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PART TWO:  
CLEANLINESS OR GODLINESS.

CHAPTER ELEVEN:  
PROSTITUTION AND VENEREAL DISEASE.

In May 1671 the General Assembly of the Free Church received a letter from certain Ladies' Associations in Glasgow and Edinburgh asking it to petition Parliament for repeal of the Contagious Diseases Acts.¹ These Acts, passed in 1864, 1866 and 1869, were designed to protect soldiers and sailors against venereal disease by providing for the compulsory medical examination of prostitutes in a number of English and Irish garrison and dockyard towns. To many military men, doctors and politicians these Acts seemed eminently sensible. Their opinion, however, was not shared by a considerable body of middle and artisan class opinion² which was disturbed by the emergence - despite much resistance to public discussion of the subject - of evidence suggesting that the Acts were as unjust in operation as they were in principle. Opposition to the Acts was soon channelled, by Josephine Butler and others, into what became known - because of its desire to abolish the Acts - as the Abolitionist movement. In appealing to the Free Assembly, the Ladies' Associations, who were part of this movement, were about to gain a significant adherent to their Great Crusade.

This part of the present study is concerned with the part which the Free Assembly and the United Presbyterian Synod played in that Crusade. But before we examine this, something has to be said about prostitution, venereal disease and the churches' attitude to these subjects prior to the passing of the Contagious Diseases Acts.

¹. F.C.G.A.P.D1871, p.263.  
1. Prostitution and Venereal Disease prior to the Nineteenth Century.

The Contagious Diseases Acts were only the latest of many attempts to deal with prostitution, for although the more self-critical Victorians and their more censorious critics are at one in agreeing that there was an enormous amount of prostitution in the nineteenth century, that century can neither be blamed nor credited for inventing it. Who did, and how, and why, are questions which it would be as inappropriate as it would be impossible (for prostitution is by no means easy to define\(^1\)) to enter into here. But since their influence upon European culture, and in particular upon the churches, has been so important, it is appropriate for us to begin with a brief consideration of prostitution among the Old Testament Jews after their arrival in Canaan.

The most significant aspect of prostitution in Israel prior to the Exile was of course its involvement with religion. In Canaan, as in many other agricultural societies, the idea of the fertility of the female was closely associated with the idea of the fertility of the field. This, together with

\(^{1}\) While it is possible to achieve a large measure of agreement on what might be called the hard-core of prostitution, its borderlands are obscure. Two characteristics often regarded as distinguishing prostitution are its indiscriminate or promiscuous nature and the involvement of payment in cash or kind. There are, however, a variety of sexual activities involving payment or reward which may not be particularly promiscuous or entirely indiscriminate, for example the activities of Greek hetairae, Renaissance courtesans, Victorian kept-women and modern call-girls. These inhabit some ill-defined no-woman's land between prostitution and concubinage. Even more difficult to classify are the women who sleep with selected men in order to advance their own or their husband's career or social position. And on the other hand there are those whose sexual activities may be indiscriminate or promiscuous, but who neither ask for nor expect payment. In the context of European rural courtship, discussed above, there were no doubt some women, more sought after than others, who demanded neither payment nor promise of marriage - at least for the time being. Such women cannot be regarded as prostitutes if hire or reward are seen as necessary elements in prostitution. Yet if their willingness to be sexually promiscuous was widely known, it is hard to draw a distinction between their activities and those of a prostitute - vide H. Benjamin and R.E.L. Masters: Prostitution and Morality, 1965, pp.21ff.
the notion of the holiness of all forms of ecstasy, including sexual orgasm, gave rise to cults in which the sacred prostitute was a key figure. As such, the sacred prostitute embodied all that the less magical and more rational prophetic religion of formerly nomadic Israel was opposed to. In the consequent struggle the prophetic religion survived only with difficulty, and was often at a disadvantage. Not least to its disadvantage was the probability that pagan cults were partly maintained by the offerings of those Jews who visited sacred prostitutes, not because of any religious conviction, but simply because there was no readily available secular alternative. ¹ (Many Jews of course were also potential converts. The Canaanite cults suited their new life-style and many were drawn into them as a result of inter-marriage with the natives.) Perhaps for this reason there is in the Old Testament Scriptures which relate to this period little condemnation of secular prostitutes such as Rahab. Even after the Exile, when urban secular prostitution assumed much greater proportions, it was not criticised with the vehemence reserved for the sacred variety, but on more practical grounds, as a waste of the time and money of young men. Later, however, the area of strong disapprobation expanded to include secular as well as sacred prostitution and in the Christian tradition a clear distinction was not maintained.

The Christian tradition, however, was also influenced by other attitudes to prostitution, primarily those which had developed in Greek and Roman society. These societies, although each of them attempted at different times to suppress prostitution, were less concerned with its religious dangers, and on the whole were more tolerant of it. Indeed, at times, prostitutes in Greece and Rome were not only tolerated, but also licensed, registered and taxed. These tactics were carried over into the Middle Ages, despite opposition from the early church; and the efforts of later Christian emperors and kings, notably Charle-

magne and Louis IX of France, who attempted to abolish prostitution by law, met with little success. Any attempt of this kind was no doubt complicated by the ambivalence of the Church and its theologians. The most commonly quoted Christian observations on the subject of prostitution, prior to the Reformation, are those of Augustine and Aquinas, the Church's most outstanding theologians. And both of them, while insisting upon the sinfulness of prostitution, and supporting the Church's policy of keeping unrepentant prostitutes outside its pale, conceded that prostitution was a necessary social evil, which should be tolerated for fear of worse. If prostitution were abolished, they felt, other females might resort to promiscuity, and men to sodomy and other sins.¹

Events in the fifteenth and sixteenth centuries were however to change this situation. The first of these was a major epidemic of syphilis, which invaded Europe in the 1490s, lasted for a hundred years, and killed tens of thousands. Whether Columbus and his crew brought it - as a new disease - back from America in 1493, or whether it was simply a new form of an old disease which somehow became much more virulent, is uncertain. But its deadly effect and the inability of contemporary doctors to treat it, are well documented.² It was not until the beginning of the seventeenth century that syphilis became a disease whose early stages were not commonly fatal. Thereafter it took on its more modern form, and while epidemics recurred, there were never again any so serious or on such an enormous scale.

The sixteenth century epidemic was not, of course, the first European experience of venereal disease. Measures to deal with venereal infection were laid down in the Old Testament: in Leviticus 15: 1-18 and 25-30, where quarantine and washing were aspects of laws against ritual uncleanness; and

in Numbers 25 and 31, where measures to check the disease included the slaughter of all the Midianite men and all of their women who were not virgins (some of whom had previously infected the Israelites) as well as the purification of the Israelite army by quarantine and washing, and of their baggage by fire and water. In the subsequent history of Europe, quarantine continued to be the main form of treatment, and although mercury became a standard remedy for the early stages of syphilis, later stages (in the post-sixteenth century development of the disease) manifested themselves, if the earlier were not treated, in paralysis, syphilitic insanity, death and the infection of unborn children. No fully effective treatment for syphilis was found until 1943, when the use of penicillin was introduced, with dramatic results. (Penicillin also transformed the treatment of gonorrhoea, a less serious but much more common form of venereal disease).

The major problem in treatment, especially during an epidemic, was that of getting hold of infected persons. If a prostitute or a highly promiscuous woman was infected the disease could spread rapidly. Literally as well as metaphorically she could infect armies of men; and during the sixteenth century epidemic, as in the Old Testament period, military campaigns had much to do with the progress of the disease. It came to Scotland with the supporters of Perkin Warbeck in 1496 and penetrated thereafter to most of the larger and smaller towns.

The second event which was to influence the future course of public attitudes to prostitution was the Reformation. There seems to be no hard

1. Not all commentators are convinced that these are references to venereal disease. Vide D.R. Mace: Hebrew Marriage, 1953, p.239.
2. It was known on this occasion variously as the Spanish sickness, the sickness of Naples, the French sickness or Grandgore (large sore). The normal custom throughout Europe was to designate the disease by the name of some other country: in a later epidemic introduced to Scotland by Cromwellian troops in the mid-seventeenth century the terminology was reversed, the troops calling it the Scotch pox. Vide British Journal of Venereal Diseases (1962), 38,175: 'Some Aspects of the Early History of Syphilis in Scotland', R.S. Morton.
evidence to show that the epidemic of venereal disease was an important factor in forming the attitude of the Reformers towards sexuality. Any effect it might have had, however, would probably only have confirmed their insistence on a single standard of sexual morality. Yet the Reformers did not adopt a uniform policy in regard to prostitution. Luther, for example, was opposed to prostitution on principle and took the optimistic view that marriage was an adequate alternative. Nevertheless, when called upon to give practical advice, he was more ambivalent, suggesting in one case at least that the premature shut-down of brothels might do more harm than good.¹

The Scottish Reformers seem on the whole to have been more single-minded. The Edinburgh Town Council, in 1560, gave 'whoremasters and harlots' two alternatives: either they could confess their conversion to a new way of life before the ministers and elders, or they could face a scale of penalties ascending, depending upon the number of their offences, from public rebuke and carting, through branding and banishment, to 'punishment to the death'.² These alternatives, save the last, were also offered by the Privy Council, when four years later it enacted legislation prohibiting brothels.³ Such attempts to put down prostitution were of course part of the more far-reaching policy of the Reformers with regard to sex, and the keen-eyed council of Edinburgh were unwilling to leave any stone unturned. Aware of the close connection of drink and sex they ruled in 1560 that

'Because in past times the iniquity of women taverners in this burgh has been a great occasion of whoredom, insomuch that there appears to be a brothel in every tavern; therefore all vintners of wine who may engage women taverners before the next Martinmas hereafter were to be certified, that if their women committed any immoral fault they should have to pay forty pounds, except they deliver the offender into the hands of the bailie, to be banished, according to the laws, as soon as the offence comes to

3. Ibid., p.250.
Such attention to detail suggests that the council's policy of repression was not only preached but also put into practice - or at least that there was a serious attempt to do this. But since a further 'most strict' proclamation against immoral women in taverns had to be issued in 1570, further efforts to banish harlots were made in 1537, and laws against streetwalking had to be repeated in 1585 and 1588, it seems likely that success in this field of legislation was limited. Perhaps because of this, the councils, by the end of the century, were beginning to tire of such efforts, and certainly in one case a citizen was released from a charge simply by providing security that he would never again enter a brothel. In the following century only two Acts concerning prostitution were passed by the Edinburgh Town Council, one of 1650, prohibiting brothels and re-ordering the carting, scourging and banishing of whores, the other demoting an officer who was found guilty of maintaining a whore.

Legislation relating to venereal disease in Scotland appears on the whole mostly to have had to do with the isolation of those who were infected. This was ordered by the authorities both before and after the Reformation. Town councils in the 1490s ordered harlots to give up their trade, and packed off infected citizens to islands, or, alternatively, commanded them to stay inside their houses. Isolation was also ordered and in some cases forcibly imposed during later outbreaks of syphilis.

1. Ibid., p.248.
3. Ibid., p.308.
4. These Acts were in fact passed in the same year in which Cromwell's soldiers brought a new epidemic of syphilis to Scotland. They were passed, however, in April and May of that year, whereas Cromwell's soldiers did not cross the border until July. It seems likely therefore that they had more to do with the politico-religious attitudes of the Covenanters than with the fear of infection by venereal disease.
5. Ibid., p.309.
But by the eighteenth century civic attitudes to prostitution were beginning to change. Prostitution had not been abolished, even in Scotland, and the Edinburgh councillors decided that if they could not beat prostitution they ought at least to recognise it. They declared therefore, in 1700, that


\[\text{ notwithstanding the great care and pains taken by them to punish common whores and thieves and banish them from this city, yet they still are found within this city and suburbs, having no mark or distinction to make them known from other inhabitants; and therefore were of the opinion that, conform to the custom of other places abroad, those common thieves and whores should be marked upon the nose, by striking out a piece of the left side of the nose with ane iron made for that purpose}.\]

At first sight this pronouncement looks like yet another attempt to suppress or abolish prostitution. Certainly it was part of a larger package, containing threats to deprive unrepentant burgesses of their status, with which the Council reinforced ecclesiastical attempts to put down adultery and fornication. But in fact it marked a significant change of direction: the reference to 'the custom of places abroad' was significant, since at about this time some continental countries were once again beginning to tolerate prostitution, regulating it through police and medical inspection of brothels and guarding against disease by suppressing the activities of unlicensed prostitutes. Not all European countries were doing this, and in Britain public opinion was still resistant to any regulating system. Nevertheless, in this context, the Council's admission of its failure to abolish prostitution, and its policy of branding common whores on the nose was recognition of a sort. Thereafter it took no further measures to abolish prostitution, but concentrated instead

3. In Austria, for example, the Empress Maria Theresa's Chastity Commission was trying to put down prostitution and all forms of fornication with as much zeal as the Scottish Reformers two hundred years earlier (ibid., p.241).
4. Bernard Mandeville's Modest Defence of Public Stews, an attempt to argue for regulation in England, was greeted with hostility (ibid., p.249).
5. Tait (op.cit., p.311) suggested that perhaps this was because they were afraid of being caught up in their own legislative net.
on attempting to limit the amount of public disorder caused by it. Subsequently, the council issued a number of Acts forbidding respectable women from wearing plaids and other forms of clothing which might lead to their being taken for prostitutes. This, recalling pre-Reformation legislation compelling harlots to wear clothing which would distinguish them from other women on the Edinburgh streets, can be seen as further evidence of official toleration and recognition.

2. The Extent of Prostitution in the Early Nineteenth Century.

What effect this return to toleration may have had upon the number of prostitutes in urban areas is a question to which no very satisfactory answer can be given.Prostitutes, as we have already noted, had been active in British towns and cities for many centuries and even in Scotland the Reformers were unable to suppress them. What we do not know, however, is the scale on which prostitution existed during these centuries: we can only suppose, since the activities of the Reformers and their successors probably drove a certain amount of prostitution underground, that it is likely to have existed on a larger scale than was officially recognised. The problem of estimating if and by how much prostitution may have increased in the later eighteenth and in the nineteenth century is further complicated by the consideration that greater toleration came at a period when the urban population, and with it the urban underworld, was increasing at a hitherto unprecedented rate.

This greatly enlarged urban underworld naturally enough provoked the interest and concern of a number of middle-class early Victorians. Increasingly cut off by economic progress from a common civic identity with the underworld's inhabitants, but energised in many cases by the spirit of Evangelicalism

1. Ibid.
and in others by the desire for greater enlightenment, their enquiries included attempts to determine the 'nature, extent, effects, guilt, causes and remedy' for and of prostitution. As far as the extent of prostitution is concerned, however, these enquiries were often as confusing as they were helpful. To illustrate this we can note a few of them in passing.

London's large underworld naturally attracted a good deal of attention. In his *Police of the Metropolis* the criminologist Colquhoun estimated that between 20,000 and 25,000 women in London – the population of which at the time (1800) was about one million – made their living entirely by prostitution. There were in addition, he calculated, another 25,000 or so women who lived partly by prostitution, in other words a total of five per cent. of the London population making or eking out their living by it. Another authority, Dr. Ryan, quoted in a magazine during 1840, thought that the total figure should be nearer 80,000, or eight per cent. of the total population. But then Sir Richard Mayne, the Chief Commissioner of the Metropolitan Police, stated in 1841 that the number of prostitutes in London was 9,409. This confusion was partly a matter of definition. Mayne was probably referring only to full time prostitutes, while Colquhoun's estimate included part-timers, a class which in his terms included 'the multitude of low females who cohabit with labourers and others without matrimony' – whose prostitute status was doubtful, to say the least. Even so, leaving part-timers aside, the difference between 25,000 and 9,409 was large enough. Here, however, contemporaries alleged, the problem lay with Colquhoun's methods: he was estimating 'the amount for the entire city from the numbers found in certain localities'.

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that is the notorious ones. His estimate was thus far too high. Other authorities again, however, considered figures like those of Mayne to be far too low. The debate about London prostitution was endless, and heavily coloured by comparisons to be drawn one way or the other with Paris, the regulationist's Utopia and the Evangelical's Gomorrah. 'The differences' in estimates, as Ralph Wardlaw, trying to make sense of them, remarked, 'are so very wide, as to be really marvellous'.

Estimates were also forthcoming for Edinburgh and Glasgow. Here there were fewer experts, so less appearance of uncertainty. But even Tait, the Edinburgh authority, admitted that answers 'where information was expected... were so vague and unsatisfactory that no reliance can be placed upon them. One individual estimated the numbers of prostitutes at 6,000, and another as low as 300'. Tait's own method of calculation involved ascertaining the number of brothels in the city - the total of which in their various disguises was about 200 - multiplying this by the average number of girls living in each - which was three - and adding to the total the number of girls who lived in private lodgings or with friends, but who frequented these places. The number in this last category, the names of most of whom Tait claimed to have procured, was 200. The total number of full-time prostitutes in Edinburgh around 1841 was thus, according to Tait, 800, a figure corroborated by the Treasurer of the Magdalene Asylum. Since the total population of Edinburgh in 1841 was 137,899 this meant that full-time prostitutes accounted for around 0.6% of the population, a proportion similar to that in Glasgow, where the population was

1. Vide ibid, pp.24ff. Mayne's estimate was questioned by Wardlaw on the ground that this figure of 8,000 to 9,000 prostitutes was too low by comparison with his report of 3,335 brothels. (The respective figures appear in Logan: op.cit., p.88, as prostitutes: 9,409, brothels 3,325 - but Wardlaw was writing quickly: the lectures were first delivered at the end of May, the book appeared in August.)
2. Ibid., p.24.
3. Tait: op.cit., p.5.
4. Ibid.
280,682; and the number of full-timers, according to the city missionary Logan's account, was put at 1,475 by police figures, at 1,800 by the Lock Hospital Surgeon, and at 1,800 by Logan himself. There was thus more unanimity about the extent of Scottish prostitution, but as we have noted, there were fewer authorities to contradict one another. On the other hand, since what authorities there were may well have been in close contact with one another, unanimity might simply have reflected mutual confirmation of one another's guesswork.

An added element of uncertainty in assessing the extent of early nineteenth century prostitution was provided by the existence of part-time prostitutes, whose number in London alone Colquhoun had put at 25,000. Even if co-habitation without marriage accounted for some proportion of this supposed figure, there clearly was - and all of the accounts seem to agree upon this - a sizeable number of working class women in towns and cities who were driven to prostitution, willingly or unwillingly, in order to help support themselves or their families. Some such women, what proportion it cannot be said, would no doubt have resorted to prostitution even if they had not needed the money. But in an age increasingly characterised by large scale unemployment, inadequate provision for the poor, and the isolation of many individuals and families from the mutual support of rural community life, many women might have seen no alternative. There seem to have been many of them in Edinburgh. Tait calculated their number on the basis of investigation into the history of 300 girls employed in sewing and book-stitching, 130 of whom were 'known to deliver themselves up partially to a life of prostitution'. From this he worked out that from 'the class of dress-makers, sewers, bonnet-makers, book-stitchers, shop-girls, house-servants and fishwives' and from that of women either unem-

1. Logan: op.cit., pp.72ff.
3. Ibid., p.2.
ployed, widowed or deserted by their husbands, at least 1,160 and probably more were sly prostitutes.

The full impact of such figures - even if their authors and their contemporaries realised that they could not be proved - was brought home dramatically by Tait\(^1\) when he estimated that in Edinburgh there was one full-time prostitute for every eighty adult males.\(^2\) An estimate of this kind including the sly prostitutes would have made this figure one for about forty. Wardlaw,\(^3\) noting Tait's calculations, was unwilling even to speculate upon whether there were proportionately as many sly prostitutes in Glasgow as in Edinburgh: if there were, over 2000 would have to be added to the total. 'Distressing as it would be to believe this', he commented, 'yet for aught I can tell, it may be true'.\(^4\)

1. Ibid., p.7.
2. This was not as bad, however, noted Tait, as the proportions for London, Paris and New York, which were 1 to 60, 1 to 15 and 1 to 6 or 7 respectively. New York's figures in particular distressed Tait: it was a city whose inhabitants were supposed to be 'independent, liberal, religious and enlightened', yet a city whose depravity 'was not surpassed even by the metropolis of France during the heat and fervour of the Revolution, when libertinism reigned triumphant, and the laws of God and man were alike set at defiance' (ibid., pp.6ff.). Wardlaw (op.cit., pp.28ff.) found the New York figures equally distressing and 'would fain discredit' them. Yet Tait's calculations, he noted, had been based on figures provided by a 'much respected minister of the gospel' (the Revd. Dr. McDowall, Chaplain to the New York Magdalene Asylum) who was 'one of themselves, (i.e. New Yorkers) and therefore, we may presume, one who would be the less likely to deal in exaggeration'. Tait (op.cit., p.7) incidentally was careful here to defend Edinburgh's reputation from the charge that Edinburgh citizens were religious hypocrites - which might be made on the ground that the majority of prostitutes in Edinburgh were of the secret rather than the public variety. No doubt religion did influence public opinion and keep much prostitution secret. But there was as much secret prostitution in Paris and New York - and the large amount of public prostitution (even if secret prostitution there was disavowed) was surely no proof of superior morality. The canard against Edinburgh attacked by Tait is repeated by Henrques (op.cit., p.94) who claims that 'in Latin countries a less rigorous interpretation of Christianity in relation to the flesh and the devil, has sponsored less hypocrisy'. Perhaps. But is this true of divorce in Italy, and contraception in France? Protestants enjoy no monopoly of hypocrisy.

4. Ibid., p.35.
3. Dealing with Prostitution.

On even the most conservative reading of the late eighteenth and early nineteenth century scene then, it is clear that prostitution was a social phenomenon of considerable dimensions, and although greater toleration was extended to it for a time, dissatisfaction soon set in. In the interests of order and morality, of social justice and of public health, reformers sought for ways to deal with the problem.

3.1 The Evangelical Approach.

Dissatisfaction with the toleration of prostitution was an inevitable concomitant of the influence exerted by Evangelicalism upon late eighteenth and early nineteenth century British society. During those years, in which 'virtue was advancing on a broad invincible front,' at least three different ways of tackling the problem were advocated or adopted: the creation of asylums for female penitents, the enactment and enforcement of stricter laws, and the general reformation of social and sexual behaviour.

3.1.1 Penitentiaries.

The first of these was not of course a new idea, since penitentiaries had existed in the past, but interest in them re-awakened during this period. In 1787 a Lock Asylum was opened in London to receive penitent prostitutes who had been discharged from the Lock Hospital (a hospital for treating venereal disease, opened in 1747), and other similar institutions were soon established; the Magdalen Hospital in 1758 (another venereal disease hospital) and the London Female Penitentiary in 1807. There were others outside London, including the Edinburgh Magdalen Asylum, founded in 1797 (Edinburgh already had a

Lock Hospital) and the Glasgow Magdalene Asylum soon after. Other institutions and societies with wider aims, but incorporating the penitentiary principle, were also set up: in London, the Guardian Society in 1812, the Maritime Female Penitentiary, a few years later, and in 1835 the London Society for the Protection of Young Females and the Prevention of Juvenile Prostitution.

The last of these, parallel societies to which were set up in Edinburgh and Glasgow during the early 'forties, carried matters much farther than simply providing a place where prostitutes could repent and be retrained for a new profession. A major criticism of the penitentiaries, expressed by Tait in the 'forties, and later by Acton, was that they catered — with varying degrees of success — for only a very small proportion of the prostitute population. The Societies, by contrast, employed much more aggressive and missionary methods, attempting to search out and save the inhabitants of brothels, and especially their most recent recruits.

3.1.2 Laws.

The London Society was also anxious to achieve changes in the law which would ensure easier convictions and more severe sentences in cases of procuring and brothel-keeping. This aim was in line with the policy of leading Evangelicals, such as Wilberforce, who, in drafting the Royal Proclamation against

1. Vide Tait: *op.cit.*, pp.333ff. In Edinburgh, between 1797 and 1837 only 814 penitents entered the Asylum, and only about 36 per cent. of these were sent on to their friends or to fresh employment, a much lower success rate than in comparable London establishments. Tait laid much of the blame for this on the respectable citizens of Edinburgh, who failed to provide financial support for this, or indeed any other charity ('on glancing over the reports of the different charities in Edinburgh, it is observed that they are supported by a few individuals and that these invariably subscribe to them all, while thousands of respectable citizens do not contribute to any of them' — *ibid.*, p.336). He also criticised respectable Edinburgh families for not being willing to employ the reformed and retrained women as domestic servants. But this, he noted, was not surprising, since very few of the Asylum's directors had enough confidence in their work to employ the women either. The system of solitary confinement for the first two or three months in the Asylum was also criticised by Tait.

Vice and Immorality (1787) and in setting up the Society dedicated to promoting the Proclamation's ends, was concerned with the stricter enforcement of the law against Sabbath-breaking, drunkenness, pornography and other forms of immorality. The Evangelicals realised, as Wilberforce put it, 'that by regulating external conduct we do not change the hearts of men', but, hoping that their countrymen would be 'ultimately wrought upon by these means', decided that they 'should at least so far remove the obtrusiveness of temptation that it may not provoke the appetite which might otherwise be dormant and inactive'.

It is difficult to measure the success of this second aspect of the Evangelical approach to prostitution, but for the present it can be noted that the police and magistrates were given greater powers to suppress brothels, to prosecute brothel-keepers, and to keep prostitutes from making too great a nuisance of themselves on the streets. These powers, granted by various local and national enactments, were not at first fully employed, but by about 1870 the police and the courts seem to have become more enthusiastic about them. According to the statistics of the Metropolitan Police, the number of brothels proper (i.e. establishments lodging or boarding prostitutes only, as opposed to places where prostitutes, among others, lived) in their district, had sunk from 933 in 1841, to 410 in 1857, to 2 in 1870. A similar decline seems to have taken place in Scotland: in 1870 the Edinburgh police knew of 85 brothels in the city compared with over a hundred three years earlier; and in the same year the Chief Constable of Glasgow expressed the opinion that neither prostitutes nor brothels had increased in number, during the previous twenty-

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3. Vide Acton: op. cit., p.4, and Logan: op. cit., p.87. The number of prostitutes accommodated in these brothels declined from 2,071 in 1841, to 921 in 1857, to 11 in 1870. Overall numbers of prostitutes known to the Metropolitan Police during this period were, however, 9,409 in 1841, 8,600 in 1857 and 6,515 in 1870.
one year, in proportion to the increased population; that the number of brothels had not increased at all, that large brothels no longer existed, and that prostitutes, thanks to police activity, no longer made an obvious nuisance of themselves on the streets.¹ A similar decline in the amount of street-walking was reported by the Superintendent of the Greenock police after his force had been provided with powers to proceed against it when the town adopted the appropriate Act (of 1862).

3.1.3 Social Reformation.

But beyond the penitentiary principle and beyond more rigorous enforcement of the law lay the larger vision of Evangelicalism. In attempting to deal with prostitution, the Evangelicals and those whom they influenced were working, in a particular case, towards the general goal of a new reformation. Tait, the Edinburgh surgeon (who whatever his private convictions had adopted the Evangelical tone), writing about remedies for prostitution, emphasised the importance of adopting 'a multiplicity of means, among which the removal of the causes will form the most important and successful'.² As enumerated by Tait these removals added up to a programme for something little short of a total social and moral reformation.

This programme for a nineteenth-century reformation was in some respects strikingly reminiscent of the sixteenth century. Tait, although considering their methods too harsh, admired the determination of the Reforming magistrates of Edinburgh. He also laid great stress upon Education. Prostitution, he believed, was rooted in the poor religious and moral training of the lower orders. Through percept and example, masters, parents and peers, could do

¹ Ibid., pp.92ff.
² Tait: op.cit., p.360.
much to minimise the effect of those 'natural' traits - 'licentious inclination', 'irritability of temper', 'pride and love of dress', 'dishonesty and desire of property' and 'indolence' - which set a young girl's feet on the primrose path. Greater kindness at home, followed by more and better religious, moral and scientific education were also prescribed in order to counteract the social or 'accidental' causes of prostitution. Other accidental causes would be dealt with by paying greater attention to the problems of poverty and Social Welfare, since female unemployment, low wages and destitution all contributed to the situation in which mothers took to the streets to support their children and daughters to support their parents. Like the Reformers, Tait was concerned about the poor, and advocated more generous poor-relief, but like them also he was unable to devise a lasting solution for regulating commerce in the poor's interest. He tentatively suggested the creation of a prices and incomes board which could penalise manufacturers and merchants who undercut their rivals and in so doing created unemployment. But then he drew back, afraid that this would 'infringe fatally on the freedom of trade', and expressed the hope that something might be done instead by 'voluntary benevolence'.

The nineteenth century reformation was also like the sixteenth in that the conventional socio-sexual system was questioned. In the nineteenth century, however, the pretentions not of celibacy but of marriage were condemned. Tait's criticism of the marriage system was the common one of 'bachelorism' and delayed loveless marriages among the rich, of hasty marriages, desertion and destitution among the poor. This combination stood high among prostitution's 'accidental' causes. Reformation would not however be achieved by

1. Vide ibid., pp.113ff. and 273ff. for the 'natural causes' of prostitution and their remedy.
2. Vide ibid., pp.129ff. and 277ff. for the 'accidental causes' of prostitution and their remedy.
3. Ibid., p.280.
4. 'The bane of the female population; for while it disappoints the one half, it ruins the other'. Ibid., p.136.
sweeping changes in the law, only by an elevation of moral standards. Professing christians — especially those of the middle and upper classes — should therefore make every effort 'to give the tone to the manners of others, which', Tait believed, 'they might easily do with success'.¹ He particularly requested them to treat their servants with greater 'gentleness, patience and firmness', to ostracise seducers (whom the law ought to punish) and men who had any commerce with prostitutes, and to see that their household kept the Sabbath and stayed away from dancing parties and the theatre. If public opinion encouraged virtue and disowned vice prostitution would 'wither and decay'.²

Prostitution, however, did not wither, nor did it decay. By 1840, when Tait was writing, the Evangelical Reformation had gone about as far as it could go. It was still the Evangelicals' high noon, and they had succeeded in casting a long shadow over the rest of the nineteenth century, but already other men were aspiring to their place in the sun. Two movements in particular, which in the twentieth century would challenge Christianity's cultural leadership, were already beginning to devise alternative ways of dealing with prostitution. These, Socialism on the one hand, and the Therapeutic Alternative on the other were, of course, still weak, and Marx and Freud, their major prophets, had yet to arise. But those who wittingly or unwittingly prepared the way for them regarded prostitution in a different light to that of the Evangelicals. It is difficult to say how far the Evangelicals realised the threat which these movements were to represent to their own ideas on the subject. But their vehemence in condemning what those who prepared the way had to say suggests that they sensed it.

¹. Ibid., p.293. (cf. Ch.5: 5.3.3, above.)
². Ibid., p.294.
3.2 A Socialist Alternative.

By 1840, a Socialist view of prostitution, later endorsed and elaborated by Engels, had emerged in the writings of Robert Owen, the anti-clerical Utopian Socialist who had attempted to found a model community at New Lanark. Ralph Wardlaw, the leading Scottish Congregationalist minister of the time, was aware of Owen's existence and was unsympathetic to his ideas. Wardlaw, persuaded by eleven hundred and forty fellow Glaswegians to lecture them on what 'with unfeigned alarm and regret' they regarded as 'the vast amount and constant increase of female prostitution within the precincts of our own city', lost no time in getting to work on those whose presuppositions threatened his own: 'the enemies of religion' who 'chuckled over' the improper behaviour of some scriptural characters - and Robert Owen.

Owen took criticism of the kind expressed by Tait much farther. The conventional marriage system, in his eyes, was not a good thing gone wrong, but a confidence trick played upon his contemporaries' ignorant ancestors by power-hungry priests. Before this took place men had lived simple and innocent lives, unaware that they should be ashamed of their sexual feelings. The priests who persuaded them that they should, had been responsible therefore for man's real fall, and now, in the West persuading them that monogamy, and in the East that polygamy, was God's will, they kept men slavish, superstitious and subservient to the Church. Now, men and women had to promise to 'love and cherish' what your organisation may compel you to dislike and loathe, even in a few hours'. The marriage system, by concealing this conflict, was the cause 'of more than one half of all the vilest and most degrading

2. Ibid., p.3.
crimes known to society' as well as 'the sole cause of all ... prostitution'.

 Understandably, the author of these ideas was anathema to the Evangelical Wardlaw, who, noting his ideas, confessed that 'my own loathing of the beastly system is so intense that I am unable to speak of it with patience'.

 To him, the notion that 'religion, property and marriage are the real originators of all existing evils ... and that no God no property and no marriage are the true panacea for the world's vices and the world's woes' was 'drivelling folly', and Wardlaw was confident that there was 'a sufficiency of sound sense and of right feeling in the community' to show this up for what it was.

 While not being willing to criticise Socialism in general, he believed that Owen's views on marriage 'deny the legitimate authority of any restriction, admit no rule but that of natural impulse, and would reduce us to the socialism of the brutes'.

 Owen's ideas, although often wild enough, did not deserve such strictures. His romantic naturalism was of course naive, but he could also be remarkably realistic. His proposals for new laws on marriage and divorce, which recognised the concept of marriage breakdown but also made provision for reconciliation, contain some suggestions which, however unthinkable to contemporary christians, were strikingly similar to those seriously advanced by

1. Ibid., p.206.
2. Ibid., p.11.
3. Ibid., p.10.
4. Ibid., p.13.
5. Ibid., p.10.
6. Marriage was to be constituted after two public declarations, separated by three months, and made by both parties. It could be terminated, but not sooner than twelve months after its constitution, and if both parties wished it, by a public declaration, followed by a further six months together, and then, if both still wished it, by a second and final declaration. If by the end of the six months one party objected to the separation, a second six months together was prescribed; and at the end of these, if the two parties remained in disagreement, the separation would be final. (Owen: Lectures on the Marriages of the Priesthood of the Old Immoral World, 1835, Appendix to 1841 edition.) Vide Morton: op.cit., pp.213ff.
orthodox Anglicans in the 1960s. This later period would also regard with much greater sympathy Owen's opinions on chastity and the family. The former, 'the chastity of Nature' he identified as 'real charity - that chastity, which alone is virtuous': it consisted, he believed, 'in the intercourse of the sexes when there is a pure and genuine sympathy or sincere affection between the sexes'. The latter, he believed, was a school of selfishness: single-families were 'dens of selfishness and hypocrisy' in which children were taught to say 'my' and 'our' and 'to seek, by ... almost any means, except direct robbery' to promote their own interests and those of close kin, instead of those of society as a whole.

In the long term then it seems as if Owen was justified when, on his deathbed dismissing the orthodox approaches of a hopeful clergyman, he remarked, 'I have been ahead of my time'. But most of his contemporaries were far from admitting it.

The view of prostitution which Owen put forward was therefore not one which presented a live option for early Victorian society. Respectable men may have been willing - even eager - to admit that the marriage system was partly responsible for contemporary prostitution. But, as we have seen, it was the corruption of the system rather than marriage itself which they criticised. Marriage and the family were bulwarks of society, protecting Britain against sin and social chaos. Anyone who doubted this need only remember the depravity of the eighteenth century, or look across the Channel, to be convinced of the danger of disregarding or tampering with these divinely ordained institutions. There was still, undeniably, much sin in British society, and the threat of social chaos was never far from the minds of the bourgeoisie.

4. Ibid., pp.209ff.
5. Ibid., p.63.
when they considered the ways of the rapidly multiplying lower orders. But sin might increase and social chaos threaten even more, if those who gave the lead to society faltered in their firm purpose and, beguiled by moral sophisticies, confused those clear distinctions of right and wrong upon which their achievement had been built. Further moral improvement consisted not in asking what was right, but in ensuring that what was known to be right was done.

Owen's ideas then were not a live option. The alternative to them was greater godliness, which would check both the sexual passions which contributed directly to prostitution and the desire for greater affluence than was appropriate, which contributed indirectly to it. Not everyone however agreed that it was enough to desire and work for greater godliness. There was also greater cleanliness to be considered. The way in which the claims of this virtue, traditionally so closely associated with godliness, were argued, was to prove very confusing to those who wished to maintain clear distinctions of right and wrong.
CHAPTER TWELVE:
A THERAPEUTIC ALTERNATIVE.

If the well-scrubbed Christian was one consequence of the Evangelical movement, another was sanitary reform. Nineteenth century efforts to improve the level of public health of course owed a great deal to the deterioration of the urban environment and to advances in medical science which held out the possibility not only of halting this deterioration but of making the population as a whole healthier than ever before. But they also owed a great deal to the energy and earnestness of the Evangelical frame of mind; and while many of those who were concerned with public health eventually mislaid the doctrines of Evangelicalism, they held on to its moralising tone of voice. Even Freud, who offered their descendants a new therapeutic language, 'still clung' to 'something of the autocratic pose, the paternal strictness he distrusted'.

And even after that therapeutic language had been rejected by the majority of the lay public, the moralising tone of voice was not silenced. The guardians of public health still play on the guilt and fears of the public mind, offering to those who repent of, for example, cigarette-smoking, the gospel, if not of eternal, then at least of longer life. The vacuum of meaning created by the downfall of Protestantism is unlikely to be filled simply by continual therapeutic readjustments to the changing configuration of social reality — if the recent resurgence of interest in the Occult, Eastern religions and even Evangelicalism is any guide — but the advocates of these continual therapeutic readjustments have had during the last hundred years just as much and probably more influence than the advocates of revolution, continual or otherwise.

For the present purpose, however, it is enough to note that this thera-

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peutic spirit was not accompanied by a new moral view of the world set up in conscious opposition to that of the churches, as was that of Owen, but that it emerged within the context of Evangelical Christianity; and that while some of its exponents were to make an open break with the churches, many individuals within the churches, and ultimately even to some extent the churches themselves, made use of it to free themselves from the sterner moral demands of Evangelicalism.

In the context of this discussion of prostitution we can see the stirring of the therapeutic spirit best expressed in the writing of William Acton, a London surgeon who specialised in diseases of the urinary and reproductive organs and who held strong views on the control of prostitution and venereal disease.


Acton was to come into conflict with the Evangelical approach to prostitution. He was not, however, either a sexual radical or a Freudian before his time. His views on the possibility and advisability of continence would have been perfectly acceptable to any Evangelical. Like Tait, he believed that male sexual desire was a 'natural demand' whose force, although 'impossible

1. For the use of this word, which, for reasons which I hope will become apparent, is more apt than, for example, Utilitarian; vide P. Kieff: The Triumph of the Therapeutic, 1966, passim.
2. Although not, of course, of all Socialists.
3. In the churches' case this has been, in so far as it has taken place, a relatively recent development.
4. For evidence that Acton was regarded as one of the leading advocates of Regulation, vide Josephine E. Butler: Personal Reminiscences of a Great Crusade, 1910, p.63.
5. Acton's views on female sexual desire were expressed in his volume on The Functions and Disorders of the Reproductive Organs, in which (6th ed., 1875, p.213) he wrote: 'A modest woman seldom desires any sexual satisfaction for herself. She submits to her husband's embraces, but principally to gratify him; and were it not for the desire of maternity, would rather be relieved of his attentions'.
to exaggerate' was not so strong that it could not normally be contained by
the floodgates of marriage. He did not go so far as to say, with Tait, that
any man who was such an uncontrolled libertine as not to be satisfied by mar-
riage 'cannot be in a sound condition of mind' and ought to be sent to the
madhouse, but he held that young men, until they were ready to marry, could
have any 'morbid excitement ... corrected by healthy bodily exercise and mental
application'. The theory of prostitution as 'the safety valve of society' was, he held, false. There was no need to fear that 'any serious diminution
in the number of prostitutes would be attended with an increase of clandestine
immodesty', since prostitution, although it had other causes, was also its own
cause: its very existence made it a possibility, creating a want, and develop-
ing into a habit encouraged by prostitutes, who were, in Acton's terminology
'the artificial supply' of the natural demand. Here too he was very much
at one with earlier writers of a more Evangelical cast: Tait had considered
the argument that prostitution was 'absolutely necessary for preserving peace
and good order in society' to be 'absurd'; this was demonstrated by other
cases and places: murder and drunkenness were also crimes which no nation had

2. Tait: op.cit., p.269.
3. Acton: op.cit., p.163. He illustrated this point by referring to the
healthy habits of the ancient Germans (as opposed to the decadent Romans),
stallions and short-horn bulls. In making this point he also took a
sidewipe at the population theories of Malthus and Mill. The proper
remedy for over-population, he noted (p.165), was emigration and 'prevent¬
ives' - 'which whatever may be thought of them in other countries are
thoroughly repugnant to Englishmen'.
4. Ibid., p.166.
5. Ibid., p.166.
6. Ibid., p.162.
7. Ibid., p.162.
8. Tait: op.cit., p.266.
ever been able to abolish — but this was never held to be an argument for tolerating them as socially necessary; nor, in practice, did the absence of prostitution in rural districts result in any public disorder there.¹

At this point, however, Acton began to disagree with the viewpoint of his predecessors. The idea that prostitution was not 'inherent in the social system' but 'incidental to it only',² which Wardlaw, arguing on similar lines to Tait, had advanced, was not one which he could share. If the natural sexual instinct was one of the 'Universal causes'³ of prostitution, whose influence could be resisted by religion, moral sanctions or prudence, another was the sinful nature of man. 'The majority of the human race', who had not 'at any time submitted themselves to the following out of either a religious or a moral code'⁴ were as ineradicably sinful as they were sexual. A hope of the kind expressed by Wardlaw — that although it was doubtful, on past experience, that prostitution could ever be totally abolished, nothing short of the 'annihilation'⁵ of this and all other sins should be the aim of Christians — was an inappropriate basis for social policies to deal with prostitution. It might be a worthy ultimate goal, but, Acton held, it obscured the urgent need to provide penultimate remedies by refusing even to discuss the existence of prostitution as a system.

2. The Harlot's Progress.

Acton's view of the nature of that system led him even farther away from that of his predecessors. Quite deliberately he set out to contradict the traditional picture of the harlot's progress on which much of their moral-

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1. 'A robust and healthy country population have full control over their sexual propensities' (ibid., p.270).
2. Wardlaw: op.cit., p.120.
4. Ibid., p.168.
ising and practical proposals had been based. Tait and Wardlaw had suggested that the great majority of prostitutes followed a career of inevitable degeneration through sufferings, mental and physical, to an early grave: few prostitutes, they emphasised, escaped venereal disease; and they illustrated their point by detailing the more hideous physical manifestations of syphilis, such as rotting of the flesh and exfoliation of the bones, implying that such cases were common. Only a very few, wrote Tait, escaped: if they were of the better class, ate well and kept off spirits, they might remain healthy enough to survive as brothel-keepers and kept-mistresses. The great majority, however, aged rapidly and died prematurely, either by their own hands or as a result of disease. Even reformation was no protection, since many of those who reformed or married soon succumbed to disease, venereal or otherwise, or to the various other after-effects of the prostitute’s profession.

Acton challenged this view because, he held, it was out of date: "the dirty intoxicated slattern, in tawdry finery and an inch thick in paint" had been replaced by a 'pretty and elegant' young woman, fashionably dressed, "whose predecessors cast away the custom of drunkenness when the gentlemen of England did the same." The idea that prostitutes degenerated socially was equally false, since today they had more self-respect. There was 'little promotion and less degradation' between the three classes of kept women, common prostitutes and women to whom prostitution was 'a subsidiary calling'; and many of even the second class were in their own way highly

1. Tait was not certain exactly how high the early mortality rate among prostitutes was. But he thought that some indication of it was given by the fact that most prostitutes were under twenty-five, and that perhaps a fifth or sixth of these died each year. A third or a quarter of prostitutes in this age-range had at least attempted suicide at some time in their career.
   Tait: op.cit., p.227.
2. Acton: op.cit., p.27.
3. Ibid., p.28.
4. Ibid., p.29.
5. Ibid.
Those who died in utter misery and destitution among the empty bottles were 'the altogether rare exception': the typical prostitute 'succumbs at last, not to that calling, nor to venereal disease, but in due time, and to the various maladies common to respectable humanity'.

Acton substantiated this point with 'a few stubborn figures ... as to the causes of mortality among prostitutes', which showed that syphilis, especially when properly treated, was now rarely fatal. Prostitutes indeed were on the whole more free from diseases of every kind than other classes of women. Compared 'at thirty-five with her sister, who perhaps is the married mother of a family, or has been a toiling slave for years in the over-heated laboratories of fashion, we shall seldom find', Acton claimed, 'that the constitutional ravages often thought to be necessary consequences of prostitution exceed those attributable to the cares of a family and the heart-wearing struggles of virtuous labour'.

This alternative to the traditional picture of the harlot's progress was taken even further by Acton when he went on to assert that 'by far the larger number ... return sooner or later to a more or less regular course of life'. He assumed that this was because the humiliation involved in all kinds of prostitution, and the poverty of the lowest, drove out all but the most hardened after about four years 'on the trade'. With iron constitutions,

1. In this class you might find a loud and lively tavern bar prostitute 'looked on as "first rate company" by aspiring gents' (ibid., p.30). But you might equally well find a quiet sober girl, who preferred 'the respect and counsel of well-bred men of settled character' from whom she would 'get lessons, rarely thrown away, on the value of repose and thrift' (ibid., p.31). The first of these girls was 'a mercenary human tigress' (p.30), the second, a female 'in whose hands ... the sick man is safe .. and the fool's money also' (p.31).
2. Ibid., p.33. Acton (ibid., p.38) found no evidence of a high suicide rate among prostitutes.
3. Ibid., p.33.
4. Ibid., p.39.
5. Ibid.
6. Ibid.
youthful vigour and worldly wisdom greater than they could otherwise have gained, ex-prostitutes achieved respectability by marrying into 'every grade of society, from the peerage to the stable'. ¹ These marriages were frequently to the women's advantage since 'as they are frequently barren, or have but a few children, there is reason to believe they often live in ease unknown to many women who have never strayed, or on whose unvitiated organisation matrimony has availed the burden of families'. ² Others set themselves up as milliners, shop-keepers, lodging-house keepers or brothel-keepers, while a few passed through reformatories and others emigrated.

Acton's account of the way in which prostitutes survived and were received back into respectable society undermined not only the traditional picture of the harlot's progress but also the contrast drawn by many of his contemporaries between respectable society and the deviant minority who engaged in prostitution. The latter, in Acton's view, were far from being a minority: too many middle and upper class men visited prostitutes, kept mistresses or even married them, for this to be the case. And so far as the lower orders were concerned the existence of prostitution in Britain was only one indication 'that vast masses from top to bottom of our people, have not the proper poetical or theoretical appreciation of female value, and are, at present, most indifferent to those laws of society and religion by which they are supposed

¹. Ibid., p.40. In his first edition of 1857, Acton wrote, he had not had any statistical evidence to confirm this, but since the passing of the Contagious Diseases Acts the reports of medical officers concerned with the Acts' operation, corroborated his claims. The medical officer at Devonport, for example, stated that of 1,175 sometime prostitutes there, 250 had married, many of them respectably. Given that the Acts had not been long in operation, and thus that the time had not yet arrived for many of these prostitutes to return to respectable society, this does seem to confirm Acton's view - at least in an area where the Acts were in operation (vide ibid., p.49). The point, however, is somewhat weakened by his observation, elsewhere (ibid., p.198), that soldiers' wives who had been prostitutes often went back to the trade after marriage, because their husbands were so badly paid.

². Ibid., p.40.
Thus, Acton argued, 'prostitution diffuses itself through the social fabric, though it is perceptible for a time only', and any attempt to suppress it by force would not only be unacceptable in principle ('Virtue and vice, as we all know, are no subjects for enactment'), but would also in practice be an endless and impossible task. Since prostitution was 'a transitory state, through which an untold number of British women are ever on their passage ... it should be the business of us all, in the interests of the commonwealth, to see these women through that state, so as to save harmless as much as may be of the bodies and souls of them'.

3. Inadequacy of the Evangelical Approach.

These views about prostitution and its relation to society were highly controversial. In 1857, according to Acton, they were 'startling', and in 1870 William Logan, the Glasgow City Missionary and writer on prostitution, described them as 'absurd'. To those of an Evangelical disposition such
ideals seemed subversive of the sort of moral standards they wished to promote, since whatever Acton might have written about the possibility of individual purity, in dealing with the problem in general he seemed prepared not only to accept a second-best morality, but also to suggest that the acceptance of a second-best morality would not lead to those individual and social disasters which the Evangelicals feared. The Evangelical strategy, grounded in the idea that the prostitute's "end is bitter as wormwood" and that as a class they were 'stamped with the indignation of Him whose laws they have violated', was seriously threatened by the suggestion that there were other ways out of the trade than death or dramatic repentance. And it must have sounded like the devil quoting Scripture when Acton suggested 'that an all-wise, all-merciful God has provided these escapes' and that

'those are less impious and erring, than furthering God's will, who would widen the gates of the fold of penitence and rest, gather by all possible means yet another crop of Christian souls and claim the Christian's noble birthright of rejoicing over more and yet more repentant sinners'.

Evangelicals would have grown even more uneasy when Acton went on to discuss the practical implications of his view, since his criticism of penitentiaries, for example, went far beyond that of Tait: not only were they inadequate, he argued, but they would make the problem worse: a prostitute whose past was decently shrouded by marriage might well be accepted back into her own village, even if what she had been was suspected or known: a girl might have a 'misfortune', or even two, and it would be overlooked, but since 'these bucolic ways are very curious' a woman who returned home as a repentant prostitute would not be forgiven. Evangelical Midnight Meetings for prostitutes, were, by much the same token, Acton argued, 'about the worst ...

2. Wardlaw: op.cit., p.49.
3. Acton: op.cit., p.33.
4. Ibid., p.265.
of all the useless expedients adopted for remedying by private measures public wrong'.

Here Acton's alternative came most openly into conflict with the views of Evangelicals, since although they favoured some state intervention — to keep prostitutes off the streets and to suppress brothels — they did not favour intervention which could be construed as state recognition — or worse, state regulation — of prostitutes. Yet it was something of this kind, some form of state intervention based on the recognition that 'prostitution as a system' existed on a large scale in contemporary Britain, which Acton saw as most imperative.

4. Local Causes and Venereal Disease.

Two factors which may well have been significant in making Acton adopt a different approach to that of the Evangelicals were what he referred to as the 'local causes' of prostitution, and his own professional interest in venereal disease.

In describing the causes of prostitution, Acton, like Tait, had divided them into two broad categories, the Primary or Universal and the Secondary or Special, which roughly corresponded to Tait's categories of Natural and Accidental respectively. But the Secondary or Special causes or prostitution, in Acton's scheme, were subdivided into three further categories: the individual, the artificial and the local, the first of these being causes which brought individuals into the system, the other two being responsible for the system itself. Some of the individual causes, notably 'idleness, love of dress, love of pleasure' were manifestations of the primary causes, in that they arose

1. Ibid., p.260.
2. Ibid., p.77.
3. Ibid., p.168.
'independently of the accidents of birth, fortune and education'\textsuperscript{1} — but since they were not present in everyone, they demanded a separate category: other individual causes, such as 'seduction, poverty ... vicious training and associations, and evil habits'\textsuperscript{2} were manifestations in the individual of the artificial and local causes. None of this differed significantly from Tait's scheme, nor did the artificial causes, which were similar to his accidental ones: the 'unnatural' marriage customs of the middle classes, based on a 'morbid'\textsuperscript{3} fear of poverty, and leading to concubinage, contributed artificial causes on the side of demand, while, on the side of supply, seduction was not nearly so significant an artificial cause as 'cruel biting poverty' among actresses, milliners, shop girls, domestic servants, and women employed in factories or working in agricultural gangs'.\textsuperscript{4} These artificial causes activated the primary, as did 'the promiscuous herding of the sexes' in 'low lodging-houses' and 'the miserable dwellings of the very poor':\textsuperscript{5} under these circumstances decency was impossible and 'in the illicit intercourse to which such a position frequently gives rise, it is not always that the tie of blood is respected.' 'Certain it is', Acton wrote, 'that when the relationship is even but one degree removed from that of brother and sister, that tie is frequently overlooked'.\textsuperscript{6}

Much of this then was similar to Tait's inventory. Acton's third class of secondary causes of prostitution, the local, however, introduced a new emphasis. What Acton had in mind here were social circumstances particularly conducive to prostitution, notably those of garrison towns. In the army, except in India, 93 out of every 100 men were unmarried.\textsuperscript{7} Prostitution was,

\textsuperscript{1} Ibid.
\textsuperscript{2} Ibid.
\textsuperscript{3} Ibid., p.171.
\textsuperscript{4} Ibid., p.180.
\textsuperscript{5} Ibid., p.181.
\textsuperscript{6} Ibid., p.182.
\textsuperscript{7} Ibid., p.176.
therefore, in special demand in garrison towns, just as it was in seaports.

Other places where it was specially likely to be found were factory towns, large cities, and agricultural areas where the gang system was in operation. Here, Acton admitted, the problem was less that of prostitution than of 'general immorality'.

This was however, he added, 'immaterial' to his present purpose.

Causes of prostitution such as fell within Acton's 'local' category had not of course been overlooked by previous writers. Wardlaw, for example, had pointed out that, as a Glasgow resident, he must add to Tait's list of causes 'the corrupting influence of extensive factories', and Tait himself had emphasised that soldiers, especially Highland soldiers (because of their dress), were 'dangerous enemies to the female portion of the population'. But Tait has put this down under the head of seduction (an accidental cause) whereas Acton (who, unlike Tait, was here concerned only with the men and not their officers), listing this as a local cause, argued that thus 'prostitution is by the state made a necessity'.

Acton's use of 'necessity' here may seem inconsistent with his earlier criticism of the safety-valve theory and his remarks about the possibility of continence. He had not however spoken of continence as something to be expected of a man who had reached marriageable age, and here was arguing that the state, in practice, prevented certain men from marrying. It was therefore not entirely inconsistent to use the term 'necessity'. And it was certainly more humane than Tait's moralistic view which blamed the soldiers for 'the dissolute and idle life which they follow' (although perhaps Tait was in

1. Ibid.
2. Ibid., p.177.
4. Tait: op.cit., p.133.
5. Acton: op.cit., p.188.
his way more humane by including officers in his criticism).

This shift in emphasis then, reflected the growth of a more therapeutic attitude (also, perhaps, growth in the size of the army, for Tait had been writing in the period following its post-war rundown). And the growth of this therapeutic attitude reflected developments in the treatment of venereal disease which had taken place during the intervening period. Acton himself certainly believed that improvement had taken place. In private practice, he wrote, patients were now more willing to present themselves when the disease was in its early stages; diagnosis and treatment were now much better; and medical science had 'been assisted by the almost complete abstinence of the upper classes generally from intoxication, though not from liquor, and the liberal ablutions now so much and so generally in fashion'.¹ Hospital treatment, as far as the other classes of the population were concerned, had also much improved: severe manifestations of syphilis were rare, gonorrhoea was now more common than syphilis, and it too was a milder form of disease than in the past.

These changes made for a better prognosis in all cases of venereal disease, and thus made its continued existence seem more intolerable than when much less could be done for sufferers from it. It was accordingly no longer appropriate to see those infected with it as under divine punishment;² and it was least of all appropriate for the state to take this view, when it was itself responsible for putting men at risk.

1. Acton: op.cit., p.70.
2. Tait had recognised that venereal disease affected the innocent as well as the guilty, as, for example, when children of healthy parents were infected by diseased wet-nurses, or wives infected by husbands. (Vide Tait: op.cit., pp.250ff.)
5. **England and the Continent.**

The case for some form of state recognition of prostitution — as Acton argued it — thus rested upon a 'realistic' social and medical analysis of the nature of the existing problem. This analysis, he stated, was based not on 'fervid imagination, but hard memory and the experience of our profession'.

His case also rested, he argued, on Christian foundations: 'true religion' demanded that his findings and 'the real interests of the masses should not be ignored or set aside, only through fear of grating on the fanciful belief of poetical men and ladylike politicians, or breaking down their plaster-images of a perfectly genteel and virtuous polity'.

To establish his case however it was essential to meet the objections which his predecessors and many of his contemporaries had raised simply by pointing across the Channel. Tait and Wardlaw, for example, had raised these objections, and had to their own satisfaction demolished the arguments put forward in favour of state regulation by the French authority, Parent-Duchatelet. They had done this by attacking the safety-valve theory. But, as we have already noted, Acton also disagreed with this theory: he had 'only the most unmitigated abhorrence and contempt' for 'cold-blooded reasoners' who 'desire to obtain by legal enactments immunity from danger in the gratification of base desires' or who 'regarding prostitution as the safety-valve of society, wish to preserve, at the expense of others, their own wives and daughters from contamination ... Their maladies and pain deserve no sympathy', he declared, 'and as for their wives and daughters, I can only join in the indignant remonstrance "who are they that they should be considered while others are left to perish?"'.

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1. Acton: *op.cit.*, p.47.
2. Ibid., p.48.
Holding such views then, Acton was able to approach the question of Continental state regulation as one who can touch pitch without being defiled. Having had first hand knowledge of France - he had trained at hospitals in Paris as well as in London - he would not deny that the French system of licensing prostitutes, so 'repugnant to English feelings', could be very cruel and contained many evils. But such evils were not a necessary part of all systems of regulating prostitution: the 'terrible' public brothels of Paris, and their keepers - 'a vicious and, as a general rule, ferocious mercenary band, tyrannising over the unfortunate helots who form their stock-in-trade, and abjectly crouching before the inspector, the surgeon and the mouchard' - were not typical of all the Continental regulation systems; and even the French system had its softer aspects: the authorities made great efforts to dissuade young women from being licensed, often sending them back to their parents or placing them in reformatories 'at the public cost'; and French charity put the English to shame. It was true of course, Acton admitted, that the French system was not able totally to suppress clandestine prostitution, but the attempt kept many more clandestine prostitutes off the streets in Paris than in London. Thus the health risk they constituted was reduced, while the public prostitutes, being regularly examined - and if diseased, treated and cured - also presented a low health risk. Any argument against the practical usefulness of the licensing system in health terms had, therefore, more relevance to its operations than to the system in principle. England, moreover, came out very badly by comparison: the English, with their voluntary system, exhibited 'a perverse determination to ignore the presence of a vast mass of evil'; they allowed venereal disease to carry on 'its ravages unchecked, pri-

1. Ibid., p.160.
2. Ibid.
3. Ibid., p.108. (The mouchard was the police informer.)
4. Ibid., p.104.
vate charity being unequal to the task of combating an evil so gigantic'; and their streets were 'a standing disgrace, the police being unable, with the limited authority intrusted to them, to cope with the disorderly characters that throng them'.

The reason for this contrast, wrote Acton, was that the French unlike the English had 'the merit of being logical'. Confronted with a serious public health problem, they acted 'in accordance with common sense', unlike the English, whose very arguments against a licensing system were self-contradictory. Some argued, for example, that the result of a licensing system was 'to lend to prostitution the appearance, at least, of a lawful calling, and to diminish sensibly both in men and women the sense of shame'. Other opponents of licensing, however, argued that it was so degrading that no English prostitute would put up with it. These arguments, Acton observed, were contradictory, and critics of licensing, if they wished to prove their case must choose between them. He advised them to choose the first: if they did, he thought, 'probably ... their position will prove impregnable'.

Acton was able to offer this helpful piece of advice because, being English and not French, he was not in the end a defender of the licensing any more than of the 'voluntary system', but of a 'middle path that may be safely followed'. This middle way, he believed, was provided by the Contagious Diseases Act, by which prostitution was 'checked and regulated without being licensed'. Some of its provisions, he admitted, were 'open to criticism'. But in principle it was 'utterly different' from licencing, even if this was not always appreciated by its critics.

1. Ibid., p.205.
2. Ibid., p.160.
3. Ibid.
4. Ibid., p.204.
5. Ibid., p.205.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid.

This point was central to the debate into which both the Free and U.P. Churches were being drawn, and Acton's views have been examined at length here because they show that the moral problems involved were more complex than would always be apparent in the churches' debates. Before turning to examine these debates, however, we must first see what the provisions of the Contagious Diseases Acts were, noting what Acton found to criticise in them and how he defended them against the two major arguments of their opponents.

The Contagious Diseases Acts of 1864, 1866 and 1869 were passed because many people within and outside the army and navy were concerned about the large numbers of soldiers and sailors who suffered from venereal disease and were therefore unfit for active service. The general level of health in the services was poor enough at the best of times, but after the report of a Departmental Committee in 1862 had pointed out the large part venereal disease played in this, it seemed imperative to do something about it in particular. No doubt, as Acton observed, 'the loss sustained by the public purse' had 'touched ... the cupidity of the legislature', so that government action was not simply a matter of conscience, duty and obligation. But a good deal of medical, ecclesiastical and public opinion in general also supported the passage of the Acts — although, as their opponents were always quick to point out, the relevant Parliamentary business had been transacted with the minimum of publicity.

The Contagious Diseases Acts, then, were designed to protect soldiers and sailors from infection with venereal disease, by providing for the compulsory medical examination of prostitutes. The first Act of 1864 gave the police in eleven areas powers to report, to a justice of the peace, women whom

1. Ibid., p.83.
they had reason to believe were infected common prostitutes. The justice could then compel the woman to be medically examined in a Lock hospital, where if she were diseased she could be kept for three months. This Act, which also included provisions for the prosecution of those who kept brothels without disclosing that the women in them were diseased, was a temporary measure, but after a favourable report from a Departmental Committee, the Act of 1866 was passed. Under its provisions the police need no longer believe the woman to be diseased: it was enough for them to have reason to believe that she was a common prostitute. The justice of the peace before whom she appeared could then order her to submit to periodical medical inspection for up to a year, and if she were diseased she could be detained in hospital for six months. Under this Act also a woman could voluntarily apply, in the presence of the police to be regularly inspected, and once in hospital, either voluntarily or under compulsion, she could, if she thought that she was being detained too long, apply to a justice for release. In 1869, as the result of a further Act, the maximum period of detention in hospital was increased to nine months.

Acton was on the whole satisfied with the medical consequences of the Acts. Visiting various hospitals where patients were detained, in 1868, he found that the women suffered little pain as a result of treatment, and although many of them were re-admitted with great frequency, they were cured very rapidly. Most of them, in fact, were cured, and at Aldershot, for example, nearly all submitted voluntarily to examination.\^1 After some initial reluctance, prostitutes came to accept the system and, according to Acton's medical informants,\^2 those who did not, and who protested most strenuously that they were neither prostitutes nor diseased were usually found to be among the most badly infected. The police, his informants agreed, 'who have shown marvellous tact and judge-

\^1. Acton: op.cit., p.90.
\^2. In this case Dr. Barr of the Aldershot Lock Hospital (ibid., p.92).
ment in carrying out their duties, have no real difficulty in applying the Act to all known prostitutes'.

'The real difficulty' one of his medical informants remarked, lay in bringing clandestine prostitutes under the provisions of the Act; and here, Acton admitted, mistakes had been made. Acton was careful not to be too critical of the police, who 'are, as a rule, undoubtedly worthy men'. But 'to guard against tyrannical and indiscreet behaviour in the performance of the difficult duties created by the Act' the police (especially if the Acts were extended) should be responsible to persons 'of superior position and education'. Without wanting to disparage the police, Acton advised that 'this duty should be entrusted to gentlemen and not left to mere police inspectors'. At the same time he was anxious that prostitutes should not, as in France, be given a card when registered, since this would be too much like a licensing system and would in any case be unnecessary, given 'a little additional trouble' on the part of the police.

Acton made some other criticisms of the operation of the Acts which were of a more specifically medical nature. His attitude to the police and to licensing is however the crucial issue here, since it illustrates the sort of opposition the Acts, and consequently any attempt to extend them, were running into.

The movement to have the Acts extended to the general population had in fact already begun. An association dedicated to achieving this purpose had been formed and a Bill to this end was to be presented to Parliament by the Home Secretary in 1872. It was therefore important for its defenders to

1. Ibid., p.95.
2. Ibid., p.216.
3. Ibid.
4. Ibid.
5. Ibid., fn.
6. Ibid., p.217.
establish their case. The efficacy of the Contagious Diseases Acts was not seriously in question at this stage: statistics seemed to show that the health of the services had improved as a result, and a Royal Commission of 1870-71, while it had come out against periodic medical examinations, had approved of the provisions of the 1864 Act. The two points at issue therefore were the fundamental ones of religion and civil liberty.


The religious argument against regulation was that it licensed sin and even encouraged it by removing dangers from the sinner's path. Acton, as we have already noted, was at pains to repudiate the first part of this argument by pointing out that the Acts were not the same thing as a licensing system. Under both systems the state recognised prostitution and enforced examination and detention where necessary. The licensing system however did more: it 'licenses the plying of a shameful trade on certain conditions fixed by law'.

Whereas the Contagious Diseases Acts, while based on the assumption that 'it is useless to deny or ignore the fact that prostitution exists' and that 'to strive to put it down is ... worse than useless', were based on the further assumption that prostitution was 'a thing to be kept within certain bounds'.

The Acts were a recognition that the state could not prevent women from taking to prostitution, but by the Acts the State told the women that: "we can, and will take care that your shameful lives shall no longer work injury to the health of others or outrage public decency". The Acts were, Acton argued, analogous to the Divorce Courts which had recently been set up in England: the existence of these Courts recognised adultery, but could not be said to

1. Ibid., p.206.
2. Ibid.
3. Ibid.
encourage it.

In dealing with the second part of the religious argument, Acton admitted that 'many worthy persons' were of the opinion that "The present chances of contracting disease is the strongest means of deterring men from being unchaste" and that if the risk was removed "you put a premium on fornication, discourage matrimony and upset society". But, he argued, however much this fear might deter 'a gentleman of education and refinement', for every thousand such there were 'ten thousand thoughtless, passionate habitually licentious men' who did not heed it, especially as they could usually point to 'some grey-haired offender, permitted by Providence to 'go on still in the way of his wickedness', for every "frightful example" that can be adduced on the other side.

8. Civil Liberty.

The other argument to be faced was that of Civil liberty. The Acts were, their opponents held, 'invasions of private liberty, and therefore intolerable in the land which holds itself to be the peculiar home of freedom'. This liberty, 'purchased by our fathers' blood' was, Acton agreed, 'a noble possession'. It included, moreover, 'the right to sin as much as we please, so long only as we do not thereby commit any offence cognizable at law against the property or person of our fellow subjects'. Englishmen had a right to 'gamble, drink and whore', wrote Acton, but - and here was the rub - while 'the first must be done to a certain extent in private' and 'the second must not cause public commotion', the third 'may be done without any restriction what-

1. Ibid., p.207.
2. Ibid., p.208.
3. Ibid.
4. Ibid., p.217.
5. Ibid., p.218.
6. Ibid.
This, Acton believed, was taking liberty too far. Fishmongers had not the right to endanger public health by selling stale fish, nor butchers by selling tainted meat. If they did they were punished, and so by the same token should diseased prostitutes. It was true of course that this argument did not entirely cover the case, since the fishmonger was pursuing an honest calling unlawfully, while the prostitute's calling precluded honesty from the start. But the law on gambling provided a further analogy to complete it. Gambling was immoral, and was prohibited in public. Nevertheless someone who cheated at gambling could be punished for obtaining money by false pretence. 'The cases', wrote Acton, 'are analogous .... No man would willingly play with a cheat, neither would any man in possession of his senses knowingly go with a diseased woman'. If it was argued, farther, that the case was still not covered, since the cheat was punished in retrospect, and was not under perpetual surveillance, then, Acton pointed out, the case of compulsory vaccination, where the law, in the interests of public health, interfered with private liberty in advance of possible danger, provided a suitable comparison. Further legal analogies were provided: by the law for the suppression of betting houses, which established the principle 'that persons who will persist in doing an immoral thing must not do it in such a manner as to place temptation in the way of the thoughtless and ignorant'; by laws protecting minors and women in cases where property and contracts were concerned - the argument here being that the Contagious Diseases Acts protected prostitutes themselves from the consequences of a way of life almost as inevitable in their case as

1. Ibid.
2. Vide Burn: op.cit., p.158.
3. Acton: op.cit., p.219. This argument did not sit very easily alongside what he had written about venereal disease being no deterrent to many men.
4. Ibid., p.220.
minority or feminity in the analogy; and by the Habitual Criminals Bill which in their case presumed guilt until innocence was shown.

By these analogies with what was mostly recent legislation Acton attempted to show that prostitutes and their customers, like other sections of the community, must accept a greater degree of official interference in the interests of public health. This was of course a highly debateable area, which had been referred to by J.S. Mill in *On Liberty* (1859) to illustrate the conflict between respect for individual liberty and the necessity of state interference with those whose activities were subversive of the public good. Mill had been uncertain how to resolve the question, and had written:

"Fornication, for example, must be tolerated, and so must gambling, but should a person be free to be a pimp, or to keep a gambling house? The case is one of those which lie on the exact boundary line between the two principles, and it is not apparent to which of the two it properly belongs. There are arguments on both sides". 1

But Mill's uncertainty in the particular cases he mentioned had been overtaken by legislative events, and in the Contagious Diseases Acts, the principle of the necessity of state interference seemed to have been so strongly affirmed that Acton was able to suggest that 'the law that permits without restraining is in reality an accomplice, and chargeable with the evils which it refuses to remedy'. 2 A major difficulty, however, which those who wished to defend the Acts and extend them on such grounds, would encounter, was that legislation of the kind mentioned by Acton in support of his position was based upon no clear philosophical foundations. As Burn has pointed out, the measures involved were "the product of unco-ordinated decisions, responses provoked by anger or fear or pity or impatience"; 3 "evils ... were dealt with ... as

2. Acton: op.cit., p.221.
they came to light';¹ and while 'on the whole these restrictions on individual liberty were moralistic and the morality which they tended to promote was, more or less, that of the religious, fairly well-educated middle class',² by no means all such measures were of this description.

The absence of any clear guiding principles behind such legislation created difficulties not simply for those who wished to endorse and extend the provisions of the Contagious Diseases Acts, but also for Scottish churchmen who wished to oppose and repeal them. Invasion of private liberty in the interest of godliness and morality was good Calvinism, but although Wardlaw, for example, had been able to sweep away arguments about 'encroachment on the liberties of the subject'³ when he called for stricter penalties for those who seduced minors, he as much as Acton had felt the need to support his arguments by comparing penalties for seduction with the analogy of penalties for cheating at gaming. That he felt this need, was an indication of how far social conditions and the cultural climate had changed since the time of the Reformation. Now that they were changing again, with the question of public health and the Contagious Diseases Acts introducing even more complex cross-currents of public opinion, it was far from obvious what attitude the Scottish churches ought to adopt, and on what grounds.

¹. Ibid., p.160.
². Ibid., p.220.
CHAPTER THIRTEEN:

REPEALING THE CONTAGIOUS DISEASES ACTS.

1. Establishment Silence.

The problem of what attitude they should adopt to the Contagious Diseases Acts immediately divided the Scottish churches. The Church of Scotland Assembly said absolutely nothing, and maintained an enigmatic silence as to its motives.¹ The Free Assembly and U.P. Synod leapt on the abolitionist bandwagon almost without looking, and thereafter maintained a steady stream of arguments for having done so.

Since it chose not to explain its silence, we can only guess why the Establishment said nothing on the subject. Indifference to the serious social problem of prostitution was probably not the reason, since as we have seen,² the Christian Life and Work Committee, although highly reticent, was aware of it, and of the debate surrounding the Acts. It is more likely that reticence about entering into possible conflict with Government over a matter which divided public opinion — and probably also opinion within the Church of Scotland — was the decisive factor which led the Scottish Establishment, like its English equivalent,³ to keep silence.

Neither the U.P. Synod nor the Free Assembly were constrained by such considerations, and there were those in the latter who took a dim view of the Establishment's position. 'I am not aware', the Reverend Mr. Paton of Dalbeattie informed the Free Assembly in 1885, 'that the Established Church has denounced them (the Acts) or petitioned against them; and I regret this fact

1. An overture to the 1875 Assembly, from an individual asking the Assembly to petition Parliament for repeal of the C.D. Acts, was withdrawn after it failed to gain support (vide C.of S.G.A. Acts (1870-75), 1875, p.70. The 1884 Assembly did agree, however, to petition Parliament in favour of the Criminal Law Amendment Bill. (Vide C.of S.G.A., Acts (1882-87) 1884, p.84.)
2. Vide Ch.6:2.1, above.
3. At least at first.
all the more, seeing that this Church claims to be the bulwark of national order.¹ It was not a charge which could be laid against his own Assembly or the U.P. Synod. Petitions from these bodies to Parliament, demanding immediate repeal of the Acts were to be an annual event from 1871 until 1886, when their demands were finally met.

2. Free Church and U.P. Objections.

The Free Church's first petition for repeal of the Acts, which was sent to Parliament in 1871, rested on six objections to them: first, they had been passed with so little publicity that they could not be regarded as expressing the will of the people; second, they caused physical and mental suffering to the women involved; third, they infringed these women's constitutional rights; fourth, they were unlikely to succeed in their aim; fifth, they were immoral, contrary to God's law, and likely to bring down divine judgement; and sixth, while venereal disease was a serious problem, the Acts hindered other 'more safe, scriptural and constitutional'² ways of dealing with it.³ The U.P. Synod's petition of the same year made much the same objections, emphasising that women were not the only sex responsible for spreading venereal disease, that not only 'gross cruelty' but considerable injustice was involved in the Acts' operations (since many innocent women were apprehended), and that the Acts had a 'hardening and debasing'⁴ effect on the women subjected to

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2. F.C.G.A.P.& D., 1871, Debates, p.263 – The Assembly obviously had not in mind the methods actually described in Scripture (vide Ch.11:1 above).
3. This petition for the most part reproduced the arguments of Josephine Butler's Women's Protest of 1870 – vide J.E. Butler: op.cit., p.9.

In 1871 the churches which sent these petitions, and the various other bodies and individuals who were demanding immediate repeal, had some hope of success. A Royal Commission, set up on the advice of a Parliamentary committee chaired by Lord Dalhousie (who had presented the Free Church's petition in the Lords) was reconsidering the whole question. But when it reported in July 1871, they were disappointed. Although the Commission recommended raising the age of consent to fourteen, and wanted to do away with special plain-clothes policemen and fortnightly medical examinations, the majority of its members were not opposed to the Contagious Diseases Acts in principle. Prostitution, in their view, was inevitable, and something had to be done about venereal disease. Their proposals added up to a return to the provisions of the 1864 Act - which they considered less open to abuse than those of 1866 and 1869.

As frequently happens however the Government did not implement the Royal Commission's proposals. Instead it attempted to solve the problem with a Bill for the Prevention of Certain Contagious Diseases and the Better Protection of Women. This Bill, presented in 1872, included provisions for raising the age of consent and for punishing brothel keepers. It also provided

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1. John Cairns, the U.P. leader, was an early recruit to the Abolitionist cause. Josephine Butler (op.cit., p.22) wrote of her visit to Berwick-on-Tweed in 1870: 'The United Presbyterians and other Scottish ministers were my best friends here. The Rev. Dr. Cairns was timid about holding a meeting although he was wholly in sympathy with us, and he did not at first like the advocacy of ladies. He is a man of much influence in the Scotch Church, and is said to be one of Sir William Hamilton's most distinguished pupils. On reaching the platform he offered up a fervent prayer. It was a full and excellent meeting, and, towards the close, unanimous'. Cairns biographer does not record this incident. He does however include (MacEwan: op.cit., pp.582-3) an extract from one of Cairns' sermons, warning individuals against prostitution and denouncing the argument that it is socially necessary as 'only worthy of hell and the father of lies'. The sermon, preached in Berwick, was an exposition of Proverbs, chapter 7.
for the conviction of women, who were caught soliciting or importuning (not simply – as under the Acts – if they were known or suspected to be prostitutes) as common prostitutes, and for their detention for up to nine months in hospital if they were diseased. These provisions, unlike those of the Acts, were to apply throughout the whole country.

The immediate effect of this Bill was a serious division of opinion within the abolitionist camp. Many of those who wished to see the Acts repealed were also very anxious that the age of consent should be raised, since juvenile prostitution was an extremely serious matter. Others, however, including Josephine Butler, while sympathetic to this view, believed that the remaining provisions of the Bill were too high a price to pay for this, and saw it as a worse (because more all-embracing) version of the Acts. In the event the Bill was so controversial that Gladstone's unhappy Government was forced to withdraw it. But it had given the subsequently re-united abolitionists even more grounds to fear what the Contagious Diseases Acts might lead to, and to struggle for their repeal.

Once involved in this struggle the Free Assembly and the U.P. Synod became increasingly committed to the cause, and although 'influential persons even within the (Free) Church' supported the Acts, the majority which opposed them was large enough to sustain a campaign that lasted long after repeal of the Acts in 1886 had removed the original grievances. This campaign was conducted by the U.P. Temperance and Morals Committee, and in the Free Assembly by a Committee known initially as that 'anent The Contagious Diseases (Women) Acts 1866–9'. The latter was set up in 1873: its convenor (after 1874) was Dr. William Ferguson of Kinsandy, an Elder; and its members included the

1. P.C. Simpson: Life of Principal Rainy, 1909, vol.ii, p.176. Rainy, addressing the 1880 Assembly (F.C.G.A.P.& D., 1880, Debates, p.284) was careful not to condemn totally those who 'sincerely argued themselves into the conviction that these Acts were right'.

inevitable and indefatigable James Begg, Francis Brown Douglas, an advocate and former Lord Provost of Edinburgh, and a Major Ross — who presumably was there to keep his colleagues right on military matters.

4. Cost and Ineffectiveness.

Each year the reports of this committee had something to add to the battery of arguments for repeal. Its first report, in 1874, was concerned with the cost of the Acts: in financial terms this was almost three times what it had been a year earlier: in human terms it meant, despite two or three hundred women 'reclaimed' under the Acts' provisions, 1,605 'new recruits for this army of sin and shame', many of whom had been 'lured up from the country under false pretences' to be 'bought and sold by the dozen "like dumb driven cattle"'. What happened to these women was described in the report of the following year — they were subjected to such physical and moral suffering under the Acts that many went mad or tried to kill themselves. These costly Acts threatened 'to land the country in the demoralised condition to which they have brought other nations' — a proposition supported by the U.P. Professor John Ker, quoted in the 1877 report, who implied that licensing had lost the Franco-Prussian war, the French army being 'powerless to break the line of the German Landwehr, nerved by the thought of wife and children'. Above all, the Acts were ineffective as far as disease was concerned: up to December 1874 only 30,460 of the 276,187 examinations under the Acts proved to be of diseased women — which showed quite clearly that the examination procedure was not a sanitary measure at all, but 'a commission to sin'. Anyone who might doubt the ineffectiveness of the Acts was referred, in the 1877 report, to the

comments of M. Lecour, head of the Paris Medical Police, whose report of 1871
admitted not only that the licensing system, despite his own great powers and
vigilant men, had failed to contain prostitution and disease, but also that
'the evil must be overcome not by legislative but by moral means'. To the
abolitionists Lecour was the demon king of French prostitution: this statement
was almost equivalent to the Pope admitting the failure of the confessional.

Much the same line of argument was followed by the U.P. Synod, whose
annual petitions to Parliament, while resting upon the grounds stated in 1871,
increasingly tended to emphasise the sanitary ineffectiveness of the Acts and
of licensing systems in general. Dr. Ker, in the paper already mentioned,
claimed moreover that prior to the introduction of the Acts 'the health and
morals of the army were improving, year by year', but that now this improve¬ment had ceased, and deterioration had set in. The difficulty with arguments
of this kind of course was proof, since the other side could usually be relied
upon to produce statistics to the contrary. The 1879 report of the Free Church
Committee thus had to go into great detail in explaining how statistics public¬ised by the Vicar of Portsmouth, showing a great decline between 1865 and 1876
in the number of prostitutes and in the amount of venereal disease, in fact were
misleading - since they had originally come from one of the chief policemen
involved in operating the Acts. Insofar as they were accurate, they could be
attributed to legal action provided for outwith the Contagious Diseases Acts.
On closer inspection, the Committee reported, Portsmouth under the Acts had
become 'a sort of Paradise for prostitutes' and its Vicar's claims, as sixteen
other ministers in the town had observed, obscured the fact that it was full of

   U.P.S.P., 1874-76, pp. 36, 99 (1874); pp. 406, 435 (1875); pp. 684, 734
   (1876).
   U.P.S.P., 1877-79, pp. 300, 100 (1877); pp. 379, 419 (1878).
juvenile and clandestine prostitutes.  

How valid were arguments of this kind? Were the Acts as costly in human and financial terms and as ineffective in the control of prostitution and venereal disease as the Free and U.P. Churches claimed? On balance it now seems as if the Acts were both costly and a failure. The evidence which Josephine Butler and her colleagues were able to collect about their human cost and the interpretation they were able to put on British and foreign facts and statistics finally persuaded Parliament to repeal the Acts. The historian half a century later was thus able in tranquility to recollect them as 'a bad system of vice-regulation'. 2 But just how bad were they? Were the stories of wrongful arrest, cruelty and suicide which the abolitionists collected a fair index of their value, or were these exceptions which could be learned from and avoided by better supervision, as Acton had suggested? Was the French example really a fair comparison, or would England, given time and appropriately amended legislation, have developed a uniquely humane method of dealing with the sanitary problem? These questions cannot easily be answered now, because so much that has been written about the acts since their repeal has been selective, much of it biassed in favour of the opinions of the dominant and courageous figure of Josephine Butler. Yet she and her colleagues were involved in a controversy which was deeply political and their's was not a disinterested enquiry. For this reason it is difficult to avoid the suspicion that much more could be said in favour of the Acts, in terms of their cost and effectiveness, than has hitherto been written.

It is not our business here however to go into this aspect of the question any more deeply, for we must now turn to examine the fundamental principles on which the Churches' opposition to the Acts rested.

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The first and perhaps the most important of these principles was that it was wrong for the state to attempt to make sin safe. The Acts, declared the Free Church Committee in 1875, were 'essentially wrong and immoral in principle' because they make 'first legal and then safe' a form of sin which 'the law of nature visits with a signal retribution'.

That this was the real purpose of the Acts was demonstrated by the judicious Principal Rainy in a paper reproduced in the Committee's report of the following year. The problem, Rainy admitted, was extremely difficult: prostitution, though always immoral, could not be put down by law, and 'it was difficult for any but professional men to form an adequate idea' of 'the extent and malignity' of venereal disease: but his readers were not to be confused by claims that the Acts 'afforded an opportunity for dealing with the women, so as to induce them to give up their mode of life'. In some cases that might happen, incidentally, but the real object of the Acts, as its supporters would admit, was different. It could be summarised by the statement that, in the Acts,

"Government says to fallen women: 'We will induce you to leave your miserable way of life if we can; but those of you that will persist, we shall at all events take measures to examine, that we may know whether you are diseased, and if so to cleanse you from disease, that you may not spread it'."

In saying this, Rainy wrote, Government was primarily concerned not with the women but with the men who might be infected by them: the fortnightly inspections of the women would not have been provided simply for the women's sake, had that end not been in view. The Acts, in short, were the only

2. Ibid.
3. Ibid.
example of Government making 'arrangements for the sole object of securing that immoral Acts may be committed in such circumstances as to guard against disadvantages that ordinarily attend them'.¹ In doing this, Government, and indeed the nation, sinned and became 'an accessory before the fact'.² Its action, moreover, had the serious consequence of creating the impression, among the women and many men, that although 'preachers and moralists may warn against it', prostitution was sanctioned by the state and 'regarded in high quarters as a recognised institution';³ and the principle thereby established opened up a 'new and dark career'⁴ for Government. However well intentioned the supporters of the Acts might be, they had chosen the wrong course, and must find other ways of dealing with the health problem, since 'arrangements which tend to give prostitution a more recognised and stable place in the social system, are absolutely certain in the long-run to prove injurious to all kinds of health, whatever effects may be ascribed to them in the meantime'.⁵

Other leading churchmen took much the same line. The U.P. Professor, John Ker, in the paper already quoted, remarked that while the nation was 'struggling to advance in the path of freedom and moral progress' the Acts were 'a stride backward ... under cover of sanitary considerations'.⁶ No one should be deceived by the appointment of Chaplains and matrons and other 'very industrious measures' which were being made 'to show the reformatory effects of the system', because these were simply a 'superimposed patch': the 'original idea' had been quite clearly expressed by Sir Henry Storks, one of the Acts' best-known supporters, when he had said that 'very little benefit will result from the best-adviced means of prevention until prostitution is recognised as

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1. Ibid.
2. Ibid., p.3.
3. Ibid.
4. Ibid.
5. Ibid., p.4.
The real nature of the Acts was reflected by what happened in Bombay, Hong Kong and Yokohama, 'where the disguise is not so necessary' and brothels were 'registered and marked to all comers as certified by our Government'.

Sir Henry Storks' remark was also quoted in a paper, included in the Free Church Committee's report of 1878, which had been prepared by Professor Henry Calderwood and, before his death in 1873, by Thomas Guthrie. In this, Storks' remark was given as one of the 'alleged excuses' for the Acts, the other being to guard "innocent wives and children" from the fearful sufferings brought upon them in consequence of the immoral life of their natural protectors'. The real purpose of the Acts, these writers held, was neither that of checking immorality, nor that of stamping out 'those diseases which are its natural results', but that of curing prostitutes quickly 'in order to enable them to continue their evil practices with safety to their guilty associates'.

This argument about the real purpose of the Acts, which was advanced on numerous other occasions in the Free Assembly and the U.P. Synod, put an interpretation upon the intentions of their supporters which was difficult for them to deny. Sir Henry Storks was correctly identified as one of the leaders of the regulationists. He had been High Commissioner in Malta, where he had gained a rather misleading impression of the sanitary effectiveness of Regulation, and thereafter became an enthusiastic supporter of such measures.

Much of course turned upon what was meant by calling prostitution a necessity,

1. Ibid.
2. Ibid.
4. Ibid.
5. In the debate in 1882, for example, Dr. Ferguson, the Convenor of the Free Church's Committee, noted that nine-tenths of the examinations under the Acts (up to 1880) had been of healthy women and were thus really just to find out if the woman was fit to work as a prostitute (F.C.G.A.P. & D., 1882, Debates, p.48).
especially if opponents of the Acts recognised that prostitution could not be put down by law. But substantially, the churchmen we have mentioned were correct in saying that what Rainy put into the mouth of Government was the position of the Acts' defenders. In this, Rainy was in fact writing in terms almost identical with those in which Acton had written 1. Acton and those who thought as he did clearly were concerned primarily with protecting men from infection, and any attempt to persuade women to give up prostitution undoubtedly was given a much lower priority. Under these circumstances therefore it would have been difficult to deny that Government was an accessory before the fact, and that by its action prostitution was encouraged - for had not Acton himself argued that the existence of prostitution itself caused more prostitution to take place? 2

But then, as Acton had also observed, Government inaction as much as action made it an accessory before the fact, and prostitution already had an established place in the social system. This was something which the arguments of Rainy and the other churchmen tended to ignore, for while they admitted the existence of a health problem, they often wrote as if they, as critics, had no responsibility for solving it. Rainy, as we have seen, shifted the burden of responsibility on to the shoulders of medical and other experts. Guthrie's evasion was perhaps even worse, since a few years before the Acts were passed he had written to the Daily Telegraph in the following terms:

'They talk, Sir, of the liberty of the subject. Let no man confound the liberty of the subject with licence and licentiousness, and I hold that the worst enemy of liberty is he who does so confound them. Why, the liberty is all on the side of evil-doers. I know many parents in Edinburgh who tremble to send their young men, even on lawful business, through the streets at night; I know of others who refuse to live in certain parts of the town, otherwise most desirable, on account

2. Vide Ch.12:1, above.
of the temptation thrown in the way of the younger members of the family. Why should this be tolerated? Why should the liberty of the well-doing be encroached on and circumscribed by the licentiousness of evil doers? Our magistrates should exercise the law - should clear the streets of every one of these infamous women, and make them at least decent if they cannot make them moral and virtuous. On the Continent no such offence to decency is seen.'

This outburst was not of course a demand for the Contagious Diseases Acts as such, but by referring to the Continent so approvingly and by demanding decency where morality might not be possible, Guthrie had been pointing in the direction of the Acts. His attack on them, and that of Rainy, insofar as they presented no positive alternative to the Acts, thus made it look as if they were exercising the harlot's prerogative, of using power over public opinion without accepting responsibility for what might happen were the Acts repealed.

In defence of these churchmen, however, it could be argued that they did suggest practical alternatives to the Acts. Professor Ker, for example, was aware of such criticism, and anxious to answer 'the wise men who fall back on their one argument in favour of the Acts - "But we must do something."' In order to meet this, he cited the report of the Glasgow Chief Constable for the previous year, which showed that prosecutions had reduced the number of Glasgow brothels from 204 to 79, that police action had suppressed a great deal of soliciting on the streets, causing many prostitutes to leave the city, and that both the number of crimes in the city and the number of patients in the Lock Hospital had decreased. 'All this', Ker stated, 'shows what can be done by wise and firm Magisterial action': and it was 'the direct reverse of the Government Acts, which legalise the vice ... and naturally lead to the increase of vice, and by consequence, and ere very long, to an ever-enlarging circle of disease'.

1. Daily Telegraph, July 1 1862, quoted in Acton: op. cit., p.221.
3. Ibid.
Claims of this kind, however, were not too difficult for the regulationists to answer, for even in the report cited by Ker it was admitted that many of the prostitutes driven out of Glasgow were 'possibly following their vicious calling elsewhere'. The effectiveness of police measures of the kind described was extremely questionable; and there is some evidence to suggest that the policy of the Glasgow police may only have hardened the hard core of professional prostitutes (to whom frequent fines became in effect like licence-renewals) without removing (but perhaps intensifying) the causes of a vast amount of part-time prostitution in the urban underworld. The reduction in venereal cases at the Lock Hospital, likewise was no proof of a decline in the disease's incidence.

The churches did, however, suggest another alternative to the Contagious Diseases Acts, and this was more difficult for regulationists to answer on the grounds of principle. It appeared in the Free Church Report of 1875, and in Guthrie and Calderwood's paper, and referred to the fact, which Acton had assumed to be unalterable, that very few men in the army were married. The Committee did not see this as unalterable, and 'urged the attention of all Christian patriots' to the 'anomaly in a Christian country of a great army prevented, with a few exceptions, from marrying'. The army, the Committee claimed, should be reorganised to 'permit the soldiers to form family ties'; and no doubt with its complaints about the expense of the Acts in mind, it remarked that 'all the statistics show that marriage means in military as in civil life steadiness, health, self respect, a longer life, freedom from invalidising (and) a superior and cheaper soldier'.

1. Vide also Ch.6:3.1.2., above.
3. Vide A. Flexner: Prostitution in Europe, 1919, pp.244ff. for the account of an acrid controversy between the Chief Constable of Glasgow and the Inspector of the Parish, which supports this contention.
5. Ibid.
This argument was difficult for regulationists to answer because the
major argument against it was not one of principle but of expense. For what
the Free Church wanted, more public money would presumably have had to be
spent on soldiers' pay, married quarters and transport. No doubt this sounded
extremely idealistic to many contemporaries, but it does in some measure save
the churches' attack on the Acts from the charge of irresponsibility.

One further aspect of the churches' attack on the Acts as a way of
'making sin safe' remains open to serious questioning. What did they really
believe about venereal disease? How far did they see it as a deterrent or as
retribution? They certainly spoke of venereal diseases as 'the dreadful results
of sin', but they were vague about the nature of the causality involved.
Prostitution was a sin 'which the law of nature visits with a signal retribu-
tion': the Acts, in making it safe were thus held to 'traverse the moral law'.

'Yet it was apparently quite different' to endeavour to heal, and beseech the
sufferer to 'sin no more, lest a worse thing' befall her'. The church did
'not oppose Lock Hospitals, or any approved means, including examination of the
person of course, of alleviating and removing' venereal disease. But it was
'quite a different thing to violate the sanctity of nature in a healthy woman,
by such examination as these Acts enforce, before, and in order to, the com-
mission of sin'.

The notion of nature and of the moral law employed here was curiously
confused. Leaving aside the question of compulsory examination - where they
were on firmer ground and to which we shall return in a moment - the churches
here seem to have been saying that treatment unaccompanied by moral teaching
broke the moral law whereas treatment accompanied by it did not. Yet if

4. Ibid.
5. Ibid.
venereal disease was nature's revenge was it right under any circumstances to interfere? The probable reply to this was that mercy demanded treatment and so over-ruled the demands of natural law. But if that was the case, was preventive medicine of the kind employed under the Acts not also demanded by mercy? The distinction between these two kinds of medical treatment is a difficult one to sustain, since as Acton would probably have argued, the moral teaching which accompanied the former could represent little more than a pious hope, while its absence scarcely justified withholding treatment from those who almost certainly needed preventive treatment. What it meant, in this context, 'to violate the sanctity of nature in a healthy woman' - if that woman was willing to be examined - is difficult to locate on any moral map. The fact of the matter seems to have been that medical advance, and in particular the development of preventive medicine, had undermined the traditional, although sub-Christian, argument about venereal disease as a form of divine punishment. The churches, however, were unwilling to give up this argument, presumably because they still believed that it was a deterrent to prostitution, despite what Acton had written to the contrary.

6. The Liberty of the Subject.

A second fundamental objection to the Acts raised by the churches was that they violated not just the liberty of the subject, but that of the lower classes, and of women in particular. As the statements of Wardlaw and Guthrie, quoted above, have shown, this argument was not one which they had deployed against other methods of dealing with prostitutes. But once involved in the agitation for repeal it was frequently on their lips.

This argument was popular with the abolitionists because their investigations had uncovered several cases of innocent women being arrested under the
Acts as prostitutes. It was also an argument which was likely to gain much popular support - for, since the Acts employed what were virtually secret police, who knew who would next be arrested, unless they were very obviously women of the middle and upper classes?

The argument that the Acts were biased against females and against the lower classes was used, as we have noted, from the beginning by both the Free and U.P. Committees. The former's report of 1882 summed the argument up by stating that the Acts 'are unequal laws, for one sex only - and that perhaps the least guilty. They ruthlessly degrade women, and bring many industrious and virtuous women under suspicion'. The same report pointed up the class aspect by asking 'what classes of women are watched?' and letting one of the doctors involved reply "dressmakers, married women, the wives of labourers and small tradesmen, and servants of course'.' The Acts, in 'treating a woman as guilty until she can prove her innocence' were thus, the Committee noted, 'a dangerous violation of the Constitution'.

Insofar as the Acts were operated in this way, although it was not, as we have noted, the way in which Acton had wanted them to be operated, arguments of this kind were unanswerable. Bearing in mind the sort of comments Wardlaw and Guthrie had expressed before the Acts came into being however, it is only fair to their supporters to point out that class-distinction, disregard of female rights and indifference to prostitutes as persons were features

3. Ibid. This was taken from the evidence of Dr. Barr of Aldershot to the Commons Select Committee of 1869. Evidence of the class bias of regulation systems outside Britain was provided in the Free Church Committee's 1877 report. This (F.C.G.A.P.& D., 1877, Report XXXIII, pp.3ff.) cited an account by Josephine Butler of M. Lecour's failure to prove the impartiality of his system by prosecuting an upper-class male. The issue was somewhat confused however by Josephine Butler's intense dislike of Lecour and her desire to prove that (ibid.) 'Regulation ... opens wide the floodgates of fiendish passion'.
which pervaded the middle and upper classes, and the churches of the time.

7. Repeal and After.

By the end of the 'seventies the arguments of the abolitionists were gaining ground. The campaign no longer simply concerned the merits and demerits of the Contagious Diseases Acts but, especially after the creation in 1875 of The British and Continental Federation For The Abolition of Government Regulation of Prostitution, the abolition of all and every system of regulation wherever it might be found. The Federation, again led by Josephine Butler and James Stansfield (whose total involvement in the campaign had already cost him his career in Government), attracted support throughout Europe and beyond, held regular conferences and international congresses, and gained support for local activities, especially from women's and working men's associations.

None of this however was done without bitter opposition and often ridicule. Despite the presence in the abolitionist camp of such distinguished contemporaries as John Stuart Mill, Herbert Spencer, F.W. Newman and Florence Nightingale, influential sections of the press,\(^1\) the medical profession and of course the services were hostile. H.A. Bruce, Home Secretary in Gladstone's first Cabinet, who had introduced the Bill of 1872, had described the abolitionists as 'hysterical and ignorant'.\(^2\)

By 1879 however, Government was increasingly uncertain about what should be done with the Acts. Between 1870 and 1877 8,046 petitions, signed by

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1. The Free Church Committee complained indignantly (F.C.G.A.P.& D., 1877, Report XXXIII, p.7) that the British press totally ignored the activities of the Federation.
2. Vide F.C.G.A.P.& D., 1877, Report XXXIII, p.4., for Dr. Ker's defence against this charge. In relation to Mill and Spencer's opposition to the Acts he declared (ibid.) 'though every bishop and presbyter in the Christian Church were on the other side, I should say, "let my soul be with the philosophers."' I honour in my heart their noble stand for constitutional right and the dignity of the moral law'.
1,949,271 people had reached Parliament and the minority of M.P.s who voted for Bills demanding repeal was steadily growing. In 1877 a farther 156 petitions, signed by 20,880 people arrived. Although the monster petition was something of a Parliamentary commonplace, and although the abolitionists remained in the minority, it was decided that the time was ripe for a Select Committee to re-appraise the Acts. The possibility that repeal might save some public money was not least among the reasons why this Committee was set up.

The Select Committee's work was interrupted in 1880 by the fall of Disraeli and the return of Gladstone. This helped the abolitionists, since although repeal was not strictly a party issue the reconstituted Committee now included abolitionist M.P.s, including Stansfield. This was noted with approval by the Free Church Committee in 1880, but the attack was kept up: Rainy and Begg both spoke against the Acts in the debate of that year, and both the Assembly and the U.P. Synod continued to send their annual petitions to Parliament.

The Select Committee eventually reported in 1882. Much to the disappointment of the abolitionists the majority favoured retention of the Acts, on the grounds that they were effective, seemed not to encourage prostitution and reduced the amount of child prostitution. The minority, however, produced another report, stating that soldiers in the areas under the Acts were no healthier or unhealthier than elsewhere, that prostitutes in those areas had greatly increased in number, and that if child prostitution had declined, it was because the police had been active in suppressing it of their own volition - not because the Acts demanded this. This report was as effective as that

1. Vide ibid., p.2.
3. By 1882 the Free Church Committee was sending out instructions about the proper way to frame petitions to Parliament (vide F.C.G.A.P.& D., 1882, Report XXXI, p.4).
5. Ibid., Debates, pp.284ff.
of the majority and in April 1883 Stansfield gained a Parliamentary majority for a Bill to repeal the second of the Contagious Diseases Acts. This did away with the special police and the system of compulsory examination.

In May of that year the Free Church Committee claimed, with some justification, that religious bodies had played a large part in the victory of the abolitionists. Their crusade, however, was far from over, and a new committee was appointed to watch over and assist further measures 'for the promotion of social purity, such as the proposed Act for the Protection of Young Women'.

8. The White Slave Trade.

Towards the end of the 'seventies some of the abolitionists became aware not only that there were child prostitutes in Britain, but that English girls were being abducted to the Continent and especially to Belgium, where they were enrolled as prostitutes. The reason for this trade was that while the age of consent in most European countries was eighteen, in Britain it was only twelve: it was thus difficult to recruit children for prostitution on the Continent, where parents or others interested might find the children and bring a successful prosecution. English parents, however, had first to find the child and then to prove that she had gone unwillingly — a task made very difficult because the police — especially in Belgium — were often hand in glove with brothel keepers and unlikely to help either in finding the girls or in proving an unwilling abduction.

That this trade was being carried on systematically was confirmed by an investigator sent to Belgium by the Home Secretary, on the prompting of Josephine Butler and others. The trade worried many people in Britain since all classes of girl were involved, some being kidnapped by apparently innocent and

2. I.e. the minimum age at which marriage was legal.
respectable governesses. Josephine Butler soon had a thousand ladies signing a petition to the Home Secretary demanding measures to rectify matters, including raising the age of consent. Petitions were also sent by the Free Church, as a result of an overture from the Presbytery of Ellon,¹ and by the U.P. Synod. The latter demanded changes in Belgian as well as English law to 'make it impossible for any woman, who is a subject of Her Majesty the Queen, to be deprived of her liberty by fraud or force, and to be kept in bondage in that country for the vilest purposes'.³

Very soon after these petitions were sent, a Select Committee, whose members included Lord Dalhousie, was set up and reported a year later, in July 1882. Its conclusions, while doubting the unwillingness of some of the girls, in general substantiated the claims which had been made about the trade. It recommended raising the age of consent to sixteen and the age of unlawful abduction for immoral purposes from 16 to 21 (as well as some other measures designed to check the trade) and led in 1883 to a Criminal Law Amendment Bill, which incorporated these recommendations. It was to watch over this Bill that the Free Church had set up its new committee in that year.

This Bill passed through the Lords only to be shelved by the Commons in 1883 and again in 1884 on the grounds of pressure of other business. Part of the reason for this was that the Bill was concerned with abduction of juveniles into prostitution not only abroad but also at home, and while abolitionists did not underestimate the importance of this, they were still at this time preoccupied with what they considered to be the root evil, namely regulation — for attempts were still being made to reintroduce measures similar to those repealed by Parliament in 1883. On this point the Free Church for once did not see exactly eye to eye with Josephine Butler, who had objected to certain

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2. The age of consent for females in Scots law was also twelve years.
aspects of the Bill directed against soliciting, on the ground that they were anti-woman. The Bill, said Dr. Ferguson, convenor of the new as of the old committee, must be seen as an overall advance and so should be supported, especially now that Lord Shaftesbury had introduced an amendment making male as well as female 'loitering and importuning' punishable. 1

The broadening interest of this committee in Social Purity 2 was illustrated at this time by its commendation of the Whitecross Union, founded by Ellice Hopkins, which now had an Edinburgh Council. Its aims for young men were very much in line with the church's general attitude at this time. These aims were:

1st. To treat all women with respect and to endeavour to protect them from wrong and degradation. 2nd. To endeavour to put down all indecent language and coarse jests. 3rd. To maintain the law of purity as equally binding upon men and women. 4th. To endeavour to spread these principles, and to help brothers and companions; and 5th. To use every possible means to fulfill the Command "Keep theyself pure." 3

The third of these aims was perhaps the most important insofar as it represented a very pointed criticism of the double sexual standard of the time. 'The women of our land', declared Dr. Ferguson 'are awakening to the crisis that is upon us; let the men awake too, and join hand in hand that this body-and-soul-destroying vice may be driven from amongst us and purity and health restored and secured'. 4 In this demand for a single standard Josephine Butler and the Free Church were at one.

The wider interests of this Committee, and its agreement with Mrs. Butler were again reflected in the following year when its Report called for a 'Gospel Purity Crusade', and for renewed efforts to keep up the campaign for

2. The Committee's name was changed this year to 'The Committee on Legislation concerning Social Purity' (ibid.).
3. Ibid., p.192.
4. Ibid.
repeal of the remaining Contagious Diseases Acts. In phraseology borrowed from Josephine Butler, it noted that "our real foes are the permanent officials of the great military and naval departments of the State", 1 who wanted to reintroduce the Acts' provisions in some form. The extent to which the patriarchs of the Free Church had been charmed by Mrs. Butler was remarkable.

In the debate, Mr. Paton, the minister of Dalbeattie, declared:

'I do not know exactly the opinion of the members of this House regarding female franchise, but I most earnestly desire it; and one of my chief reasons for it is, that when the ladies have votes, they will be on the side of social legislation, and for sweeping away such obnoxious acts'. 2

Mr. Paton was roundly applauded for expressing these statements: the petition which followed however was for repeal of the remaining Acts and not for female suffrage.

It was the last of the Free Church's petitions against the Contagious Diseases Acts: 3 what was left of them was repealed before the Assembly met again in 1886. In the year between the Assemblies of 1885 and 1886 the Criminal Law Amendment Act also passed on to the statute book. Parliament, previously reluctant to proceed with Bills on this matter, had been precipitated into enactment by the publication of journalist W.T. Stead's series of articles in the Pall Mall Gazette on 'The Maiden Tribute of Modern Babylon'. These articles confirmed the worst suspicions of many of Stead's contemporaries about the prevalence of juvenile prostitution in London, the trade in virgins for the domestic and foreign market, and the brutal atrocities which accompanied it.

The low age of consent, Stead pointed out, made it impossible in most cases to proceed against those who procured, cheated, raped and half-murdered young

2. Ibid., Debates, p.56.
3. The U.P. Synod also kept on petitioning to the end. Vide e.g. U.P.S.P., 1883-85, p.594 (1885).
girls. Particularly concerned to prove his allegations beyond any shadow of doubt, Stead, with the help of Josephine Butler and the Salvationist Bramwell Booth, forced a test case by himself buying a girl and then publicising what he had done. This resulted in a prison sentence of three months for Stead, but it helped to prove his case - although more substantial help was provided by his threat to name public figures, including members of the Government (from June 1885 to February 1886 the Tories were back in power) who were involved in the prostitution scene.

Stead's campaign was supported not only by Bramwell Booth, but also by other more orthodox ecclesiastical figures, including Temple, Bishop of London and Cardinal Manning. The Free Assembly and the U.P. Synod, meeting in 1886, also expressed their satisfaction at the passing of the Criminal Law Amendment Act as well as at the final repeal of the Contagious Diseases Acts. The former, declared Dr. Ferguson in the Free Assembly, had not been passed too soon, especially in view of revelations that 'in localities which seemed fair and pure and beautiful there had been an under-current of immorality which made one shudder to contemplate'.

The deep disquiet aroused by the events of 1885-1886 obviously strengthened the Purity movement in the Free and U.P. Synods. It was in this year that the latter decided to issue its Pastoral Letter on Purity, which has already been discussed; the Synod also at this time urged its Temperance and Public Morals Committee 'to be watchful against any attempts to reintroduce the spirit of the (Contagious Diseases) Acts in the form of hospitals subsidized and controlled by Government'. In the Free Assembly the Social Purity Committee was discharged, but before it was, it took the question of the nation's

3. Vide Ch.8:2, above.
sexual morals by the horns, declaring that while 'the attainments of the past year must be an encouragement to Christian people to persevere in seeking righteous legislation even in the face of the most formidable and persistent opposition', it was now necessary to deal with the causes of prostitution rather than its effects:

'One of the most pressing needs of our time is a revolution in the morals of political life. Unless principle is put before party, and our legislators are men of Christian principles, whose views are sound on great moral questions, there is no security that our laws will be framed in accordance with the eternal laws of righteousness and truth.'

2. Ibid.
CHAPTER FOURTEEN:

REGULATION AT HOME AND ABROAD.

1. Imperial, Colonial and Continental Vice.

If anyone thought that this was an inscription on the tombstone of the churches' interest in state-regulated vice they were mistaken. The corpse of the Social Purity Committee was barely cold before its convenor, Dr. Ferguson, was up on his feet again, informing the Assembly of 1887 that there was still in operation, in seventy stations in India and more than eleven in the Crown Colonies, a system of state-regulated prostitution similar to that which they thought had been abolished by the Repeal of the Contagious Diseases Acts. The Great Crusade, far from having ended, was only entering a new phase, to which the Free Assembly responded by appointing a new Committee on the State-Regulation of Vice, under the Convenorship of the Rev. John Dymock of Kemnay in Aberdeenshire and with Dr. Ferguson among its members.

This committee and the U.P. Committee on Temperance and Morals were if anything more active than their predecessors. A motive for this was provided by the churches' missionary interest, especially in India, where according to Dr. Ferguson, the system of state-regulated vice was 'seriously interfering with the work of the Christian church'. The same point was made in the U.P. Synod, which deprecated 'the setting before those under our rule in foreign lands of an example so lowering to the fair fame of our country, and so dishonouring to our Christian civilization'.

To illustrate this point a member of the U.P. committee had written

1. Dr. Ferguson, although 'a staunch Conservative in politics' according to Rainy's biographer (P.C. Simpson: op.cit., Vol.2, p.202), was not afraid of embarrassing his party, now back in office after a six months' break in 1886.
2. F.C.G.A.P.& D., 1887, Debates, p.188.
an article for the Church's Missionary Record, which appeared in November 1887. Under the title, Britain's Mission of Vice to the World, the writer set out to show how 'both nationally by our Government, and individually by our actions, we are spreading evil, vice and death, among millions of our fellow creatures'.  

He was concerned, in particular, with drunkenness and impurity. The former, 'our chief national vice', had 'degraded and destroyed ... many native races' including 'the Red Indians of the Far West, the "Blacks" of Australia (and) the Maories of New Zealand'.  

Currently it was most conspicuous in South and West Africa and in India. In South Africa, native customs discouraging or even forbidding drink and drunkenness had been disrupted by the arrival of the British, with 'the Bible in one hand and the brandy bottle in the other'; in West Africa, British firms, 'the members of which are most excellent men, many of them ... sincere Christians', imported from Germany and sold, sometimes at a profit of 700 per cent., spirit 'so strong that the native painters use it instead of turpentine'; and in India, where although 'there have always been native intoxicating drinks, and, in consequence, native drunkards' the introduction of European habits and the custom of raising revenue by auctioning licences to the highest bidder had wrought havoc: 'the example of their rulers has led many native gentlemen to acquire intemperate habits, their comparatively feeble constitution, and the climate of the country, leading them quickly to ruin'.  

As far as impurity was concerned, however, there was little in this

1. The Missionary Record of the United Presbyterian Church, Nov. 1 1887, p.346.
2. Ibid.
3. Ibid., p.348 (A popular phrase: vide P.C.G.A.P.& D., 1888, Report XXXII, p.3: 'What can the natives of India think of Christianity, when a nation calling itself Christian brings Bibles in the one hand and Vice-licences in the other, and provides for its troops prostitutes as well as preachers?')
5. Ibid.
writer's view which the British could teach India. 'The natives, alas', he declared, 'do not need to be encouraged in this direction. While their creed forbids drunkenness it panders to lust'. Yet, he went on, 'if heathen religions thus approve of prostitution, is that any reason why we, with our enlightened Christianity should do the same?' This, however, was just what Great Britain had done. Among its soldiers and sailors, 'the great proportion of which is celibate', he stated, 'sexual indulgence is regarded by the authorities as a necessary evil which, as it cannot be repressed, should be regulated and guarded'. After the passing of the Contagious Diseases Acts the system had quickly been implemented overseas, with dire consequences. In Hong Kong 'men have been actually employed and paid by the representatives of the Queen of England to compass the fall of Chinese women, in order to lead them to enrol themselves in the ranks of registered unfortunates'; and Sir J. Pope-Hennesy, for protesting about this 'slavery ... under the flag of England', had been forced to give up his Governorship of the colony. The military authorities were 'so utterly indifferent ... to public opinion at home' that whenever Egypt and Burmah were occupied (Egypt in 1882 and Upper Burmah in 1886), state-regulated prostitution was immediately introduced. Some progress, the writer was glad to say, had been made: repeal at home had led to the suspension or abolition of regulation in Jamaica, Trinidad, Barbadoes and Labuan and it was expected soon to cease in Ceylon, Hong Kong, the Straits Settlement, Malta and Gibraltar. 'This is something to be thankful for. But much remains to be done'. The list of places where regulation continued included India,

1. Ibid., p.348.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid.
Burmah, Egypt, Canada, Cape Colony, Queensland, Victoria, Tasmania, New Zealand and Fiji - 'that wonderful trophy of modern Missions'.

The missionary motive for repeal then was prominent. This writer repeated the assertion that in India, regulation was 'one of the most serious obstacles to the spread of the gospel'. Missionaries and their wives protested against it, but their authority was undermined 'when the people turn to us and say "the Government allows it"'. Together with drink and the opium trade it made the missionary's task incalculably more difficult - 'Our work now in several parts of the globe is not merely to dispel heathen error, but to destroy the vices which we ourselves have introduced and fostered'.

These complaints were re-echoed in the Free Assembly, whose committee had sent all of its ministers a copy of the Tract, 'Slavery under the British Flag', written by Josephine Butler's friend Alfred Dyer. Dyer was now in India gathering more information and learning appalling things, the Assembly was told. 'Some medical and military officers', the committee stated, had even printed a document proposing 'a regular recruiting system, with a capitation fee of three rupees' to gather 'the greatest number of the most attractive women they can obtain to fill the barracks or camps in which the

1. Ibid.
2. Ibid.
3. Ibid.
4. Ibid., p.349. The U.P. writer, not insignificantly, failed to touch upon one aspect of this question. Although, during the nineteenth century, syphilis was not, in general, as dangerous or fatal a disease as at earlier periods in Europe, European expansion brought it to all but the remotest areas of Central Africa and Central America, and often with devastating effects, since the native population lacked European immunity. According to Havelock Ellis (op.cit., vol.VI, p.327), 90 per cent. of the Baganda people of Uganda were found to be suffering from it in 1907, and it accounted for 50 to 60 per cent. of infant mortality among them. This people, wrote Ellis (ibid.,) 'were a highly intelligent, powerful and well-organised tribe before they received, in the gift of syphilis, the full benefit of civilization and Christianity, which ... has been largely the cause of the spread of the disease by breaking down social customs and emancipating the women. Christianity is powerful enough to break down the old morality, but not powerful enough to build up a new morality'.
poor slaves of British lust are confined'. Despite the evasive statements of the India Office and the 'painful and repulsive' nature of the subject, the Church must continue to protest.

Protest followed. The committee and that of the U.P. Synod joined with local Vigilance Associations to organise public meetings in Edinburgh, Glasgow, Dundee and Aberdeen. These, held in November 1887, were addressed by well-known speakers from the south, such as Mrs.Ormiston Chant, H.J. Wilson, MP. and others, and also by local ministers and laymen of personal weight and representative character. The Free and U.P. committees had hoped to involve the Church of Scotland as well, but 'it was found that there existed no established Church Committee within whose province it lay to take part in such a project'.

The campaign thus launched was to be fought against regulation in three areas: in India, in the Colonies and on the Continent. What the churches could do about the last of these, beyond sending representatives to meetings of the International Federation, was limited, but they kept their members informed of progress on that front year by year. They were also limited in what they could do about the self-governing colonies, although here they took more active measures to stimulate their Presbyterian and Protestant colleagues in those countries to set up their own repeal movements. (They had been advised to do this in 1888 by the Colonial Secretary Lord Knutsford, the first in a series of Colonial Secretaries, for whose

2. Ibid., p.3.
3. Mrs. Chant figured in numerous protest movements of the period, concerned with the subject under discussion, with temperance and with women's suffrage. She seems to have been the late nineteenth century equivalent of a cross between Mrs. Mary Whitehouse and Miss Vanessa Redgrave.
4. MP. for Sheffield. Mrs. Butler should also have spoken, but was ill.
5. U.P.S.P., 1886-88, p.1167 (1888). Meetings were later held in Inverness, Perth, Hawick and Greenock.
7. To the Free Church Committee's delight, when they asked an experienced English repealer what was the most suitable piece of literature to send to these ministers, he replied that 'there was nothing equal to a statement prepared sixteen years ago by Principal Rainy' (F.C.G.A.P.& D., 1889, Report XXXII, p.3, and vide Ch.13:8, above).
abolitionist efforts in the other colonies they had, in general, only praise.1) The great problem however was India.

2. India.

The problem, more precisely, was the Indian Army, in which disease was rife and the mortality rate had long been high.2 Much of the disease could be attributed to tropical and insanitary conditions, but a good deal of it was venereal, and attempts to deal with venereal disease in the Indian Army dated at least from the early years of the nineteenth century. Various experiments had been made with the medical supervision of prostitutes: Lock Hospitals were opened 'in one Presidency or another because the state of things is so bad, closed because things only go on getting worse, and opened again because they have become worse still'.3

Things became worse than ever before, or at least seemed so to the authorities, however, after the Mutiny, when large numbers of young soldiers were sent out to India and the proportion of married men, which under the East India Company had been between 20 and 30 per cent., sank to 12 and eventually to 4 per cent.4 The tide of venereal disease seemed to be rising and a Royal Commission on the health of the Indian Army, reporting in the early 'sixties, attempted to check it by recommending on the one hand greater opportunities for alternative forms of recreation and amusement for the soldiers and, on the other, regular medical inspection of prostitutes around the garrisons. As a result of this Lock Hospitals were again opened, in

2. 'Statistics (c.1862) showed that for years the death-rate of the British Army in India had been 69 per 1000': C. Woodham-Smith: Florence Nightingale, 1952 Reprint Society Edtn., p.320.
1865 and 1867, but this had no sooner been done than the epidemic waned and, according to the official figures the number of hospital admissions for venereal disease went down from 352 per 1000 in 1861 to 160 per 1000 in 1867. The figures then however proceeded to rise again, reaching 293 per 1000 in 1884.1

The military authorities were not sure what to make of these figures, even if it could be assumed that they were in any sense accurate.2 The increase of the later years tended to be blamed upon the introduction of the Short Service System in 1873, for what Acton would have called the demand, and the great famine of 1877, for what he would have called the supply. During the years between 1867 and 1884, when the Regulation System was in operation, the Army Sanitary Commission (a medico-military body, whose reports were based on local information) was at first optimistic about the success of the new measures, but it soon became uncertain as reports from different stations showed a great variety of results. Causes of this were sought, and suggestions included police inefficiency and bribery, as well as the soldiers' reluctance to identify infected women. Stronger measures were then called for, and attempts were made to round up more and more infected women: it was even suggested that informers should be paid. But by 1882 the causes of the diseases' fluctuations remained obscure, and the Government of India refused to extend the system to new stations, arguing that it had been a failure in the old ones.3 Soon after this it went on, with the support of the Army Sanitary Commission, to recommend that the system should be totally abolished. This, however, was a highly controversial recommendation, not only because opinion on the subject was so divided (disease rates in Bombay

1. Vide Leppington: op. cit., p.188.
2. The methods of calculation were not always known, and may have included re-admissions of the same patient after a relapse.
had recently soared after an experiment in abolition) but also because the system was still in force (under the Contagious Diseases Acts) in England. The suggestion of abolition was thus amended to one of suspension, and this was implemented about 1885, when most of the lock hospitals were closed. Disease, however, then increased more rapidly than before, and the hospitals were re-opened in 1887.1

2.1 The New Cantonment Act 1889.

It was about this point that the British Abolitionists got wind of what was happening. Hitherto they had not paid much attention to India, assuming perhaps that repeal of the Contagious Diseases Acts would apply there also. But if they did assume this they were mistaken, for the Acts had applied only to military stations at Madras, Bombay and Bassen. Elsewhere regulation was provided under the older, specifically Indian, Cantonment Act. This Act had not been repealed, but only suspended, and what this suspension meant in practice was far from clear, especially if reports of the kind being retailed to the Free Assembly were well-founded.

Such apparent indifference to the wishes of the Imperial Parliament outraged the Abolitionists, and in 1888 Parliament itself was sufficiently indignant to resolve unanimously, on the motion of a leading Abolitionist,2 that 'any mere suspension of measures for the compulsory examination of women, and for licensing and regulating prostitution in India, is insufficient, and the legislation which enjoins, authorises or permits such measures ought to be repealed'. But this resolution was as far as the Commons could go. Any implementation had to lie with the Government of India.

The churches however wished to go farther, the Synod (and its Presbyteries) sending memorials, and the Free Church a deputation to Lord Cross, India Secretary in Lord Salisbury's administration. The Synod, afraid that 'the military authorities in India might do all in their power to evade'\(^1\) the resolution, urged Lord Cross to give practical effect to it. But the Free Church deputation although they 'felt that it was a great advantage to have made manifest the earnest and determined attitude of a body admitted, by Her Majesty's Secretary, to be so influential as the Free Church of Scotland', feared that no 'definite promise of decided action'\(^2\) had been obtained from his Lordship. In an attempt to press matters farther they also sent a memorial to Lord Lansdowne, the newly appointed Viceroy, urging him to exercise his 'Viceregal authority on the side of purity and righteousness'.\(^3\)

The Viceregal authority and the Government of India acknowledged the necessity of legislating in accordance with the 1888 Resolution of the Commons by repealing the Cantonment Act and introducing a new one. At the last moment however the New Cantonment Act was amended by the addition of a clause 'legalising "all orders, declarations, rules and regulations made" under the old Act'.\(^4\) These orders and rules, the Free Church Committee observed, 'included, strange to say, the disgraceful regulations unanimously condemned by the whole House of Commons'.\(^5\) These might look innocent, but 'to practised eyes' they betrayed 'the cloven hoof', and any charitable interpretation of them was ruled out - for the Indian authorities had connived at regulation when the old Acts had theoretically been suspended, and already some of the Anglo-Indian papers were 'shamelessly' exulting that '"the old order of things will be enforced under another name"'.\(^6\)

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3. Ibid.
5. Ibid.
6. Ibid.
Protest was apparently unavailing. A Missionary Conference at Calcutta had tried to dissuade the Government of India from passing the new Act, but without success. At home, various bodies including the Wesleyan Conference Social Purity Committee and the Free Church Committee, sought interviews with Lord Cross, but were refused: there was, he claimed, no evidence for the construction they put upon matters, and 'any such action on his part might be interpreted as implying that he had reason to feel doubtful as to the good faith of the Government of India'.

This was too much for the Free Church Committee and although they tactfully denied questioning the good faith of Lord Cross, they did declare their doubts about that of the Indian Government. Together with the other 'enemies of State-regulated Vice, in and out of Parliament', they warned, they had 'been and will be busy gathering their information and maturing their plans, with a view to striking an effective blow'. The Indian officials, they declared, must 'pay honest and practical and thorough regard to the will of the British people, and the mind of the natives of India, as expressed in the unanimous Resolution of the House of Commons'. The degree of bitterness which lay behind this came through more clearly in the debate on this report than in the report itself. Mr. Dymock, throwing tact to the winds, 'condemned the shuffling conduct of Lord Cross'; and Professor T.M. Lindsay, telling the Assembly of how in India an army doctor had advised him "We are so arranging that we will do for you", declared, to applause from the fathers and brethren, that 'It was just for the Church to "do for them"'.

To do for their opponents, however, the churches needed more informa-

1. Ibid., p.3.
2. Ibid.
3. Ibid.
4. Ibid., Debates, p.256.
5. Ibid., p.257.
Accordingly, in December 1890, Mr. Dymock wrote from his Aberdeenshire manse to 49 selected ministers and missionaries in India, asking them for news of the working of the new Cantonment Act. To his great disappointment - but perhaps by his own fault, since he had asked for this information by the end of January - only seven replied, none of them Free Church missionaries.¹

From those who replied to Mr. Dymock, it was clear that current practice differed from Cantonment to Cantonment. In some, especially the smaller ones, the military authorities ordered their native subordinates to procure women for the troops; in some again these women were given special quarters - with, in one case, set hours when the men could visit them. Medical examination of the women took place weekly in at least two Cantonments, and, in more than one, infected men were ordered to point out to a policeman the woman from whom they had contracted the disease. (The police were said to dislike having to attend to this.) The women thus pointed out had then to submit to a medical examination or leave the Cantonment within 24 hours, or in some cases face imprisonment. Where regular or weekly examination took place however it was not strictly compulsory, nor were the women given licences, although some of them regarded examination as a form of licencing which, they felt, gave 'their profession a standing'.²

Two of Mr. Dymock's informants, an Indian Christian lawyer and William Huntly, a U.P. medical missionary, were quoted extensively in the 1891 Report. The former remarked that 'our Hindu and Mohammedan fellow subjects ... know the Government is determined by hook or by crook to drag prostitutes into hospitals for the benefit of British lust', and commented that recourse to

¹. Help had been offered however by the Revd. Henry Rice, an established Church missionary in Madras (vide F.C.G.A.P. & D., 1891, Report XXXVII, p.3).
prostitution was 'almost universal' among men of the Indian Army. The same point was made by Dr. Huntly, who issued a dire warning of what would happen when the 'young ignorant fools, both officers and privates', of the Indian Army were 'shipped home and let loose on England with their acquired lust thirsting to be satiated'. The Indian authorities, in his view, did not fully realise 'the terrible evil and harm they are inflicting on the old country by encouraging the men to think they could escape disease — 'a medical lie, as they don't escape'. Not 'merely India's women' were ruined by these regulations but at the same time 'the virtue and honour of thousands of England's women are endangered'. With something bordering on apparent indifference to the Indians, but with what was probably considerable insight into the motives of his readers, Dr. Huntly concluded: 'It is on behalf of England's women we must fight this out'.

The Free Church was not alone in gathering information, and as its report in 1892 stated, there was 'now ample evidence, in other hands than ours, to support the most serious conclusions we came to'. The most significant pieces of evidence in fact were now in the hands of the British Committee of the International Federation for the Abolition of State-Regulation of Vice. They had been carefully and painstakingly gathered by two American lady admirers of Josephine Butler, Dr. Kate Bushnell and Mrs. Wheeler Andrew, who, visiting India for the American Women's Christian Temperance Union, were able to substantiate claims of the sort made by the missionaries, even to the extent of producing official tickets, given to women

1. Ibid.
2. Ibid.
3. Ibid.
4. Ibid.
5. See Appendix Note 8.
6. F.C.G.A.P. & D., 1892, Report XXXIV, p.1. Although regulation was 'not in the least a party question', this report urged church members to question candidates in the forthcoming Parliamentary election about their views on it (ibid.).
allocating them to particular groups of soldiers. This information was widely publicised and presented to Lord Kimberley, Secretary for India in Gladstone's 1892-94 administration, by Stansfield and by Professor James Stuart, another leading abolitionist MP. Kimberley, the Free Church Committee remarked, 'unhappily has a bad record in connection with this subject', for when Colonial Secretary in an earlier Liberal administration he had defended the system, including procuring, in Hong Kong, despite Governor Pope-Hennessy's condemnation of it. Their fears however were disappointed, for Kimberley not only set up a Departmental Committee to investigate the abolitionists' accusations, but included two abolitionists, Stansfield and Henry Wilson, in its membership. The Jubilee Assembly of the Free Church believed that victory was at hand. 'Surely the Fiftieth Anniversary of its own emancipation', declared the Committee, 'calls loudly on the Church to strike a specially vigorous blow, so far as words can do it, for freedom to those who are bound with the fetters of the vilest of slaveries'.

These hopes were justified. The Departmental Committee, reporting later in 1893, confirmed what the abolitionists had said. Lord Roberts, the hero of the Afghan War and Commander-in-Chief in India, who had told Josephine Butler that the Free Church's claims were exaggerated and the press that the American ladies were overstating what could only have been 'an occasional breach of the regulations', had to climb down and was severely reprimanded. Dr. Bushnell and Mrs. Andrew were given over £800 by the British Government to cover their expenses, and Lord Kimberley sent a Draft

3. Ibid., p.9.
Bill for repeal legislation to the Government of India.¹

2.2 The 1895 Act.

In India the action of the home Government was deeply resented, and the authorities were not prepared to take it lying down. Interviewed in the summer of 1894, Sir George White, the new Indian Commander-in-Chief, indignantly spoke of 'the hideous evil that is done to our soldiers, morally and physically, by the non-enforcement of the Contagious Diseases Acts'.² During the previous two years, he claimed, 56,000 out of 70,000 men had been admitted to hospital 'suffering nameless horrors'.³

'Picture to yourself (he went on) the state of our army in such a condition, and its utter inability to endure the cold and wet and misery of a long campaign. And picture to yourself the no less miserable condition of the poor women for whose benefit the Acts work as completely as they do for the men. We are, I

1. In the midst of all this, however, controversy had blown up over the Decennial Conference of Missionaries, which had met in Bombay in 1892-93. This body, to the dismay of abolitionists at home, had withdrawn its resolution condemning licensed vice in India. It seemed inexplicable. It was however explained to the U.P. Synod (U.P.S.P., 1893, p.189) in a letter from one of their medical missionaries, the Rev. Dr. J. Husband, which showed that the missionaries were not all like Dr. Huntly. Dr. Husband gave four reasons for withdrawal of the resolution: firstly, that the Conference was 'a consultative and not a deliberative body' (ibid.) and the Steering committee had decided against any resolutions; secondly, that 'half of the members were ladies, and many of them young ladies'; thirdly, that many of the missionaries had never lived in a cantonment and so to be asked 'to vote in a matter of which (they were) profoundly ignorant was neither fair nor Christian' (ibid.); and fourthly, that the medical missionaries were divided on the subject. Dr. Husband added that he believed that this last meant division on the medical rather than the moral aspects of it. He was sure that they all must agree on the latter. The 'official silence of the Conference' still troubled the U.P. Committee, however, and, they added, opened the views of missionaries to 'misconstruction'. They were, however, cheered to report that the South Indian Missionary Conference and the Bombay Conference of the Methodist Episcopal Church had subsequently resolved to condemn state-regulated vice.

2. U.P.S.P., 1895, p.204 (Interview in Black and White, September 1, 1894.)

3. Ibid., p.205.
believe, the only nation so acting. Our neglect may be criminal; we shall in time poison and defile the whole world, and all for the sake of a certain feeling of sentiment. Don't think I exaggerate, for we who urge this matter know from painful experience the misery that is being wrought by evil-meaning fanatics. 1 There is not a general in the army or an admiral in the Navy, there is not a doctor in the service or a Catholic or Anglican chaplain who will not bear testimony to the truth of what I say.’ 2

The other members of the India Council 3 also were unhappy, not least because the draft Bill included a clause threatening to penalise any public servant who enforced compulsory examination of women for venereal disease. But even when this penal clause was withdrawn by the Secretary of State, others, containing clauses forbidding regular or compulsory examination for venereal disease and any form of licencing, registering or legalising of prostitution in the Cantonments, remained, and the Council was slow to enact them. Its Law Member complained 'that "the Bill had practically been drafted in England" and he "declined to express any opinion as to its necessity"'. 4 But the Council eventually passed it, in February 1895.

These events were reported to the U.P. Synod and the Free Assembly by their respective committees. The U.P. version was a fairly straightforward account of what had taken place. That of the Free Church, however, was highly polemical. The committee described Indian 'righteous indignation' over the penal clause as 'affected ... considerably exaggerated, and ... the

1. The general had remarked, earlier in the interview (ibid., p.204): '... I greatly respect the motives of those who are diametrically opposed to me in this matter'.
2. ibid., p.205.
3. After the Mutiny the Indian Council, under the Viceroy, was made up of a (British) Executive Council, and about twelve other members, half of whom were British officials, the other half being Indian princes, nobles or administrators. The Council could consider only matters set before it. Vide P. Spear: A History of India, vol.2, 1965, p.149.
work, to a large extent of wirepullers'. It was natural for the Indian authorities to be angry about home Government interference, but they had only their own earlier devious conduct to blame: to the committee the fact that the India Office 'took fright' and withdrew the penal clause was really 'an occasion of great disappointment', even though there was much to be thankful for in what remained.

The 'outcry, chiefly in medico-military quarters in India', which the committee thus dismissed, did not die down after the Act of 1895 was passed. A month later there appeared what the committee described as 'a very ominous symptom': a married officer had written to the Times of India proposing what the committee termed 'The Indian Army Encouragement-of-Fornication Association' - an organisation of married officers which would re-instate on a voluntary basis all the provisions of the Cantonment Act - to give 'our soldiers a fair chance of escaping the terrible consequences that are the natural result of sending young men under the present Army regulations to India'. What happened to this proposal was not recorded by the committee, but his sentiments appear to have been shared by many of the officer's colleagues, for in 1896 Mr. Dymock was complaining loudly about recurrent articles in 'some medical paper, as The Lancet, or some military paper, as The United Service Gazette, clamouring for the revival of the C.D. Act system'. This 'mania for regulation' was intensified by letters to the British press, such as one from Lord Malmesbury, claiming that 'the absurd prudery and noisy shouting of a body of narrow-minded fanatics' was 'the real cause by which not only our young soldiers, but young England, is being demoralised - viz. the repeal of the Contagious Diseases Act'.

2. Ibid.
3. Ibid., p.3.
5. Ibid.
Charges of this kind, in the committee's opinion, relied too heavily upon 'weak abuse' and, in Lord Malmesbury's case, upon a 'singular confusion of "demoralisation" with injury to health'.

In reply to them however it was only necessary to quote (and both the U.P. and Free Church committees did quote, at length) recent reports of the Army Sanitary Commission. These had pointed out that despite all the care taken over the Lock Hospital system since 1864 venereal disease had actually increased during the period when the system was fully operative. It had therefore to be judged 'a failure'; and, the Commission had continued, 'the best practicable means of diminishing the prevalence of these diseases is to be found in establishing a system of voluntary lock hospitals and in providing the soldier, as far as possible, with healthy occupation and recreation' — including 'all forms of athletic amusement, as physical fatigue acts as a deterrent to sexual indulgence'.

The Commission had also noted, for comparison, that venereal disease statistics in the home army had not been less under the Contagious Diseases Acts than after their repeal: for although during that period fear of the police may have deterred illicit prostitution, after it the rate of admissions for venereal disease had actually decreased.

These conclusions seemed pretty convincing to the U.P. and Free Church committees, and in the House of Commons Campbell-Bannerman, the Liberal Secretary for War, had admitted their validity during the 1894 debate on the army estimates. In June 1895 however the Conservatives returned to power, and the new War Secretary, the Marquess of Lansdowne did not share this

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1. Ibid., p.3.
2. Ibid., p.2. The committee was quoting from a Memorandum of 1895. But similar sentiments had been expressed for some time by the Army Sanitary Commission.
3. Ibid., p.4.
5. The former Viceroy of India.
view. After the 1895 Act came into force most of the lock hospitals had been closed and there were now disturbing rumours of a considerable rise in the venereal disease rate. Questioned about this, after Lord Malmesbury's and other letters had appeared in the press, Lord Lansdowne (Mr. Dymock informed the 1896 Assembly) 'cooly assumed that the increase of disease ... was caused by the abolition of the C.D. Acts, and this cool assumption was received with loud cheers'.

Lord George Hamilton, the new India Secretary, in reply to another questioner, had made much the same assumption and had stated that the Indian Government were very concerned and 'were considering what instructions or regulations it might be possible for them to issue to mitigate the scourge without infringing the restriction imposed upon them by the Resolution passed by the House on the subject'.

'Happily', remarked the Free Church committee, this would be difficult, for the practices condemned in the Commons 1888 Resolution (compulsory examination, licencing and regulation) were not simply prohibited by an executive order in India, which the Indian Government could change, but had the force of law, and despite the abandonment of the penal clause in the 1895 Act, compulsory examination of a woman against her will now amounted to assault and was punishable as such under the Indian penal code.

2.3 The 1897 Panic.

In discussing the concern of the home and Indian Governments over the rising venereal disease statistics, Mr. Dymock had remarked that his committee had no wish to challenge the figures, but only the implications drawn from them by regulationists and Government ministers. The committee felt confident that the findings of the Army Sanitary Commission had amply refuted

2. Ibid., Report XXIX, p.3.
3. Ibid.
the notion that removal of regulationist measures rather than an increase in vice was responsible for venereal disease.

It was just as well that the committee had not decided to challenge the statistics, for when the official figures for 1894 and 1895 were published, towards the end of 1896, they showed that the venereal disease rate in India was now higher than ever before. This immediately provoked a great outcry and Lord George Hamilton set up a Departmental Committee under Lord Onslow (the Under-Secretary for India) to investigate the implications of the statistics. Reporting in February 1897, the Departmental Committee stated that the rising rate of disease, which 'seriously impaired' the military efficiency of the Indian Army, and which, as the soldiers returned home, was 'a growing danger to the health of the community' did not 'appear to be attributable to increased immorality in the army' since 'drunkenness and crime have greatly diminished'. Nor were facilities for recreation at fault, since 'successive Commanders-in-Chief in India ... none more than Lord Roberts' had done a great deal to provide and improve 'recreation rooms, libraries, regimental workshops, etc.' and to encourage 'cleanliness and, so far as the climate admits, ... active exercise and sports'.

These findings were a great blow to abolitionists and to the U.P. and Free Church committees, for they undermined their claims that increased venereal disease reflected increased vice, and that recreation restricted copulation. But a greater blow was to fall a month later when the Army Sanitary Commission, until now the abolitionists' ally, had second thoughts.

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1. In 1895, 522 in every 1000 British soldiers in India had venereal disease, half of whom had syphilis. 3,200 of the total force of 71,000 were always totally disabled and many more partially disabled by venereal disease. Venereal disease represented about a third of the total amount of sickness at any one time in the Indian Army. Vide U.P.S.P., 1897, p.180.
2. Ibid.
3. Ibid.
about the matter. In a memorandum of March 1897 the Commission noted that since the withdrawal of Government control over prostitution in India there had been 'a progressive increase' in venereal disease among British troops and that there was 'no assurance that this increase had reached its limits'.

although it had hitherto considered the former methods 'unquestionably a failure', it was now compelled 'to admit that, although they failed to bring about any marked reduction in the number of men affected, they nevertheless exercised a very sensible influence in checking increase'. Treatment under these measures had also prevented venereal disease 'from assuming that virulent and destructive character' it now exhibited. Therefore, the Commission concluded, 'control of prostitution in some form seems to be a reasonable method of dealing with the effects produced by prostitution'.

As a result of these reports Lord George Hamilton had written to the Indian Government at the end of March 1897 requesting it to review its rules concerning venereal disease. His despatch excluded the possibility of re-introducing any measures which could 'be represented as an encouragement to vice': prostitutes were not to be registered, licensed or 'allowed to reside in regimental bazaars, or to accompany regiments on the march', nor were women to be examined compulsorily or regularly. Instead, the rules of the 1889 Cantonment Act which applied to cholera, smallpox, diphtheria and typhoid were to be extended to cover all contagious and infectious diseases, including those of a venereal nature. Under these rules, women suffering from any of these diseases would not be compelled to attend hospital, but would be required to leave the Cantonment if they did not. The British Government

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1. Ibid.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid., p.181.
did 'not share the view'¹ that this amounted to compulsory examination.

The India Secretary left it to the Indian Government to draw up rules embodying these principles, and its reply was sent from Simla on the 18th of May, 1897. This was too late for comments upon it to be included in the U.P. and Free Church committees' 1897 reports, but while the former reserved judgement until it saw the reply, the latter launched into a lengthy criticism not only of the reports of the Departmental Committee and the Sanitary Commission, but also of Lord George Hamilton's despatch.

In criticising the Reports the Free Church committee emphasised once again that it did not wish to question the awfulness of the Indian statistics. This, after all, was what the abolitionists - who were now 'charged with ignorance of the condition of the Indian Army'² - had for long been complaining about. The 'sudden panic that arose on the publication of the Report'³ of the Departmental Committee was however not justified, for the rate of hospital admissions, which had been rising 'with fluctuations'⁴ for the last twenty years, was at present⁵ actually rising more slowly than at some times when the Contagious Diseases and Cantonment Acts had been fully operational. Admittedly it was not decreasing (as the rate at home had done after repeal of the Contagious Diseases Acts)⁶ but the habits acquired by the soldiers during the regulationist period probably continued 'to bear fruit in increased vice and consequently in increased disease',⁷ and the habits acquired by their superiors made the thoroughness of abolition uncertain even yet. A further

1. Ibid. The despatch also endorsed the suggestion of the Army Sanitary Commission that female hospital attendants should assist in examination of the women.
3. Ibid.
4. Ibid.
5. The rate of rise in admissions in 1895 was only 11 per 1000 compared with 45 per 1000 in 1894 (ibid.).
6. The rate of admissions had decreased from 285 per 1000 in 1885 to 173 per 1000 in 1895 (ibid., p.5).
7. Ibid.
reason for questioning the connection between abolition and the rising venereal disease rate was that after 1895 the rate had risen only on some stations. On others it had decreased, and, as the Inspector General of Military Hospitals had remarked in 1879, when he was giving evidence in favour of the Contagious Diseases Acts, differences of this kind could only be explained in terms of differences 'in the character of the men, and in the traditional habits of the regiment'. They could not in other words be attributed to regulation or to its abandonment. The conversion to regulationism of the Army Sanitary Commission, whose own Report contained statistics of this nature, was thus 'not easy to understand'.

These Reports then, the Free Church committee considered, had added unnecessary fuel to the regulationists' fire, and press and public reaction to them had been greatly exaggerated. Newspapers 'repeatedly' ignored the fact that about a quarter of the 522 admissions to hospital were readmissions and - a particularly glaring example of 'ignorant exaggeration' - the Inverness Northern Chronicle had even informed its readers that the 45 per 1000 constantly sick were 45 per 100. The press also tended far too readily to assume that venereal disease could be easily prevented, and it was frequently being suggested that -

'but for Repeal, disease would have been almost, if not quite, extinguished, and disease has been laid at the door of Repealers just as if the soldier were not a voluntary and responsible agent. There has been nothing for him but pity, as for one to whom vice is necessary, and whom it is monstrous, not only not to try to cure (which no one objects to), but to allow to be sick, or even to fail to provide beforehand with the assurance of immunity. Floods of abuse have been discharged on Abolitionists; they have been accused, eg., of utter heart-

1. Ibid.
2. Ibid., p.4.
3. Ibid., p.3. (More probably a misprint.)
lessness, of low motives, foul tastes, and in the chorus of execration that has arisen against them one voice has proclaimed that they deserve themselves to be inoculated with the virus'.

Fortunately, the committee noted, the India Secretary had so far resisted much of this regulationist pressure, and there was much in his despatch to the Indian Government 'to be satisfied with and to be grateful for'. Nevertheless, the committee could hide neither from themselves nor the church 'that no small danger lurks beneath an innocent-looking surface', for the despatch was 'elastic enough to admit measures which shall amount practically to Vice-Regulation'; and it was difficult to see how examination could really be any more voluntary than it had been in the regulationist period, if now as then the only alternative was for the diseased woman to leave the Cantonment. In the despatch the committee saw 'the door opened for the oppression of women, and men too' for nothing was said about judicial procedures, and thus all the old dangers arose. Their fear that it might eventually lead to a reintroduction of all the old evils was intensified by the fact that regulationists were now either complaining that the Indian Government should be given more of a free hand than the despatch allowed them, or were congratulating themselves that this had already been given, if one read between the lines of the despatch.

The Free Church committee concluded its report (which even it admitted was 'too long') by remarking that the Government would have been wiser to appoint a Select Committee than a Departmental one, for the latter had not gone into the question in sufficient detail. Its suggestion, for example, that there was no evidence of 'an increase of vice to account for an increase

1. Ibid.
2. Ibid., p.8.
3. Ibid.
4. Ibid.
5. Ibid., p.9.
of disease' was ill-founded, for 'diminution of drunkenness and crime is not incompatible with increased immorality'. A more substantial enquiry would also have suggested more thorough improvements in conditions for men in the Indian Army, especially in relation to 'facilities for marriage'. The fact that the disease rate among the Native troops (in 1895) was less than a seventeenth of what it was among British soldiers, was clearly related to the fact that just over 4 per cent. of the British were married. This was 'nothing short of scandalous':

'The cost of married soldiers is made an objection; but what of the cost of diseased soldiers, and what of the eternal difference between right and wrong? It is wrong to have an army of young men in India under the conditions to which the British troops are subject, and it is surely very disappointing that the first utterance and proposals of Government, in the face of a state of things that has spread consternation through the land, should not as much as hint at a remedy which is at once obvious, natural and God-appointed'.

2.4 Dissension in the Free Assembly.

On the afternoon of Monday, May the 31st, 1897, the Free Assembly was not in a particularly serious mood. It was debating whether to licence a candidate for the ministry who had been studying for sixteen years, but always had a serious illness when due to be examined. On the advice of Prin-

1. Ibid.
2. Ibid., p.10.
3. The committee stated that the proportion of married Native troops was 'altogether otherwise' but gave no figure (ibid.).
4. Ibid. An Appendix to the report listed some alternative ways of dealing with the situation. These, taken from a memorandum of the British Committee of the International Abolitionist Federation, included recommendations that moral character should be made 'an important element in promotion' (ibid., p.11) in the army (as things were, 'habitual profligacy' was 'no impediment' (ibid.,)); that venereal disease should be mentioned when a soldier was discharged (as things were he could have had it and be discharged with an 'exemplary' character); and that the officers and regiment involved should be disciplined if they had a bad record in this respect.
cipal Rainy, and amid no little laughter, it agreed to waive all but the final examinations in this 'thoroughly exceptional' case. It then called for the lengthy report which we have just been considering. This was introduced by Mr. Dymock, and the Assembly quickly sobered up.

As was customary, the convenor's speech summarised the main points of his committee's report for the benefit of those present who either had not read or had forgotten its contents. In view of the number and length of the reports which members of the Assembly were now given to digest, this practice was not only necessary, but also provided convenors with an opportunity to comment on any relevant developments which had taken place in their field since their report had been printed.

In Mr. Dymock's case two relevant developments had taken place: the Viceroy, Lord Elgin and the India Council had replied to Lord George Hamilton's despatch, and the Report of the Departmental Committee (which had provoked the despatch) had been debated in the House of Lords. Each of these events had taken place a fortnight earlier, but so far Mr. Dymock was aware only of the second, which clearly had made a deep impression on him. It had, for one thing, confirmed some of his worst fears about the British ruling classes: in the course of the peers' debate 'one so-called noble Lord', the Earl of Clarina - he informed the fathers and brethren - 'had not been ashamed to describe himself as "a bachelor who occasionally obeyed the strongest instincts of human nature"'.

This perhaps was all that could be expected of some regulationists. More disturbing, however, was a 'singular change' which Mr. Dymock observed coming over others among them:

2. Lord Elgin was later to be a member of the Royal Commission which reported on the Free Church case in 1905.
Religion was now invoked. They had Lord Dunraven 1 "thanking God" that public opinion was coming more and more to that side; and they had Lord Lister saying that the Government was "entering on a Christian course" - a course that, according to his lordship, was to end in the C.D. Acts. Christianity was repeatedly appealed to, and repeal spoken of as "iniquity" and "sin". But ... they knew that a thing might be called Christian which was the reverse of that, and that God might be thanked ... when thanks were due in an opposite quarter altogether. 2

Despite these brave words the conjunction of religion, respectability and regulationism was not new, 3 nor - to many contemporaries - was it as incongruous as it seemed to Mr. Dymock. The emergence of Lister as a regulationist represented a particularly serious threat to abolitionists, especially if, as Godlee (Lister's nephew, and himself a surgeon) asserted, his regulationist opinions reflected 'the general view of the medical profession in this country at that time'. 4 Nor was there any doubt that Lister was a regulationist. He chose this, his maiden speech, to criticise the India Secretary's despatch for unduly hampering the Indian Government in dealing with venereal diseases. All contagious diseases including venereal diseases, he stated, should be treated in the same way, and in principle he had no objection to the Contagious Diseases Act. It was, he considered 'a most beneficent act' which,

1. Lord Dunraven had raised the matter in terms of a motion for a more general enquiry into the effect of venereal disease on the army and the civil and native population.
3. Mr. Dymock, apparently, was not acquainted with the religious opinions of Mr. Acton.
'he hoped, at no distant time to see ... re-enforced in this country'.

The spectre of regulationism in high places clearly agitated Mr. Dymock considerably, and led him in his speech to express much more extreme opinions than were contained in his committee's report. Lord Lister's remarks, he claimed, 'had let the cat out of the bag' by showing that for Lord George Hamilton's despatch to be 'of any use' there must be periodical examination, and that, he suspected, was just what it was going to lead to. No doubt some people 'were quite delighted and disarmed' by the good things in the despatch, and no doubt they were 'honestly meant'. But they had all been heard before - from Lord Cross. The Assembly therefore ought to object to the despatch as 'a step backwards' and 'part of a policy of despair' which 'opened the door to all the evil practices' of the past, leading ultimately to an 'out-and-out C.D.A. system'. Mr. Dymock's anger was intensified by

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1. Ibid. The seventy year old surgeon to the Queen and founder of antiseptic surgery had been raised to the peerage in January of that year and did not speak in the Lords unless he felt deeply about the matter in hand. (His only other important speech there was made a year later, in support of the Vaccination Bill). Nor with his Quaker background, did he talk lightly about Christianity. His earlier involvement in the stormy Scottish medical scene, where Simpson, who had had to battle with biblical texts against the clerical opponents of painless childbirth, had been still active, and other controversies of the period had forced him to think deeply about the conflict between religion and science, leading him to the conclusion that there was 'no antagonism between the religion of Jesus Christ and any fact scientifically established' (R. Truax: Joseph Lister, 1947, p.114). He had moreover demonstrated the courage of his convictions when he had refused Queen Victoria's request to make a public statement condemning vivisection. Neither his significance nor his sincerity could easily be questioned - nor for that matter his information, if as Godlee (op.cit., p.545) claimed, Lister, 'impatient of inaccurate statements and loose arguments such as were often put forward by sentimentalists or enthusiasts', preparing for this speech, 'confirmed the opinion he had long held, by reference to documents and statistics and by a considerable correspondence'. His convictions were firm and on this subject he 'continued to exercise his influence upon members of the Government in private' (ibid.).


3. Ibid.

4. Ibid., p.215.
the fact that General Chapman, who under Lord Roberts had sent out the 'notorious circular calling for a larger supply of younger and more attractive women for the troops, had now had the effrontery to write to the Moderator asking him to use his influence with ministers in the Highlands to get them to be practically recruiting sergeants for the army'. The only course open to the Government, declared Mr. Dymock, recovering his main theme, was a return to the conditions, of 'long service and greater facilities for marriage', which had existed before the Mutiny. This was 'God's way' and 'even her Majesty's Government would find that it was vain to fight against God'.

This was also strong language. But Mr. Dymock's speech was applauded by the Assembly only at its conclusion, which suggests that its reception was not over-enthusiastic. Principal Rainy, who was a member of the committee and now rose to move the deliverance, thus had the difficult task of speaking for the report without identifying himself too closely with his convener. He did this by emphasising that it was important for the Assembly to 'make clear what they objected to' and to 'take care to take up grounds that they could clearly understand and clearly define'. Thus, 'for instance', Rainy went on, 'when Mr. Dymock said that one of his objections was that these operations tended to protect men from the consequences of vice, he had to say that he would go a long way to deliver men from the consequences of their own vice

1. Chapman was intensely disliked by Josephine Butler, who described him as 'a dark evil-looking man, lean, dried up like a piece of old tree-trunk'. He also was 'a Plymouth Brother and holds prayer-meetings' - vide G. Petrie: op.cit., p.269.
2. F.C.G.A.P.& D., 1897, Debates, p.216. Only that morning, said Mr. Dymock, he had received a letter from a Highland minister, stating 'that he would rather do what he would to prevent young men from entering the army when vice was treated as a necessity' (ibid.).
3. Ibid.
4. Ibid., p.217.
5. Ibid. - such as had been outlined in Rainy's pamphlet on the subject, 'which he believed was still in circulation' (ibid.).
if he were not required in so doing to connive at their vice, and make himself responsible for it'.

This judicious, if convoluted, piece of reasoning, was applauded by the Assembly, which again applauded the Principal when he went on to state that only if the Government was under 'strong pressure' from regulationists was it right for the Assembly to exert 'counter-pressure'. This, he believed, was 'the proper way of supporting the Government'. Under the present circumstances, since many of the officials who would have to carry out the provisions of the despatch wanted to go back to the old system, and since support for this view had been expressed in the House of Lords, it clearly was right for the Assembly to state that it had, in the words of the deliverance, 'reasonable ground for apprehension as to the effects of this despatch'. But this was as far as it should go, and the Assembly should 'be duly cautious in taking up any ground in the way of condemning this despatch'.

Rainy had good reason to take a more moderate line than his convenor, for an Edinburgh elder, Mr. McCandlish, had already intimated his intention to move that the committee should be discharged. Dr. Ferguson of Kinmundy, seconding the adoption of the deliverance, remarked that this would be 'a sore discouragement' and 'a highly undesirable step', since the Free Church 'was regarded as the outstanding exponent of public opinion on this subject'. Dr. Ferguson, however, was an old opponent of Mr. McCandlish, for the latter, when he rose to speak, declared that he had protested against the establishment of the committee twenty-two years earlier, and the Assembly 'had allowed

1. Ibid.
2. Ibid., p. 218.
3. Ibid., p. 217.
4. Ibid., p. 218.
5. Ibid.
6. He was one of the representatives of the Presbytery of Italy.
7. Ibid., p. 219.
the thing to go on too long'.

Mr. McCandlish objected to the committee's existence because, as he put it, 'it dealt with a subject with which, as a Church, they had nothing to do'.

Greeted with 'cries of "Oh"' for saying this, Mr. McCandlish quickly added that members were entitled to express their opinions on such subjects 'as individual Christians': but 'when from Church Courts and pulpits views were expressed upon social, moral or political subjects upon which the members of the Church were divided', he argued, it 'told seriously against religion'.

He doubted moreover if there was in the Assembly 'one man in twenty who had mastered this subject so as to be justified in taking a serious responsibility in connection with it', and so although they all condemned vice, it was wrong for the Assembly to be committed to the 'extreme views' of the committee.

This was not however the only ground of criticism of this committee advanced by Mr. McCandlish, for he had 'strong views' upon the question of regulation as well as that of the church's involvement in politics. The Government and the Indian army, he stated, were well aware of the serious nature of the problem and were doing their best to deal with it in a way which would reduce disease, raise morality, and undo some of the harmful effects of the 1888 resolution, which 'had acted as a stimulant to vice'.

The committee however seemed to be interested only in preventing the authorities from interfering with an 'army of professional prostitutes, native women who made a trade of vice, and who were brought up to this trade': they seemed unconcerned to 'deliver the lads who sinned from ... suffering all

1. Ibid.
2. Ibid.
3. Ibid., p.220.
4. Ibid.
5. Ibid.
6. Ibid.
their lives from a loathsome and often fatal disease, and transmitting it to the wives they might afterwards marry on their return home, and to their children. The committee indeed seemed determined to ensure that these young men should suffer. 'Were the members of Assembly', he asked, 'prepared to take this responsibility on themselves?'

This view, as extreme in its own way as that of Mr. Dymock, did not commend itself to the members of Assembly, who refrained from applauding even at the end of Mr. McCandlish's speech. Nor were they very enthusiastic when two other and very distinguished elders rose to express their dissent.

Colonel Cadell, V.C., 'one of the few military men' in the Assembly and recently retired after thirty-eight years in India, informed the Assembly that he agreed with 'the practically unanimous opinion of the officers of the army in India' that it was 'the duty of the Government of India to regulate, not vice, but the prevention of disease'. There were, he said, 'as good men in the army as there are in the Church' and the Indian authorities wanted to keep the men away from temptation, but thanks to the new regulations, following 'a recommendation passed by chance in the House of Commons on a Wednesday afternoon' (the 1888 Resolution) they no longer had any powers to keep prostitutes out of Cantonments. Simply warning the soldiers against disease was useless, for they did not give the fear of disease 'a second thought'. It was his opinion therefore that 'no man of common-sense, if he knew the circumstances as I do, would object to the rules proposed by the Government

1. Ibid.
2. Colonel Thomas Cadell (b.1835) won his V.C. for 'bringing in wounded men under severe fire' in Delhi during the Mutiny. He subsequently entered the Political Department and served in Central India and Rajputana until he retired in 1892. Vide C.D. Buckland: Dictionary of Indian Biography, 1906, p.65. He was a member of the Free Church Committee on Presbyterian Chaplains in the Army and, from 1899, its convenor.
4. Ibid.
5. Ibid.
of India'.  

These rules were 'based on the principle of general registration of all civil inhabitants of the Cantonment' and medical examination was 'entirely voluntary', for the women could choose to leave the Cantonment if they did not wish to be examined. Colonel Cadell concluded by pointing out that although many great and good ladies had signed memorials protesting against these rules, another memorial supporting the measures proposed in the India Secretary's despatch, and declaring that it was 'the duty of the state' to protect unmarried soldiers 'from the consequences of evils which are unavoidable' under the conditions imposed on them by the State, had been signed by many other 'equally revered' ladies, including Florence Nightingale.

The Colonel's reference to the famous nurse was swiftly followed by the speech of a distinguished doctor, Professor Sir Thomas Grainger Stewart, Physician in Ordinary to the Queen for Scotland, remarked that he could not support Dr. Rainy, for 'he knew what the results of these diseases were, not only in the victims themselves ... in many a poor hospital patient, and in many a patient of good social position ... but in the individuals contaminated, and their children and even their grandchildren ... and he knew also that it was possible to prevent such things'. It was the Assembly's duty 'where they could, to prevent disease with the utmost earnestness'.

These formidable allies did not however win the day for Mr. McCandlish, and Rainy's motion was carried by a majority.

2.5 Compromise in the Free Assembly.

The motion which was carried was not however exactly the same as that

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1. Ibid., p.222. Colonel Cadell may have known what the Indian Government had by now proposed, or he may simply have been referring to the older practices.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
originally proposed, for Rainy had agreed to add the words 'contrary to the intentions of the Secretary of State as expressed in the Despatch'\(^1\) to the Assembly's expression of apprehension about what might follow the implementation of the despatch. Rainy had suggested these words after a short speech from an elder with some experience of India, who was unwilling to support Mr. McCandlish, because he believed that 'it was the duty of the Church to inform the State upon moral questions' (which, as well as being a 'medical and military' question, this was) but who was also unwilling to support the deliverance, because he believed that the Secretary for India, after listening to what the Churches had to say, had issued 'a despatch with which no reasonable fault could be found'.\(^2\)

The elder, whose speech was punctuated with as many bursts of applause and cries of 'Hear, hear!' as all the other speeches put together, was Andrew H.L. Fraser C.S.I., who had just completed seven years as a civil servant in the Central Provinces. Now at home on leave prior to taking up his appointment as Officiating Secretary to the Indian Government's Home Department, Fraser was poised, at the age of 49, on the brink of promotion, which would bring him in two years to the Chief Commissionership of the Central Provinces and in six to a knighthood and the Lieutenant-Governorship of Bengal. Whatever reasons his superiors may have had for promoting him, Fraser's own expression of his attitudes\(^3\) suggests that he was a remarkably conscientious and compassionate civilian, who not only believed it his duty but also enjoyed meeting Indians of all classes. Very critical of colleagues who did not trouble to learn the local customs and languages and who failed to keep 'in mind that an Indian gentleman ought to be treated as a European gentleman

\(^1\) Ibid., p.221.
\(^2\) Ibid.
\(^3\) Vide his autobiographical reflections: Among Indian Rajahs and Ryots, 1912, passim.
should be treated',¹ he was himself criticised for being too soft with the natives when he insisted that peasants should be treated with respect. He was not, of course, immune from the contemporary European's sense of superiority, believing that 'British rule is necessary for the maintenance of peace and for the progress of the country';² and he was unsympathetic to Congress, whose members were, he believed, a minority of disaffected intellectuals. There was, in his view, 'no Indian nation'³ and he thought that it would be 'a long time before the races of India can be left to manage their own affairs'; but he recognised that 'intellectual unrest' in India was only to be expected after the introduction of 'Western civilisation, our industrial methods, our education and even our political ideas',⁴ and he argued that Indians should be given an increasing part to play in Government.

On matters of religion Fraser, as a good civil servant, believed in the principle of religious neutrality and had 'never conscientiously favoured Christian or Hindu or Muhammadan for his creed' nor used his 'official influence in any way to undermine or change the faith of any man'.⁵ But he had 'never regarded the principle of neutrality as involving indifference or opposition to religion'.⁶ Early in his service he had attended a mission church, together with Europeans, Eurasians, a few Indian Christians and some non-Christian Indians, and when the missionary - the only one in the district - had to be absent, Fraser had conducted the service. His superior, 'an upright English gentleman', consequently told him 'that, as Indians attended the service, it was incompatible with my duty to Government to conduct it,

¹. Ibid., p.36. 'There is no one that is more sensitive, nor more observant, in regard to courtesy than the Indian gentleman' (ibid.).
². Ibid., p.91.
³. Ibid.
⁴. Ibid., p.300.
⁵. Ibid., p.277.
⁶. Ibid.
especially as some of these were Hindus'. Fraser however refused to accept this view of his duty and asked to have the matter referred to the Local Government. His superior 'very courteously and kindly' agreed to this, and the reply came back that 'so long as I merely took part in a Christian service in a place to which no one was compelled to come', the Government had no objection. He 'never had any trouble again in this connection', and during his time in Nagpur (which Presbytery he was representing in the 1897 Assembly) he was one of only two European elders (the other was a missionary) on the Session of the native church. His attitude to missionaries was mixed: some, he thought, were 'unsympathetic towards the natives ... jealous, suspicious and even hostile to their fellow-countrymen ... narrow, ill-educated, and wanting in tact and judgement'. Such missionaries, he said, probably do more harm than good' and although he stressed that these were 'exceedingly exceptional', his vivid characterisation of their faults suggests that he must have had a few in mind. He also may have had in mind some situation such as that under discussion in the 1897 Assembly when he remarked that 'to them, as a body, we owe the awakening of the conscience of the Government to some of the abuses of Indian administration', as well as when he noted that some missionaries 'although no doubt well-meaning, forget that not all the information that reaches them is accurate': he would

'I like to see all missionaries willing to enter fully and with kindly confidence into friendly relations with the officers of the Government. They ought not readily to take up an unfavourable impression of the character and conduct of officers of Government, and least of all when they are their own fellow-countrymen. Officers

1. Ibid.
2. Ibid.
3. Ibid.
4. Ibid., p.268.
5. Ibid.
6. He might of course have been thinking of some other example such as the part played by missionaries in protecting the peasants from the indigo planters: vide M. Edwards: Bound to Exile, 1969, pp.133ff.
of Government, whether European or Indian, are for the most part animated by a strong sense of duty'.

It was not surprising then that this realistic, compassionate and high-minded Scottish civilian was able to make common cause with Rainy, nor that the Nomination Committee immediately added his name to the membership of the Committee on the State Regulation of Vice.

It is not clear, either from Fraser's autobiography or from the Assembly records, whether he was able to attend any meetings of the committee between his appointment in May 1897 and the subsequent Assembly, or whether he had to return to India in the meantime. What is clear however is that he was present at the 1898 Assembly and that he had not attended the crucial committee meeting which adopted the report to that Assembly - for he told the Assembly as much when he submitted the report to it.

The report which Mr. Fraser submitted contained none of the committee's usual allusions to Continental and Colonial Vice. Instead, it quoted in full the Indian Government's reply to Lord George Hamilton's despatch, plus his response thereto, and made some comments of its own on this exchange.

In reply to the despatch, the Indian Government had framed rules enabling Cantonment authorities to prohibit brothel-keeping, soliciting, and the residence of prostitutes in Cantonments. The military authorities had agreed, further, to make deductions from soldiers' pay for days spent in hospital with venereal disease (unless the soldier could prove that the disease was 'contracted under circumstances, not the result of his own immorality') and to warn 'young soldiers on their arrival in India of the dangers to which they are exposed, and of the terrible consequences attending the

1. Fraser: op.cit., p.269.
3. F.C.G.A.P. & D., 1898, Report XXVII, p.8. With some ingenuity this might just have been possible.
contraction of venereal disease in a tropical climate'. These were provisions to which it might seem that no abolitionist could take exception. The Free Church committee however, while expressing some satisfaction with them, was concerned that 'the mere permission given to the Cantonment authority to prohibit brothel-keeping or the residence of prostitutes in the Cantonment, or in any specified part thereof' might lead soldiers and the women to think that those houses and women not prohibited were for practical purposes licensed.

The committee's main objection, however, was to the Indian Government's recommendation (which Lord George Hamilton agreed to), that, for the rules applying to other infectious and contagious diseases to be extended to venereal disease, it would be necessary to repeal the Act of 1895 and to amend a section of the Act of 1889. This was necessary because any medical officer examining a woman under the new rules could be penalised under the 1895 Act. (The amendment to the 1889 Act was proposed in order to give more explicit protection to an officer doing this.) The Free Church's objection to this (made 'without in the least imputing sinister motives to the Viceroy and his Council') was that 'this Repeal, with the free hand it gives to medical and other officers, will operate towards the admission of those evil practices

1. Ibid., p.3. Lord George Hamilton, in his reply, was insistent upon this last point. He wished to see a copy of the warning and urged that it should be given to all troops on embarkation for India. He also insisted that the Indian Government should give 'a trial wherever possible' (ibid., p.9) to the Army Sanitary Commission's recommendation that female hospital assistants should help with the examination of women for venereal disease. He disagreed with their contention that 'for the class of common prostitutes in India, with which we have mainly to do, it is an entirely unnecessary and in many respects unsuitable, provision' (ibid., p.2).

2. Abolitionists might of course argue that pay-stoppage could lead to concealment of disease. B. Leppington (op.cit., p.183) argued that this happened under the C.D. Acts when the admissions rate in the home army (1873–79) fell, during the period when pay-stoppage for v.d. hospitalisation was in force.

which the Act repealed peremptorily excluded'. Examination would not be voluntary, and 'the door will be opened for the oppression even of innocent women by unscrupulous men'. The committee 'carefully abstaining from all over-statements, from undue suspicions, and from ill-advised denunciations', was bound to record its conviction 'that the status quo is one of great peril'.

The defensive way in which this conviction was registered suggests that Mr. Dymock, who presumably drafted the report, was licking his wounds. Further evidence of his feelings however is lacking, for he was unable to attend the Assembly, and Mr. Fraser's submission of the report, although made at Mr. Dymock's request, was very different from that which he would have made had he been present.

Although Mr. Fraser asserted that he 'had no hand in drafting the Report', was 'not, therefore, responsible for it' and wished that 'some parts of it' had been 'at least expressed differently', he nevertheless expressed his general approval of 'the views contained in the Report and the spirit in which it has been drawn up'. He then went on to outline the history of the controversy in a manner appropriate to someone trying to be loyal both to the Indian Government and the Free Church. Venereal disease, he emphasised, was a more serious disease in India than at home, so it was not surprising that the Indian Government followed the example of the Home Government when the Contagious Disease Acts were passed. Nor was it surprising that when there were abuses under the Acts at home, abuses also took place in India. But

1. Ibid.
2. Ibid. Such fears, it claimed, had also been expressed by a number of British missionaries in India, led by their own Mr. Campbell of Toondee; and the Directors of the London Missionary Society, as well as 'many societies and public meetings' (ibid.), had condemned the new Act and Rules.
3. Ibid.
4. Ibid., Debates, p.222.
5. He made no mention of any earlier measures by the Indian Government.
the Indian Government issued orders to put these down, and did not realise that these orders were being disobeyed by some local authorities until the ladies from the World's Women's Christian Temperance Union reported upon them, and the Government of India itself discovered General Chapman's circular. 'These awful discoveries', Mr. Fraser noted, filled the Government of India with horror and shame; and as a result it passed the 1895 Act, since, as the Military Member of the India Council remarked, 'in face of the Quartermaster-General's circular of 1886, they had not a sufficiently clear conscience' to make a stand for protective measures. The difficulty with the 1895 Act however was that it was legally binding and because of the danger of prosecution put a stop to all treatment of venereal disease among women. Despite the India Secretary's opinion that the regulations proposed in his despatch would not amount to compulsory examination under the 1895 Act (which might 'morally' be the case) - lawyers were uncertain about this and the medical men were afraid - especially 'in India, where malicious charges are more rife' to treat women while the 1895 Act remained in force. For whether compulsory or not, the Act forbade periodical examination, which might well be necessary in the course of treatment. The Indian Government and the India Secretary were therefore right, in Mr. Fraser's opinion, to repeal the 1895 Act.

As far as the new rules were concerned, Mr. Fraser emphasised the absence of registration and compulsion and the fact that the choice of examination or leaving the Cantonment could only be offered to a woman if the medical officer and the commanding officer were agreed that it was necessary.

1. 'Their reports' Fraser remarked, 'contained some matter which may easily enough be turned to ridicule'. (Ibid.)
2. Ibid.
4. Ibid., p. 223.
5. Ibid.
He also emphasised the positive aspects of the new system which discouraged vice and warned soldiers against the dangers facing them. The new system, he observed, was completely different from the old one, and he believed that the church had 'no cause whatever to be ashamed to have had a share in the efforts of Christian people which have led to this ... clear recognition of moral principle'.

The only danger now was that 'even fairly good men, looking at a subject like this from only one point of view' might repeat the 'awful blunders' of the past. Repeal of the 'rightly repealed 1895 Act thus called 'for careful watchfulness against local abuse'.

By stating his case in this way Mr. Fraser had managed to support the deliverance, which expressed 'grave apprehension' as to the 'local working out' of the system following repeal of the 1895 Act, without endorsing the 'great regret' at Repeal expressed by the report. Thus, although an Edinburgh Elder attacked 'the biassed and hostile tone of much of this Report' and persuaded Rainy on behalf of the committee to accept an amendment converting the 'grave apprehension lest' local evils would ensue to 'the earnest hope' that they would not, the deliverance was adopted, and the committee and convenor re-appointed, without any further controversy.

The absence of any further controversy, which was carefully managed by Rainy, may well have been as much as anything else an attempt to protect Mr. Dymock. For after his long labours the absent convenor was dying. With his death, the committee entered its own terminal stages, which were,

1. Ibid., p.224.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid., Report XXVII, p.9.
6. Mr. Robert Simpson, a builder.
7. Ibid., Debates, p.224.
8. He died the following February (1899). The generation which had fought the C.D. Acts was going: Stansfield died in 1898, and Josephine Butler, although she lingered on until 1906, was now less active.
appropriately, less stormy. Mr. Fraser returned to India, but remained a member of the committee and later went on to become 'one of the most prominent and highly respected members of the church', playing an important part in the negotiations for Union with the Establishment and wielding, as before, 'great influence in an unobtrusive way on every occasion when his advice was sought'.

The new convenor of the committee, Dr. J.G. Cunningham of Edinburgh, produced shorter and more optimistic reports. That of 1899 had in fact nothing but praise for the Indian authorities. A member of the committee (perhaps Mr. Fraser, but he was not mentioned by name) had written from India to Dr. Cunningham with 'reassuring statements as to the manner in which the Cantonment regulations were being carried out', and the committee quoted 'as one of the hopeful signs of the times' a memorandum from the Commander-in-Chief, Lord Wolseley, which matched his exalted situation with appropriately exalted sentiments:

'It will (he wrote) be the duty of the Company officers to point out to the men under their control, and particularly to young soldiers, the disastrous effects of giving way to habits of intemperance and immorality; the excessive use of intoxicating liquors unfits the soldier for active work, blunts his intelligence, and is a fruitful source of crime. The man who leads a vicious life, enfeebles his constitution and exposes himself to the risk of contracting disease of a kind which has, of late, made terrible ravages in the British Army. Men tainted with this disease are useless to the State while in the Army, and a burden to their friends when they leave it.'

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2. F.C.G.A.P. & D., 1899, Debates, p.239.
3. Ibid., Report XXVII, p.2.
2.6 U.P. Hostility, U.F. Compromise and the Establishment.

The U.P. Synod's reaction to the repeal of the 1895 Act was similar to that of Mr. Dymock, and if anything more hostile. Repeal, it considered, had removed any legal means whereby a return to the old system might be prevented and, the Synod observed, 'in view of the way in which the Indian authorities have acted in the past there is grave cause to fear that the 'new rules will be used to reintroduce the old system'. The Synod admitted, however, that the Army was now aware of the need to attack vice as well as disease. Even Sir George White was strongly urging the application of moral pressure on the grounds that 'soldiers listen with attention to the teaching of those they respect and who can speak to them from the standpoint of higher education, of a blameless life, or of technical knowledge'. But these measures, the committee believed, would 'never be used in adequate measure, so long as any system of regulation is in force'; and it petitioned Parliament for re-enactment of the 1895 Act, together with greater facilities for marriage and moral training. (Not even the U.P. Synod, however, could resist the high moral tone of Lord Wolseley's memorandum, which it quoted at length, remarking that it could not 'fail to produce good moral results among the

1. U.P.S.P., 1898, p.201. Disturbing evidence had again been furnished by Dr. William Huntly, the U.P. medical missionary. Dr. Huntly had been running a lazaret hospital in buildings leased from the Government for 25 years (following the closure of Government lock hospitals) for a nominal rent. When the new rules were issued he was asked if he would carry them out: 'I asked (he wrote) how they were to be construed, and received, to me, no satisfactory reply. I also pointed out that since the lock hospital had been closed, the mission hospital had been treating any poor woman with the disease, who came, and would continue to treat them, but that any examination of the woman because she was a prostitute, with a view to discovering disease, was out of the question. A short time after this a notice was served on the mission that the Government would take over the building in which was our mission after six months ... The old lock hospital has been cleaned up, servants, etc., put in, and a British surgeon attached to the army (appointed)'

2. Ibid.
The U.P. analysis of the Indian situation now directly contradicted that which the Free Church committee had adopted. There were, it held, 'strong reasons to fear that the governmental regulation of vice has been restored to India in the Cantonments, with all its repulsive practices' and the regulationist lobby at home was so strongly in favour of re-enacting the C.D. Acts for the whole of Britain that it seemed as if 'the battle against the State Regulation of Vice will require to be fought all over again'.

The same fears were again expressed by this committee in its report to the U.P. Synod in 1900. A petition had been sent to the Commons, it noted, from 'most of the Protestant Missionary Societies of India' requesting repeal of the 1899 Act and Rules, and 'the abandonment of the proposal to employ "female hospital assistants" in an occupation which is immoral, and which must necessarily ruin the reputation of any young woman entering upon it'.

The committee was at the same time, however, more optimistic about 'the question of social purity in military circles': Lord Wolseley's memorandum had, it believed, helped to improve the tone there, and with such men as at present occupying the chief military posts, who discountenance vice in all its forms, the outlook is hopeful, it commented.

This of course was the last report of the U.P. Temperance and Morals Committee before the Synod united with the Free Assembly. After the Union, Temperance became a separate committee, Morals were incorporated in Church

2. Ibid.
4. Ibid. It was curious that this should be opposed since its introduction had apparently been designed as a measure to re-assure abolitionists. On the subject of 'vice at home' (ibid.) the committee found it 'difficult to speak with certainty' but found 'evidence of the prevalence of immorality' in 'the increase in the number of divorce cases, and the amount of organised profligacy of the streets(ibid.).
5. Ibid.
6. Ibid.
Life and Work, and the U.P. ' s concern with regulation was channelled into the new United Free Assembly Committee on the State-Regulation of Vice. The last Free Church Report under that title had said nothing about India, but the U.P. s reintroduced the subject, and the new committee remarked that the 1899 Act caused it 'serious misgiving'. The Assembly approved this report, but not entirely happily: the former Free Church elder who seconded it  thought that there was really no need for the misgiving.

The following Assembly in fact was the last to receive a report from this committee. Despite the need, expressed in the 1902 report, for the church to 'maintain with boldness and with hope new testimony on the side of national purity and righteousness, as in former years' the general feeling seems to have been, as the 1901 report put it, that there was now 'a lull in the agitation ... in favour of re-introduction into this country of legislation on the lines of the Contagious Diseases Act'; and although 'the spirit of militarism which is fostered by the long continuance of the South African War' temporarily strengthened regulationist feeling, it seems likely that the majority of the new Assembly were glad to lay the vexed question of Indian vice to rest.

Before leaving the Indian question it may be noted that the Church of Scotland was not unaware of what was going on in India. Its committees on

2. U.F.C.G.A.P.& D., 1901, Report XXV, p.3. The report also noted further opposition in India to the employment of female hospital assistants in examining women for V.D. Any employee of the Lady Dufferin Fund who engaged in it faced immediate dismissal.
3. Mr. D.M. Traill, an ex-Indian member unsympathetic to the Dymock line.
6. Ibid.
7. The Committee's last report (U.F.C.G.A.P.& D., 1902, Report XXIV, p.1) recorded the death of the Earl of Moray, an 'uncompromising' opponent of State Regulation, who was 'one of the Committee's most valued members'. His death, following Dymock's, may have weakened the Committee's position.
Foreign Missions did not mention the subject of prostitution but there were hints in reports from Colonial chaplains about 'the danger that meets young men in Indian life', and the section of the Colonial Committee concerned with army and navy chaplaincies was urging the General Assembly to take steps to remedy a state of things which is not creditable, and is fraught with danger to the spiritual interests of our soldiers - so many of whom are young soldiers - placed amidst the temptations of Indian life. This was not however a reference to prostitution or venereal disease, but to the fact that only a few of the nine Scottish regiments in India had a Presbyterian chaplain paid for by the Government.

3. The Colonies and the Continent.

India unquestionably was the main interest of the Free Church and U.P. Committees during this period, but events in the other parts of the British Empire did not go unnoticed. When Mr. McCandlish attacked the Free Church committee in 1897 he complained of it continually taking the Assembly 'to New Zealand, the Transvaal, to Geneva and Guernsey with none of which places this Church has any special connection'.

2. C.of S.G.A.Reports, 1891, p.268 (Colonial Committee).
4. Some concessions were made: vide C.of S.G.A. Reports, 1899, pp.372ff. (Colonial Committee). In 1891 the Free Church protested to the War Office that Presbyterian chaplains to the Army and Navy were always either Church of Scotland or Irish Presbyterian ministers. The War Office asked the Church of Scotland Assembly for advice and the latter, pointing out that the Free Church was not excluded (its ministers in various places such as Malta and Gibraltar were the only, albeit part-time, chaplains), and that the system was not, as the Free Church claimed, breaking down, recommended that, if as was advisable the number of full-time Government-paid chaplains was increased, a proportion of the additional chaplains might be Free Churchmen. Vide C.of S.G.A., 1892, pp.353ff. (Special Report on Army and Navy Chaplains). Here also some concessions were made by the Government. Vide C.of S.G.A., 1896, p.314 (Colonial Committee).
3.1 Self-governing Colonies.

This was not strictly accurate. The committee, as we have noted, had been told in 1898 by Lord Knutsford that while his Colonial Office could not interfere with New Zealand, Cape Colony and other self-governing colonies, the Free Church might very effectively stimulate abolitionist movements in these countries, most of which had at that time some form of C.D. Act on their statute books. It had accordingly written to all Protestant ministers in Canada, enclosing Rainy's pamphlet, in 1889, and in December 1895 it had sent an appeal to all of the five or six hundred Presbyterian ministers in New Zealand. The effect of the Canadian correspondence was not recorded by the committee, but the abolitionist movement in New Zealand, it noted, had 'got a great impetus recently, due in large measure to influences brought to bear from the mother country'. The New Zealand press had been reporting the Free Church of Scotland's activities in this sphere, and the Dunedin Presbytery had made a firm stand against regulation. So far, this had not amounted to repeal: a Bill had been defeated in the Upper House and some of the women of this country where female franchise had first been gained had organised a regulationist association. But this association, the committee noted, was neither large nor representative and had 'called forth indignant protests from the women of New Zealand'. The Premier of New Zealand had also come out publicly against regulation, and had received a letter from the Free Church committee 'expressing great gratification at his utterance'.

1. Vide 1., above.
2. F.C.G.A.P. & D., 1889, Report XXXII, p.2, which mentions some such Act in Victoria, Queensland, New Zealand, Tasmania and Cape Colony. Canada (ibid., p.3) had just re-introduced regulation.
3. Assisted by grants from the Gospel Purity Association and others (ibid.).
6. Ibid.
7. Ibid.
The only other self-governing Colonial area which the Free Church committee mentioned at any length was South Africa. Regulation had been introduced in five towns in Cape Colony in 1885, and was extended to Kimberley in 1892. By 1896 however a Contagious Diseases Act Amendment Bill which, according to the Committee, 'recommended changes which were in part for the better, but in part for the worse', was under consideration by the Legislative Council; the Lord Chief Justice and the General-in-Command at the Cape had come out in favour of repeal; and a minister's wife was writing to tell the committee that the Dutch M.P.s were increasingly opposed to the Act and likely to bring about its repeal in the next year. An attempt shortly afterwards to introduce C.D. Acts into the Transvaal, Mr. Dymock told the 1897 Assembly, 'had been firmly resisted by the President, who was reported to have said that he would rather have his right hand burned than sign such an Act'. Efforts were also being made to introduce regulation to Rhodesia, but 'how our Government would deal with it, remained to be seen'.

In the event however neither Mr. Dymock nor his committee was able to follow these developments through to their conclusion. As early as 1896 the committee was noting the 'distracting effect' of 'recent events in South Africa', and in 1900 it was able to attribute decline in the regulationist movement at least partly to the fact that 'the military authorities have had their whole attention engrossed by the stern necessities and cares of actual

1. Little progress, from the abolitionist point of view, was made in Australia, where C.D. type Acts were on the Statute Book, although sometimes kept in abeyance: vide F.C.G.A.P. & D., 1896, Report XXIX, p.5. An Act for South Australia was proposed around 1897: vide U.P.S.P., 1897, p.181. (Victoria was the only other regulationist Australian state mentioned in this report.)
5. F.C.G.A.P. & D., 1897, Debates, p.213.
6. Ibid.
war. What happened in the meantime was not something which the Free Church committee, which supported the war, or the Synod's committee, which attacked it, cared to look at too closely. After their Churches united, the statements of the new committee were ambiguous as far as the army was concerned: 'the moral quality of our soldiers in the field has been to some extent tested by the experiences of incessant and harassing warfare', it remarked, and while, as we have already noted, it was afraid that 'the spirit of militarism fostered by the protracted war' might reinforce regulationist pressures, it let the matter rest in the hope that the question of regulation in South Africa could be reviewed in the period of post-war reconstruction, when it would 'be necessary to use every effort to protect our African fellow-subjects from the imposition of the yoke of a demoralising legislation'.

3.2 Crown Colonies.

The Colonial Office, Lord Knutsford had told the Free Church committee in 1888, would not interfere with self-governing colonies. It was however responsible for Crown Colonies, and the Committee was anxious to see this responsibility exercised in the matter of abolition. At first, under

2. Vide ibid., 'The events of the Transvaal War have tested in the eyes of all the nations the quality of the soldiers now gathered from all parts of the British Empire to serve their Queen and country; and it is not too much to say that the heroism, endurance and loyalty of all the officers and men rallied round our national flag have earned not only the gratitude of their countrymen, but the admiration of the world.'
3. Vide U.P.S.P., 1900, p.156. 'This is a war which all must deplore, since it is waged between two peoples having so much in common ... To all appearance the war must be waged to the bitter end; but with the triumph of our arms let us hope and pray that an honourable peace may be established, and that with its establishment the two peoples may come to entertain for each other mutual respect, and live together in the enjoyment of equal rights.' (But Rainy, for one, had initially been against the war - vide P.C. Simpson: op.cit., vol.ii, p.281.)
5. Ibid.
Knutsford, things seemed to be going well: the C.D. Acts, the committee informed the 1889 Assembly, had been repealed in Ceylon, Hong Kong and the Straits Settlements and although inspection of brothels had not been discontinued in the latter two, such was the faith of the committee in Lord Knutsford that it told the Assembly that this was 'done in the interest of women and children'.¹ The 'special circumstances' which led to its continuance there and to the delay of repeal of Fiji,² did not mean that the committee approved of this situation, simply that they felt 'assured that Lord Knutsford is acting conscientiously in the matter, and that he is eager to see his way to discontinue what is so like an official sanction of vice'.³ The progress made so far in Colonial repeal was, after all, 'due, under God, to the Colonial Secretary'.⁴

Progress however was slow, and when the U.P. committee wrote to Knutsford in the same year he explained that registration in Hong Kong and the Straits Settlements was a 'necessity' because 'the circumstances' there were 'very peculiar'.⁵ The Free Church committee however was to hear in 1890 that new regulations had been promised by the Colonial Secretary, and that while 'no advance in the right direction' had been made in the Colonies, neither had 'any ground ... been lost'.⁶ Nothing further could be done until some definite step was taken, although in the meantime there was 'much need for watchfulness'.⁷

Nothing further had been done however by 1893, and the Free Church committee took the opportunity provided by a change of Government to write

2. There (ibid.) 'the regulations seem free from some of the objectionable features found elsewhere'.
3. Ibid.
4. Ibid.
7. Ibid.
to Lord Ripon, the new Liberal Colonial Secretary, asking what was happening in the Straits Settlements, Fiji and Hong Kong. It was difficult to get information, they noted, and expressed the hope that Ripon's previous statements as Viceroy of India (1880-84) were a sign of his good intentions at the Colonial Office. Ripon's reply gave the committee another opportunity to express its 'gratitude to God, and under Him, to the Secretary of State for the Colonies':¹ he had 'formed an opinion adverse to (the) system of brothel registration' which continued in Hong Kong and the Straits Settlements and had asked the Governor of these colonies to bring their law 'more into harmony with the recognised policy of Parliament on such questions'.² He had also written to the Governor of Fiji, expressing his view that 'the special consideration affecting the health of the natives',³ which had persuaded his predecessor to leave the Contagious Diseases Ordinances in operation there, were no longer valid, and was waiting for the Governor's reply.

Thus, declared the committee in 1895, 'the Marquess of Ripon ... steadfastly carried out, to its full issues, the work which Lord Knutsford nobly forwarded, but hesitated to perfect'.⁴ Its admiration for noble Colonial Secretaries was equal only to its denunciation of regulationist colonial officers: 'It is only from a perusal of the official correspondence', the report went on, 'that one can learn what difficulties have to be overcome, and what unflinching determination must be exercised, before the Colonial Secretary can give effect to his convictions, and bear down the persistent and sometimes plausible pleading of functionaries who will not be divorced from the Regulation System'.⁵ Magnanimity in Victory was not a

². Ibid.
³. Ibid.
⁵. Ibid. This was illustrated by remarks in a letter of 1891, from the Resident of Perak to Lord Knutsford, which had described prostitutes as 'a necessary evil' whose 'calling supplies a public want' (ibid.).
characteristic of the committee.

Victory however was elusive, and in 1896 Mr. Dymock had to inform the Assembly that the Governor of Mauritius had set up a committee to look into the desirability of introducing a C.D. Act there. The committee did not refer to this subject again, nor to the question of regulation in Malta, where around 1889 Lord Knutsford had introduced a Repeal Bill which, under the Colony's new constitution had been 'thrown out' because 'the native members had a majority against it'. The Contagious Diseases Acts 'by a deplorable inconsistency' were still in force in Malta in 1895, the committee noted. No more was said about this however, nor, apart from the passing notice in 1901 of 'a recent Sanitary Ordinance for Gibraltar', about that Colony, and this was strange, because Malta and Gibraltar were places where the Free Church was the only Presbyterian body responsible for the spiritual oversight of soldiers and sailors. Perhaps the near-Establishment status of the Free Church in these places made its representatives adopt Establishment reticence on this subject.

Nearer home a more serious situation had arisen, which the committee did strongly protest about. In Guernsey, its 1895 Report stated, 'a regulation scheme of a very shameful character has been recently propounded, and is, in part at least, in temporary operation'. This scheme was however being resisted by residents, aided by helpers from England, and Mr. Dymock

1. In an addendum to its 1895 report the committee noted (ibid., p.7) that 'information has come to hand which seems to show, beyond question, that, in the Straits Settlements, the directions of the Colonial Secretary are being grossly set at nought'. It promised investigation by the British Committee of the International Abolitionist Federation.
6. Vide 2.6, above.
8. Ibid.
informed the 1896 Assembly that he expected the Privy Council, to which the 'States of Deliberation' was subject, to veto it. The committee and other bodies (including the U.P. committee) had memorialised the Privy Council to this end. To their 'deep regret' however the Privy Council, after sitting on the matter for a year and without hearing representatives of the abolitionists had sanctioned the scheme. In the committee's opinion it was especially deplorable that such a 'retrograde measure' should have been passed by 'the Queen in Council ... in this year of national rejoicing.' The Privy Council's decision was however final, and no more was heard from the committee on the subject.

Before concluding this review of the Free Church and U.P. committees' concerns with a brief notice of their Continental interests, it may be remarked that the Synod's and the Assembly's Colonial concerns were not confined to vice. The Synod's committee, throughout this period, kept a critical eye on opium, drink, slavery and war throughout the world, and both churches were committed to global mission. Even so, said Mr. Hugh Black of Edinburgh, moving the adoption of the Colonial Committee's report in the Free Assembly of 1898:

'He did feel that their Church, as a Church, did not pay as much attention to the Colonies as they deserved. When they thought of it, they belonged after all to an imperial race, and at a time when, as never before, all the instincts of our imperial politics appealed to us, and national bonds were being shattered and burst asunder, we were having larger conceptions of the future of our race, and they ought to remember they belonged to an imperial race. They also had an imperial faith - a religion which adapted itself to every need and to every situation. We dared not let ourselves be narrowed down to small, petty provincial views

4. Ibid. (1898 was the year of Queen Victoria's Diamond Jubilee.)
The White Slave Trade had aroused U.P. and Free Church interest in Continental Vice and this interest was maintained through the churches:

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connections with the British, Continental and General Federation for the Abolition of the State Regulation of Vice. The Federation, founded by Stansfield and Josephine Butler, had branches in most European countries, and each year its congress was attended by delegates from Europe and beyond. Free Church representatives were often to be found among these, but rarely U.P.s, unless the Congress met in Britain. The U.P.s, however, usually sent a message of support, which the Free Church also did when no delegate could be present.

For those who attended them, these Congresses clearly were very influential, and no doubt they helped to reinforce their sense of membership in a world-wide movement. Those who attended were, naturally enough, the leading Free Church abolitionists. Mr. Dymock attended the Congress of 1889 in Geneva, Mr. Cunningham (Dymock's successor as convenor) and the current Moderator, Dr. Thomas Smith, that of 1891 in Brussels (to which they carried the 'fraternal greetings' of the U.P. Synod), Mr. Dymock, the Revd. Dr. Scott of Saltcoats and Gilbert Beith M.P., that of 1894 in London, Mr. Dymock and (now) Dr. Cunningham that of 1895 in Colmar, and Dr. Cunningham that of 1898 in London. Mr. Dymock in particular was very much impressed by his international travels. At the Geneva Congress of 1889 he had seen all the eminent abolitionists of Europe and took especial note of the presence of a Dutch Professor of medicine recently converted from regulationism. He also had addressed the Congress, speaking 'of the position taken up by the Free Church

1. The Synod sent representatives, for example, to the 1898 Congress which was held in London. Vide U.P.S.P., 1899, p.185.
2. For example, to the 1888 and 1890 Congresses which were held in Copenhagen and Stockholm respectively. Vide F.C.G.A.P.& D., 1889, Report XXXII, p.4., and 1890, Report XXXVI, p.2.
of Scotland on this question, and of the duty of other churches to make a similar stand'. This address, he informed the Free Assembly, had then been 'translated into Dutch, and inserted in the organ of the Dutch National Church, with friendly remarks on the part of the Editor'.

Mr. Dymock, although unable to attend the Brussels Congress, enjoyed a prominent position again in 1891, for that year he took part 'by request' in the Annual Meeting of the Ladies' National Association in London, where 'the Free Church's support of the movement was much appreciated'. Still, he was no doubt disappointed at not being able to go to Brussels (where the delegates 'representation of the mind of the Free Church of Scotland was held to be a valuable contribution to the weight of the Congress'), for he had asked to go, and the abolitionists considered it one of their most significant demonstrations: the Belgian Government lent them a palace to meet in, the Prime Minister gave them a reception, other Ministers attended their meetings, and the Belgian newspapers ('unlike those of this country, which mainly boycott the subject') gave them extensive and for the most part favourable coverage.

Mr. Dymock may, however, have been compensated by the fact that the Assembly allowed him to attend the London Congress in 1894, and to mingle with delegates 'from the four continents' and even ('a thing which never occurred before') a 'Roman priest from Belgium'. An even greater compensation to Mr. Dymock may have been the fact that in this, the first year after the sphere of his committee's action had been enlarged by the Assembly

2. Ibid.
4. Ibid.
7. F.C.G.A.P.A., 1895, Report XXXI, p.6. 'The voice of that Church' the Committee prophesied 'may soon be heard in the most emphatic way' (ibid.).
'so as to embrace State-Regulation of Vice anywhere and everywhere', 1 he had been appointed to the executive committee of the International Federation.

The last abolitionist Conference attended by Mr. Dymock recorded in his committee's report, was called by the British Committee of the Federation to protest against what it considered to be the growing threat of a reintroduction of regulation in India and at home. It was held in Birmingham in November 1896 (two months after the Berne Congress, which was held as usual in September), and at it Mr. Dymock was supported by Dr. Cunningham and the Earl of Moray. At about the same time the committee and the Commission of Assembly sent memorials to the Government, protesting against a possible reintroduction of the Contagious Diseases Acts. 'There is no saying', the 1897 report remarked, 'how far these and similar demonstrations may have contributed to the emphatic repudiation of the old system, which has since then proceeded from Government and other quarters'. 2

But how effective were these demonstrations on Continental Europe itself? At first, the Free Church committee was optimistic about Europe, for in 1888 the Italian Parliament had agreed to abolish its regulation system, and the fact that Lord Knutsford had been able to use this as an argument for abolition in Malta seemed in the committee's eyes to justify British and Free Church involvement in the Federation: 'the thorough effacement of the foul stain from the escutcheon of the British Empire', it stated, 'will be promoted by its removal elsewhere'. 3 At this stage it seemed possible that abolition might come as quickly in Europe as it had done in Britain. At the 1889 Congress Professor James Stuart, the abolitionist M.P. told the Genevese that their regulationist government was 'behind the times', 4 and he informed

1. Ibid., p.1.
the Stockholm Congress a year later that 'in Paris the system of regulated 
vice is in ruins. In Holland we gain every year'.¹ (At this time large 
towns in Holland were abolishing regulation at the rate of about two each 
year.) There were also 'prospects of improvement in Italy',² the Congress 
was informed, and of abolition in Amiens.

The fact that the Congress was told to look for improvement in Italy 
however was a sign that matters were not as cheerful as some abolitionists 
had hoped. Italy, apparently the largest catch so far outside Britain, had 
not in fact totally abolished regulation in 1888, and even its limited repeal 
measure, the Free Church committee recorded, 'was not fairly put in force, 
owing to the determined opposition of corrupt officials, and of the many whose 
fool interests are bound up with the flourishing of vice'.³ By 1892, indeed, 
it seemed as if Italy was destined for the full reintroduction of regulation, 
Morals Police and all, and the abolitionists had to call a special confer¬
ence in Rome to protest. The Free Church ministers of Rome and Florence 
were promised as delegates by the committee, but the Italian abolitionists' 
desire for support from the British Press was, the committee considered, 
'hopeless'.⁴ They were, however, supported by the majority of delegates at 
an Italian medical congress held in Milan in 1894, who were 'entirely against 
regulation from a sanitary point of view'. But then, although 'when a motion 
for its entire abolition was brought before Parliament, not a voice was raised 
to the contrary', the system was 'not actually abolished'.⁵ Despite these 
various abolitionist demonstrations and despite the goodwill shown by the 
Belgian Government to the 1891 Congress (at the time, it had seemed that even 
in Belgium, 'a country in which regulation has long prevailed and been carried

² Ibid., p.2.
³ F.C.G.A.P.& D., 1892, Report XXXIV, p.3.
⁴ Ibid.
far ... the downfall of the system is not far off"1), the committee had to record in 1895 the 'deplorable fact that in Europe there are only two countries free from the demoralising abomination of State Regulation, viz., Great Britain and Switzerland, and in Switzerland, alas! Geneva has to be excepted'.2

The exception of 'Calvin's City', understandably enough, was a thorn in the side of the Free Church committee: 'it was painful to mention that great name in connection with such a thing',3 said Mr. Dymock. Particularly painful was what the 1896 report described as 'the event of the year'4— the decision by two thirds of the Council and two thirds of the people of Geneva to maintain the century-old system of Government controlled brothels. This decision, the result of organised and sometimes violent opposition to the abolitionists by the brothel-keepers and their patrons, was celebrated 'by orgies of mingled profanity and obscenity such as perhaps never before were enacted'.5

Although this seemed like a crushing blow (the U.P.s were particularly distressed that this should have been the result 'the first time a moral question of this kind has been submitted to the vote of the people')6 the abolitionists did not admit defeat and actually gained support from some of their fellow citizens who were aroused by the violence of the event. But when a new Grand Council was elected in the autumn of 1896 the regulationist majority was doubled. This gave rise to a further 'hideous Saturnalia'7 in which even the previous year's orgies were exceeded. The only grim comfort

5. Ibid., p.7.
the Free Church Committee could draw from these events was that after three successive nights on which the brothel keepers opened their doors without charge, 'ghastly results were visible in the victims' which 'showed the delusive nature of the protection promised to the patrons of State-Regulated Vice'.

Apart from the fragmentary comments already cited about Italy, Belgium, Holland and Geneva, the Free Church committee in fact had very little to say about Continental Vice. Although after 1894 it was supposed to be concerned with regulation 'anywhere and everywhere' this made little difference to the amount of information it provided for the Assembly to consider. Its Indian and Colonial concerns were presumably more than enough for it to be going on with.

Those sections of the committee's reports which dealt with Europe were

1. Ibid.
2. Reference was also made: in 1892, to Germany, France, Belgium and other countries where 'there are very hopeful appearances, yet of actual achievement there is little to record' (F.C.G.A.P.& D., 1892, Report XXXIV, p.3); in 1893, to new legislation in preparation in Norway, Finland, and Denmark, providing 'for the better protection of the young, and for the repression of vice' — but not doing away with compulsory examination and thus unacceptable to 'genuine abolitionists'. In Holland on the other hand the Minister of the Interior was expected to propose repeal of compulsory examination — and while this would not amount to complete abolition, it was acceptable, since the regulation system 'could hardly survive such a loss' (F.C.G.A.P.& D., 1893, Report XXXIII, p.2); in 1895, to 'the suppression of every trace of the regulation of prostitution in the Swiss Canton of Zürich, to withdrawal of a proposal for regulation in the Canton of Vaud ('owing in large measure to the splendid stand made by the women of the Canton') and to proposed legislation in Norway, brought forward in the interests of morality, but in which 'intelligent friends of our cause' detected 'a surrender of anti-regulation principles, and hence opposed' (F.C.G.A.P.& D., 1895, Report XXXI, pp.5ff). Norway also disgraced itself in the Committee's eyes by having 'a purity society, composed entirely of women, pleading "for the compulsory examination of their poor sisters," etc.' (Ibid., p.6); in 1896, to Colmar (where that year's Congress was being held) which was the only town in Germany without regulation, even though it was a military centre; and to New York where an 'Anti-Vice Society' had proposed regulationist legislation (F.C.G.A. P.& D., 1896, Report XXIX, pp.6ff).
thus not the most cheerful ones. Indeed at times Mr. Dymock had sounded very depressed about the Continent: 'The black flag of regulation' he had informed the 1896 Assembly, 'hung its voluminous folds, to a greater or lesser extent, over every country in Europe, with the exception of Norway (where a relic of the system might be said to remain), and Great Britain (which as regarded its colonies, was not all it ought to be)' . But neither he nor his colleagues had ever really been tempted to throw in the sponge, and by the end of the century their reports began again to sound more optimistic.

Regulation in Europe, even if not abolished, was not making much progress, and medical opinion was coming round to the abolitionist position. This had been foreshadowed when at the August 1891 meeting of the International Society of Hygiene and Demography, abolitionists had prevented regulationists from moving a regulationist resolution. But the great Medical Conference held in Brussels in September 1899 was the really decisive event.

The Brussels Conference had been convened to examine the effectiveness of regulation systems and to consider ways in which prostitution and venereal diseases might be diminished. Delegates to it were appointed by the Governments of most major nations and included 'nearly all the great Regulation leaders of the world'. The medical directors of the Paris, Tokyo and Berlin regulation systems were there, together with many of their subordinates. So were representatives of the War Offices of most of the participant nations.

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3. By 'a Committee of Belgian officials, acting under the sanction of the Belgian Government' - according to B. Leppington: op.cit., p.171.
4. The list comprised (F.C.G.A.P.& D., 1900, Report XXVII, p.2) Germany, Austria, Bosnia, Brazil, Bulgaria, Chile, Denmark, Spain, the U.S.A., France, Great Britain, Honduras, Hungary, Italy, Japan, Mexico, Norway, Paraguay, Persia, Peru, Holland, the Argentine Republic, Roumania, Russia, Servia, Sweden, Switzerland and Belgium.
5. Ibid.
6. In Tokyo, a newcomer to the Free Church's repertoire, there were (ibid.) '7,000 women segregated to a life of vice' under Government control.
including Britain, which also sent delegates from the India and Colonial Offices. Also present were the 'most noted specialists' of 'practically all the great medical bodies of the world', including the English Royal College of Surgeons, which was represented by Dr. Jonathan Hutchinson, 'one of the greatest specialists in Europe'.

In the course of the Conference regulation was, of course, discussed at length. Eventually a Russian Professor moved that the Conference should adopt a resolution describing 'the sanitary surveillance of prostitution' as 'one of the most important means for diminishing the propagation of syphilis and venereal maladies'. The subsequent debate was summed up by the correspondent of the British Medical Journal whose account was quoted by the Free Church Committee.

'The failure of the statistical argument in favour of regulation was emphasised by Professor Fournier, the very able leader of the French Regulationists, who said he rejected it altogether and preferred to rely upon "common sense". Professor Fournier's "common sense"

1. *Ibid.* Sir Jonathan Hutchinson (1828-1913), Surgeon to the London Hospital, was well known for his research on syphilis and leprosy (*vide* D. Guthrie: *A History of Medicine*, 1958 ed., p.329). According to B. Leppington (*op.cit.*, p.180), Hutchinson, in his speech, 'deprecates panic and exaggeration; and pointed out that the disease was not increasing but diminishing in England, and that hereditary syphilis in particular was becoming rare among the educated classes, as men were warned by their doctors not to marry till completely cured. The same ideas would gradually permeate all classes. He agreed as to the importance of warning young men in schools and colleges. He thought a better tone was already asserting itself among medical students and other young men of that class. Dissolute habits were no longer considered inseparable from army life. Men enlisted young and left the army early, and they might reasonably be expected to keep straight from eighteen to twenty-seven. The effect would develop character, temperance and industry. If the matter were put before them in a reasonable way, he was certain the men would respond, and that would do more to reduce disease in the army than all the regulations that could be devised'.


reasoning amounted to this — that if you shut up an infected prostitute you thereby protect society against the danger she constitutes, but if you do not she becomes necessarily a focus for the dissemination of the disease. To this the opponents of regulation replied that it is impossible to shut up every infected prostitute until she ceases to be a source of danger; that only a small proportion of women engaged in prostitution come under medical inspection; that inspection itself, as usually practised, is inefficient, and probably must always be more or less so, for gonorrhoea; and, finally, that it is absurd to say that a prostitute with syphilis may safely return to her trade after a few weeks or months of treatment. The only reply to this was that a partial remedy is at least better than none at all.

The fact that this Conference could not make up its mind about regulation was taken by the Free Church committee as 'an extraordinary and epoch-making confession of the failure, from the medical point of view, of the whole system of State Regulation of Vice'. Although 'these experts had before them the results of an experiment which has been made in France and some other countries for a hundred years ... yet when they came together to frame an answer to the question concerning this system — "Is it from heaven or of men?" they answered, "We cannot tell".'

This of course was not quite the question the Conference was attempting to answer, and in the last resort the Free Church committee had always claimed that its position rested on moral rather than sanitary grounds, but the

2. Ibid. The reference is to Mark: chapter 11, verses 30-33.
3. Not even the evangelical Acton had suggested that regulation was comparable to the baptism of John.
4. This was reaffirmed by Professor Alexander Hislop, Joint-Convenor of the U.P. committee when commenting on the Conference and on the marked decrease in the Army's venereal disease rate (in Britain) since repeal of the C.D. Acts: (U.F.C.G.A.P. & D., 1901, Debates, p.201) 'the legalising of vice is always wrong. It is a crime against women. It breaks down in immoral men the checks of self-restraint and conscience. If the state cannot repress profligacy, it should not go to the opposite extreme, and provide securities beforehand against the consequences of immorality. Rather should it so adjust the theatre of life as to make virtue easy and vice difficult'. Vide also ibid., Report XXV, p.2.
impression that abolitionist leaders were 'now listened to with a new interest and respect' seemed to vindicate the long struggle of the U.P. and Free Church committee and their now United Free hope that the abolitionists' 'confident predictions of the overthrow of this legislation, even in the lands in which it has held longest sway, may perhaps be ere long fulfilled'.

4. Venereal Disease, the Birth-Rate and the War.

4.1 The U.P. View.

Despite the confident predictions of abolitionists at the turn of the century, regulation in many countries was far from being overthrown. At the beginning of the second world war some form of it still existed in 50 countries. In Europe, Britain, Scandinavia and Yugoslavia were about the only places where officially approved brothels or registered prostitutes were not to be found, and while Holland and Germany had given up the system officially, tolerated areas existed in some of their cities. France and Italy did not get rid of their brothel systems until after the second world war, and although the rates of abolitionist to regulationist countries had risen by this time from 50 to 29, to 119 to 19, many of the 119 had informal regulation and inspection schemes. The White Slave Trade also continued, and although the subject of League of Nations investigation and activity in the 'thirties, it was still to be found in a lesser and less open fashion during the fifties.

Investigation of this extremely obscure subject is not part of our present purpose, however, for although the United Free Church's Committee on the State Regulation of Vice remained in existence for the first few years

2. The U.P. and Free Church Committees each already had a Sub-Committee working with the other. (Vide F.C.G.A.P.& D., 1897, Report XXIX, p.2)
of the new century, it made no further reports after 1902. One or two Assembly reports during the pre-war years recalled the committee's hey-day however, and should be mentioned here.

The first of these was the report of the Church Life and Work and Public Morals Committee to the 1913 Assembly. Two items in this are relevant. The first referred to the 1912 Criminal Law Amendment Act which had extended the provisions of the 1885 Act of the same name by giving the Courts discretionary powers to whip as well as imprison men convicted of procuring. 'Horrible disclosures' the committee stated, had created a 'wave of moral indignation' which 'carried the Act triumphantly through both Houses of Parliament'. This had been 'in every way satisfactory' and the Act was already having a 'beneficial' and 'deterrent' effect. As a result of this, the committee went on, 'the public conscience has been so shocked, that not only has there been greater freedom in the discussion of such matters, but there is a more enlightened determination 'to seek public social purity'.

The committee's own determination to 'take definite action' in this area had manifested itself in enquiries made to the police, parish councils and voluntary 'preventive and rescue' organisations - which furnished it with 'reliable evidence' that immorality was increasing and that the age of erring girls was decreasing - and in advocating that the church, which had 'too long maintained silence', should adopt 'a policy of clear and pointed teaching on the subject of purity'. The present 'dangerous' situation, which was 'not confined to one class' pointed to 'a breakdown of parental concern and control' and to the need for parents to 'exercise a firm control over their children' and to

2. Vide Ch.13:8, above.
4. Ibid.
5. Ibid., p.16.
6. Ibid.
'inform them as to the dangers that beset them'. In schools, lectures should be given 'to senior girls by medical women on health and hygiene' and the committee was writing to Sessions appealing to them 'to encourage and strengthen the home influence': it also was preparing a series of pamphlets to be 'circulated among the youth'. Subsequent reports of the committee recorded that a circular letter and copies of a 'leaflet on "Parental Responsibility"' had been sent to all Sessions in the hope that the leaflet would 'be sent into every home'. Two further leaflets, a 'Letter to Boys' and a 'Letter to Girls' were also sent, but were not for 'indiscriminate circulation': the committee, 'aware that there are differences of opinion on this matter', was relying on the discretion of Sessions to distribute them 'with the greatest care wherever their need is felt'. Sessions must, however, have been either indiscreet or pessimistic, for the committee noted a year later that the letters to boys and girls had been 'in considerable demand'.

The other matter discussed by the Life and Work committee in its 1913 report recalled the later states of the Vice committee's activities. The British Committee of the international Federation had been in correspondence

1. Ibid. According to a report from the Edinburgh Chief Constable this was particularly necessary in the case of 'girls, many of them scarcely out of their teens', who, when the Fleet was in the Forth, could 'be seen, some of them to all appearance the worse of drink, going arm in arm with the sailors, singing and dancing as they go along, and conducting themselves in such a manner as to suggest to the onlooker that they have lost all sense of maidenhood' (ibid.). He complained that 'the police have no remedy, and all they can do is to see that the peace is not disturbed, and arrest any who may become obstreperous' (ibid.).

2. Ibid., p.17. The Glasgow School Board had recently decided to do this, and the United States, Canada, Australia, Germany and France had set a good example.

3. Ibid.


5. Ibid.

6. U.P.C.G.A.P.& D., 1915, Report VI, p.11. The committee had however received 'gratifying testimony to their usefulness ... from many quarters, including Old Calabar'.

with the India Office from 1909 to 1912 about 'certain of the former abuses' which had 'crept in at some of the military stations' in India, and they had "now elicited at last from the Indian authorities an admission that in many cantonments the periodical examination of women has been regularly permitted". Nor was it denied that "brothels known to be for the use of soldiers are not only permitted in the cantonments, but are placed under some sort of medical supervision or control". The Life and Work committee however, with quite un-Dymock-like reticence, decided that it was 'not fitting to go into the details' and, praising Lord Kitchener (and his successor as Indian Commander-in-Chief) for trying 'to dissuade his men from vice', expressed gratification 'that quite recently the military authorities have expelled all European women from some of the cantonments'. The old spirit flared up momentarily when it declared that 'the Christian sense of this nation cannot be satisfied until all evasion of the expressed will of Parliament shall cease', and when it asked for permission for representatives to attend an abolitionist conference on the subject in London. But all this, while generally approved, was not debated in the Assembly, and no more was heard of it. Perhaps Sir Andrew Fraser—who was present at the Assembly but did not speak on this subject—had a quiet word with someone about it.

But although the Assembly had finally loosened its grip on the thorny problem of vice in the Indian Army, it had not lost interest in vice as such, or in venereal disease. A year later, in 1914, the Church Life and Work and

2. Ibid.
3. Ibid., p.18. This was the first occasion on which a church committee mentioned the existence of European prostitutes in India.
4. Ibid.
5. He spoke, however, in the debate on the report of the Temperance Committee (ibid., Debates, pp.17ff.), where once again he asked for a more sympathetic attitude to the Government of India (here in connection with the opium trade); in support of giving more money for Foreign Missions (ibid., pp.210ff.); and in favour of trusting the church's leaders in negotiating with the Church of Scotland (ibid., pp.260ff).
Public Morals Committee noted that 'a Royal Commission has been inquiring to the prevalence of diseases caused by immorality, and which have assumed the proportion of a grave menace to the national health and well-being'.

When this Commission reported, in 1916, an Edinburgh elder, Dr. J.W. Ballantyne, was to describe its report as 'one of the great historical disillusioning documents of these times' - 'a destructive bomb' which had 'torn down the curtain which we had continued to suffer to hang over a most disagreeable subject', revealing 'the skeleton in our national cupboard'.

Two of the U.P. Assembly's committees - that on Church Life and Work and Public Morals and that on Social Problems - were to be especially concerned with the Royal Commission's Report. The Life and Work committee, investigating a decrease in the number of baptisms, had attributed it, for the most part, to the declining birth-rate and had passed the subject on to the Social Problems committee for further investigation, since that committee was already concerned with problems such as housing and the welfare of mothers and children. Both committees were alarmed by the fact that the birth rate was declining among the middle and well-to-do artisan classes - from which the Protestant churches mainly drew their members - but not among 'the least competent class of the population'. The Social Problems committee attributed the decline among the middle and artisan classes not 'to natural causes' but to voluntary limitation which was in turn due to 'the desire for social

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3. Vide U.F.C.G.A., 1915, Reports VI, p.7. The number of baptisms had been decreasing since 1897 in all of the Scottish Churches except the Roman Catholic Church - whose baptisms had risen by nearly 15 per cent.
4. In the event, the Committee later discovered, baptisms had been decreasing at more than twice the rate of births. Vide U.F.C.G.A., 1916, Reports, VI, p.1.
6. U.F.C.G.A., 1916, Report XXXII, p.4 - 'for the saving of infant life has been much more common in such circles through the operation of maternity and child welfare schemes'. (Ibid.).
comfort, the dread of the future for children, and the increased cost of maintaining a family*; to this however it added as further causes of decline ('in the opinion of eminent medical men') 'certain racial poisons, due to alcohol, lead poisoning and venereal diseases'.

The subject of venereal diseases was thus to some extent already associated with that of the declining birth rate in the mind of the Social Problems committee when in 1917 its report dealt not only with the Royal Commission on Venereal Disease but also with the National Council of Public Morals' Commission on the Birth Rate. The latter, which confirmed that the decline was greatest among Protestants and the better-off, declared that 'all interference with nature by the destruction of the unborn babe, except to save the life of the mother, is criminal in the highest degree', a view shared by witnesses from all the churches who 'were almost without exception opposed, on moral and religious grounds, not only to the practice of abortion, which had no defender among those who have given evidence before the Commission, but to the use of mechanical and chemical means to prevent conception'.

The churches were not however unanimous about 'the morality of restricting the family in other ways'. Among the Commission's recommendations (which also included a minimum wage, unemployment insurance, State family bonuses, cheap education and lower rents) were: 'censure of the poor for recklessness

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1. Ibid., p.5.
2. The Commission (U.P.C.G.A., 1917, Reports, XXVIII, p.8) 'was representative of the Clergy, the Medical Profession (including Women Doctors), Statisticians, Publicists and others'. Although 'privately appointed', some Government officers served on it, and this, and a promise by the Prime Minister 'to regard its work as of value', gave it 'semi-official recognition'.
3. Fertility was rising in Ireland, except in Ulster. Over the 'last few years' it had risen from 36.1 to 37.0 (per 1000 of the population) whereas in England and Wales it had decreased from 28.4 to 24.7 and in Scotland from 33.4 to 29.7. The birth rate among miners was twice that among doctors. (Vide ibid., p.9.)
4. Ibid.
5. Ibid., p.10.
6. Ibid.
in undertaking unlimited parental responsibility, and of the selfish luxury of the rich who shirk it' and 'a stimulation of the popular sentiment regarding the value and sacredness of family life'.

The need to stimulate this sentiment was echoed in the Social Problems committee's treatment of the Royal Commission's report. The latter had stated that the number of persons infected with syphilis, acquired or congenital, cannot fall below ten per cent. of the whole population of large cities, and the percentage affected with gonorrhea must greatly exceed this proportion. Venereal disease led to 'an enormous amount of disease and suffering' including an estimated 25 per cent. of blindness among the population and 30 to 50 per cent. of sterility among women. This, together with infant mortality cases associated with venereal disease, was related to the Social Problems committee's interest in promoting family life, and led it to urge the church 'to be up and doing', since a 'policy of masterly inactivity will not serve in the present crisis'. Although 'the minister need not proclaim his views from the pulpit' and the elder is not required to talk about the subject unless he is consulted', they ought to have an opinion about it, distinguishing between 'self-control without indulgence' and 'sexual gratification with artificial prevention'. The minister ought to get to the bottom of people's motives 'for he cannot be ignorant that prudence is often given as the reason, whereas, lack of faith in God, or no higher motive than the selfish desire to enjoy some luxury, ought to be

1. Ibid. The Commission also recommended 'a fairer distribution of the burden of parenthood between the mother and the father' (ibid.).
2. Ibid., p.11.
3. Ibid., p.12.
4. This remark suggests a growth rather than a decline in reticence in the church's attitude since the 19th century, when committees used to urge forthright pulpit proclamations on purity. Perhaps birth control was regarded as a more delicate subject.
5. Ibid., p.13.
confessed'.

The committee, thus set upon a course of denunciation which was not to run out of steam for half a century, passed the task of dealing with other implications of the Royal Commission's report back to the Life and Work committee - although not before noting with satisfaction that the Commission, whose remit included the understanding "that no return to the policy or provisions of the Contagious Diseases Acts of 1864, 1866 or 1869 is to be regarded as falling within the scope of the inquiry" had also placed "on record their view that the evidence they have received, which includes that of several Continental experts, points to the conclusion that no advantage would accrue from a return to the system of these Acts".

The Life and Work committee, however, preoccupied with Systematic Giving, Cinematograph Censorship, Housing, Romanism and Ritualism and Betting and Gambling must have lost its cue, for it was not until a year later that it took up the subject, and only then as a result of its discovery of Regulation 401 of the Defence of the Realm Act. Under this regulation no woman infected with venereal disease was allowed to have intercourse with any member of His Majesty's Forces. If she did, she could be charged and remanded for not less than a week for medical inspection, with the right of choosing her own doctor. To the Life and Work Committee this was a 'virtual re-enactment of the Contagious Diseases Acts' and it wrote to the Home and War Secretaries

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1. Ibid. '"Be fruitful and multiply and replenish the earth"', the committee declared, 'is one of the Creator's oldest commands to his creatures, and while it is old it is not antiquated, nor has it been abrogated'. (Ibid., p.14) The committee was to some extent concerned with replenishing the earth after the loss of life in the War. The next section of its report (ibid., pp.15ff), dealing with infant mortality and the welfare of mothers and children, was entitled 'Saving the Infants' and began (ibid., p.15):

'Under impetus of the appalling loss of manhood by the war, the certainty of a further diminution in the rate of births, and the necessity for the maintenance of the British race for the homeland and our far-flung dominions, there has been an increasing interest in the subject of Infantile Mortality and the Welfare of Mothers and Children'.

2. Ibid., p.11.

urging them 'at once to rescind the offensive Regulation'. The fact that the Royal Commission had decided that such enactments did no good hardened the committee's opposition, as did 'reliable information' it had received, that in some military units and in the navy men were issued with 'so-called preventives' and told that these would protect them. 'We are now', it stated, 'in the hands of the generation of (often well-meaning) men who not only to do not realise the nature of what they are doing, but are quite unaware that where medical examination has been introduced, it has been quite inefficacious as a check against the spread of disease'.

A year later however the Social Problems committee, re-assuming responsibility for purity, was able to report that D.O.R.A. 40 D had been withdrawn by the Government, although 'in a spirit of very bad temper, with an indication that it might be restored under another form'. Access to licensed brothels in France for British troops, against which the Social Problems committee had also protested as, among other things, an 'offence ... to the French people', had also been withdrawn 'in face of a storm of moral indignation'. But the U.P. Assembly had obviously been severely shaken by these and other revelations of war-time military morality, and the demand for 'a uniform standard for men and women with regard to purity' which had always been a major element in the abolitionist programme, and had been emphasised by feminists and purity societies in the pre-war period, was re-asserted. Along with this now however went a great emphasis on sex-education and the recognition of social factors in the development of attitudes to marriage and the family. In terms strikingly reminiscent of James Begg, the convenor of

2. Ibid., p.7. (This was a quotation from 'a recent article on the question' of which the committee approved.)
5. U.F.C.G.A., 1919, Debates, p.244.
the Social Problems committee, Dr. R.J. Drummond, told the 1919 Assembly that there was a close relation between morality and religion and the houses in which men and women had to live. If they gave people houses where there was no privacy, no opportunity for the maintenance of modesty and no opportunity of secret devotion, they were taking away from them great factors in the building-up of character'.

4.2 The Church of Scotland View.

The Church of Scotland's attitude to such matters continued to be characterised by greater reticence, but war-time developments precluded total silence. The 'gravity' of the findings of the Royal Commission on Venereal Disease was noted by its Social Work committee in 1917, but mainly in connection with 'the stream of broken lives pouring through our Rescue Homes'.

The church's committee on Army and Navy Chaplains also was concerned with war-time sexual morality and was co-operating with U.P. and other churches in making representations to the Army Council about 'several matters affecting the wellbeing of our soldiers in France' with an eye on protecting 'the interests of morality'. The Interdenominational Committee which did this also conducted a purity campaign among servicemen in France and the U.K. during 1917 and 1918. This took the form of lectures by selected chaplains to which 'officers and men were paraded'. Later, the same committee took the army medical authorities to task 'in regard to the wording of the specimen lecture to troops on the prevention of disease, and also on the indiscriminate distribution of prophylactics'. Parts of the lecture, it pointed out, could be taken 'as likely to encourage immorality, to create a false security

1. Ibid.
5. Ibid.
and as condoning immorality if the consequences could be escaped'. Changes in the lecture were promised, but nothing was said about the prophylactics.

The Church of Scotland's Commission on the War also dealt with the problem of Impurity. A paper by Professor W.A. Curtis examined the whole spectrum of what could be subsumed under the title of 'Impurity and ...' Two sections of this paper, relevant to our present concern, were entitled 'Impurity and Prostitution' and 'Impurity and Disease'. The first of these betrayed considerable ambivalence on the writer's part toward the prostitute. In the Old Testament, he admitted, 'her foul trade ... is so familiar in the town life of Israel as almost to evade censure when she appears in the unaffected narrative': yet 'her occupation is so wicked' that the prophets used her as 'a symbol of idolatry'. In the New Testament again, she is 'the outcaste, but the object of Divine compassion': yet 'in the Epistles her fatal work is not concealed'. To some extent Curtis was able to avoid the difficulty of choosing whether to condemn or be compassionate by echoing the 'apostolic censure' of 'the men who live upon her earnings or defile themselves with her flesh', and when he went on to condemn brothel-keepers and clients he described their crime as worse than that of the 'besotted women and tender girls' whose bodies they exploited. Of one thing however he seemed certain: prostitution 'may have its phase of pleasure and idleness and luxury and dissipation, but it sinks to a condition which is almost too repulsive for human compassion - filth, poverty, shame, starvation, insanity'.

That Curtis wrote this was curious, for two paragraphs later, reviewing

1. Ibid.
3. See Appendix Note 9.
4. Ibid., p.76.
5. Ibid.
6. Ibid.
7. Ibid., p.77.
8. Ibid., p.76.
Flexner's recent study of European prostitution,\(^1\) he remarked that a 'surprising discovery is the extent to which women of their own accord succeed in extricating themselves from the morass and returning to respectability, disillusioned by their experience, not seldom financially enriched by their shame'.\(^2\) Apart from the fact that Acton had made this 'surprising discovery' half a century earlier, it was odd that these two statements did not seem incongruous to Curtis, and was some indication of the ecclesiastical mind's need for moralistic overkill.

Despite this, however, Flexner's other 'discovery', that most prostitutes came from the lower reaches of the working classes, supported the compassionate side of Curtis' attitude to them. For many, he recognised, prostitution seemed the only way out, and illustrating his point with some Glasgow statistics, he argued that 'fines and imprisonment fail utterly to cope with the evil' and that 'no remedy that fails to reach them in their early homes, and to raise them above the level of casual unskilled and underpaid workers, can deal effectually with the problem'.\(^3\)

The section of Professor Curtis' paper which dealt with 'Impurity and Disease' was little more than a brief account of the findings of the Royal Commission, emphasis being laid upon similar aspects to those emphasised by the U.F. committees, at least insofar as the civilian population were concerned. On the question of venereal disease in the armed services, however, Curtis was somewhat ambiguous. Although he emphasised the enormity of the problem, he merely noted, without comment, that 'so hopeless has it appeared

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1. Abraham Flexner: Prostitution in Europe, 1914 (References above to the same author and title are to the abridged 1919 edition.)
3. Ibid., p.79. In the course of his paper Curtis had of course noted the connection between prostitution and alcohol, commenting that 'at their lowest their (prostitutes') condition is so physically revolting that it is inconceivable that without the blinding influence of drink they can be attractive to any man' (ibid.).
to the authorities to induce men to refrain from the evil in the Navy and the Army, that a medical preparation is served out to protect them as far as possible from the contagion they incur;\(^1\) and although he asked, 'What would a prophet say to these things?' and 'What shall it advantage a great empire to gain a military victory and lose its own soul?' he also remarked, ambiguously, 'Much has been done to appeal to our men to resist temptation. Practically nothing has been done in France and Britain to remove the temptation. In Germany stern measures were promptly taken to protect the soldiery from a disease-spreading camp-following, for our enemy, if he is not devoted to chivalry, at least bows down to efficiency'.\(^2\)

Whether or not Curtis was advocating regulationist measures here is not entirely clear. But he may well have been, for the official figures put the number of British soldiers hospitalised as a result of venereal disease at 4.3 per cent.,\(^3\) and the numbers infected were, it was later alleged, 17.4 per cent., as opposed to 2.5 per cent. in the German army\(^4\) - where prostitutes visited by soldiers were regularly inspected.\(^5\) Britain, at least officially, was the only combatant nation which did not enforce regulation of some kind.\(^6\) It is possible that the Church of Scotland as a whole was much less abolitionist than were its representatives sitting on

\[^1\] Ibid., p.83.
\[^2\] Ibid., p.84.
\[^3\] Ibid., p.83.
\[^4\] At least, according to Professor Blaschko, the German venereologist. Vide H.C. Fischer and E.X. Dubois: Sexual Life during the World War, 1937, p.373.
\[^5\] Ibid., chs. XII and XIII.
\[^6\] Ibid.
the Interdenominational Purity Committee with the U.P. churchmen. ¹

In the connection it may be noted, in conclusion, that after these two churches had united and when the country was once more at war, the Church and Nation committee, alarmed at the rising venereal disease rate especially in the vicinity of ports and military areas, and concerned 'that many infected persons are not coming to clinics', unanimously urged, in 1944, 'that strong efforts should be made to secure compulsory notification and complete treatment of Venereal Disease in the interests of the individual, the future family and the community'. ² Since the country already had, in the form of Regulation 33B of the Defence of the Realm Act, a new war-time measure providing for compulsory examination of infected persons of both sexes, the church's late conversion to this aspect of 'the system' was perhaps rather gratuitous.

Conversion, however, was not total: a year later the Church and Nation committee, under the coy subtitle 'anent a certain allegation', ³ recorded how it had been pursuing the military authorities about the issue of contraceptives to servicemen going on leave. But even here the fires of

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1. Social Evils and Problems also contained a paper, by the Revd. Dr. Norman Maclean on The Decreasing Birthrate (op. cit., pp.93ff). It made much the same points as U.P. reports, emphasising the decrease among the middle classes and those on whom the churches depended for membership and finance. It blamed 'the withering blight' of 'neo-Malthusianism' (ibid., p.98), venereal disease, landlords, and, fundamentally, loss of 'the sense of the sacredness of life' (ibid., p.102). As a result of the war, it argued, 'the Wastage of war has to be Replaced', 'the Wastage of Disease will be Increased' (ibid., p.103), and 'the Empire must be peopled' (ibid., p.104 - 'If Australia and New Zealand are not occupied by the British, the yellow man cannot be shut out'). Possible remedies by the State included a ban on the manufacture and sale of contraceptives, improved health and housing measures, and tax relief for larger families. For its part the church should give more 'definite teaching' on contraception - otherwise 'the future of the race must lie with the Roman Catholic Church'. It should also pronounce God's judgement on sin, and teach the sacredness of life. The alternative, as in Greece, Rome and France was racial suicide.


indignation were burning low. When the committee was informed, by the services' medical departments and by their chaplains, that contraceptives were 'available' rather than 'offered' to the men, and that the chaplains had 'every opportunity, and the first opportunity when men enter the Services, to stress the obligation of sexual purity on moral and spiritual grounds', it judged that 'before the Church could insist on the cessation of the availability practice, it would require to be convinced that its abolition, if secured, would not result in greater evils than those it sought to remedy'. In saying this the committee tacitly accepted the official view that the social and financial cost of venereal disease among men who 'despite moral and spiritual persuasion ... will go their own way' was a greater evil than the moral cost of making contraceptives available. 'Account', they considered, 'had to be taken of the actual conditions in time of war' — not least significant among which now was the fact that contraceptives were 'obtainable by civilians in every city and town and even in the country'.

2. Ibid.
3. Ibid.
CHAPTER FIFTEEN:
THEOLOGICAL AND OTHER PRESUPPOSITIONS.

In concluding this part of the present study we shall review the churches' arguments against regulation and ask what theological presuppositions informed them. The arguments used by the U.P. and Free Churches, as we have already noted, were of three kinds, concerning cost and effectiveness, civil liberty and making sin safe.

1. Cost and Effectiveness.

Arguments of the first kind were frequently introduced into the controversy about regulation. Those concerning effectiveness were probably more important than those concerning cost, for there was little point in regulation being cheap if it did no good. Cost arguments, however, were useful, for accusations about Government extravagance always make good debating points. But neither arguments about cost nor arguments about effectiveness ever rose far above the level of political expediency, for regulationists and abolitionists alike were able to use them with great confidence when current statistics proved the point they wished to make, only to reject them with equally great confidence (and comments on the unreliability of 'mere' statistics) when they went against them. Such arguments may therefore be seen as confirming rather than creating the views of either side. Principal Rainy frequently advised the Free Church that their fundamental objections to regulation were moral and religious: Professor Fournier agreed that the statistical argument had failed and preferred to rely upon "common sense".¹

¹ Vide Ch.14:3,3, above.
2. Civil Liberty.

How far fundamental moral and religious arguments on the one side and common sense on the other were in fact responsible for making some people abolitionist and others regulationist is of course difficult to tell, for the reason why the protagonists of public controversy espouse their respective causes are usually much more mixed than they allow. It seems likely, however, that in the early years of this particular controversy arguments of the second kind - about civil liberty - came closest to representing the deeper feelings of those who wanted to repeal the Contagious Diseases Acts. The thought that English women might be arrested on mere suspicion and perhaps out of malice, by a secret police force, represented a threat to individual liberty the more severe because it had been documented with graphic and gory examples. It was understandable that working men, whose wives and daughters were in most danger, were among those who signed the numerous repeal petitions.

When such petitions were framed by the Free and U.P. churches they included arguments about civil liberty and constitutional rights, but the theological presuppositions which informed them were rarely if ever articulated. Perhaps it was difficult for the descendants of Calvinists to know where they stood over against those who used Calvinist coercion for ungodly ends. Or perhaps it simply was that the rights of an Englishman¹ to the churches, like the rights of Roman citizenship to St. Paul, were too self-evident to require justification. Even so, the espousal by the churches in this context of arguments in defence of the constitutional rights of women of the lower classes at least implied a theological presupposition. Directly or indirectly, the idea expressed in Christian teaching by the dictum that there is

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¹ 'English' was so frequently used as a synonym for 'British', especially by U.P.s, but also by Free Churchmen, that it would be pedantic not to use it here.
'neither bond nor free ... neither male nor female' in Christ underlay this aspect of the churches' pronouncements. Insofar as it went, this idea contrasted markedly with the note of social and sexual superiority in the voices of many medical and military professionals.

It did not go very far however: for the churches were rather less expressive of their own time's variant on 'neither Jew nor Gentile' — neither British nor lesser breed — than of the other two distinctions. When the controversy entered its later stages there was little to substantiate Mr. McCandlish's assertion that the Free Church committee was only concerned about protecting Indian prostitutes.1 Scarcely any mention was made of these women except as ciphers of vice and even Dr. Huntly, one of the few people involved who had actually spoken with some of them, clearly was more concerned about the women of England.2 Insofar as the churches were now concerned about protecting anyone (apart from the women of England — and everyone, including the regulationists, was concerned about protecting them) the most likely candidates were the British soldiers, who required protection from sin, (but not from its fruits) by being given facilities for marriage. But then soldiers too were being converted into ciphers as the controversy dragged on: and even the benighted Hindus and Mohammedans, whose conversion had been hindered by Britain's Mission of Vice, sank almost out of sight as abolitionists and regulationists fired off at one another familiar sounding salvos from familiar looking positions. It would probably be a mistake therefore to imagine that much theological reflection related to the second kind of argument informed the churches' later pronouncements.

1. Vide Ch.14:2.4, above.
2. Vide Ch.14:2.1, above.

The third argument - that regulation encouraged vice by appearing to make sin safe - was however a fairly constant feature in the churches' pronouncements from beginning to end, and it seems likely that this argument represented, as Rainy wanted it to, the churches' central objection to regulation. It correctly identified, as we have noted, the main purpose of regulation as the protection of soldiers from venereal disease - rather than their or the prostitutes' reformation. But the implications it drew from this, notably that regulation encouraged prostitution and hence venereal disease, were more difficult to substantiate; and the alternatives to regulation suggested by the churches were frequently impractical, the only exception being the expensive suggestion of a married army.

The great difficulty about this argument however was the churches' ambivalent attitude towards the notion that venereal disease was a deterrent to and a punishment for illicit intercourse. That it was not a deterrent to the men most at risk must surely have been clear from the numbers of them involved, and this argument, like subsequent ecclesiastical arguments against contraception, rested upon a somewhat naive analysis of the psychology of their fellow countrymen - in which churchmen took their own attitudes as normative. Such an analysis was not of course totally misguided, since it was based upon a desire to appeal to the men's higher nature. But it was very unrealistic.

More serious than this however was the churches' refusal to come to terms with the idea that venereal disease was a punishment. As we have seen this idea was expressed in vague references to the law of nature, which

1. Vide Ch.13:5, above.
2. The argument that Regulation hardened the prostitutes involved is, however, a plausible one.
3. Vide Ch.13:5, above.
suggest that the churches were as reluctant to deny as to affirm that God caused venereal disease. The opportunity for a theological re-appraisal of this notion was certainly not taken up by the churches in this connection, and one is left with the suspicion that they preferred to keep their thinking on the subject vague, perhaps because they were afraid of the consequences of any theological conclusion which might secularise venereal disease.

The churches' use of this third argument therefore suggests that the introduction of therapeutic and prophylactic considerations into what had hitherto been a much more straightforward argument about sin, caught the churches off balance and left them unable to offer any very convincing theological critique of the new situation.

4. Some Non-Theological Factors.

It is of course easy, with the benefit of hindsight, to see flaws in the churches' position, and to lament the absence of a convincing theological critique. At worst, however, the demand for such a critique may be the demand for a concatenation of Scriptural, patristic, and later authorities on the subject selected in such a way as to legitimate the opinions of the concatenator with support from supposedly more pristine sources - in the case of Protestant concatenators from Scriptural and Reformation services in particular. And even at best such a demand represents uncertainty on the part of those who demand it. Such uncertainty, however, did not characterise the opponents of regulation, who although perhaps afraid of the consequences of secularising venereal disease were not afraid that such consequences would be commendable.

This lack of uncertainty on the part of the ecclesiastical abolitionists arose in some degree from the historical situation in which they found
themselves, for church pronouncements are always the result of a more or less dialectical relationship between the Christian tradition and contemporary society. In concluding this section therefore some aspects of this historical situation should once again be noted.

The situation in which the two churches which protested against regulation found themselves was very complicated. In theory the Free Church stood for the Establishment and the U.P.s for the Voluntary principle. In practice however neither church was established. In practice also the opinions expressed by their members did not always reflect the principles for which their churches stood. Matters were further complicated by the fact that even if all of the Presbyterian churches had been united and together established, their influence on Government for righteousness would have been severely limited by the provincial character of their sphere of influence.

Under these circumstances the Free Assembly and the U.P. Synod had little hope of exercising much diplomatic influence on the Imperial Government — even though Rainy was a distant cousin of Gladstone. If the Government was encouraging unrighteousness (a far cry from the days when it had complied with their fathers' demand to suppress unrighteousness) the most they could do was to ally themselves with others, including regiments of women, to rouse public opinion and hence the electorate against its unwisdom.

Unlike the Church of Scotland, which provided the Services with their Presbyterian chaplains, and therefore was on the whole more likely to understand, to sympathise with, and even to hope to influence the motives of the military leadership, the Free and U.P. churches had no lines of communication to those who had decided that regulation was necessary. Consequently they tended to view them in caricature, and lacked any very effective desire to understand their position or for that matter the position of medical men and officials once it had been ascertained that they were regulationists.
The fact that the Free and U.P. churches protested against regulation must therefore to some extent be accounted for by the position they occupied in contemporary society. This contention is supported by the observation that the Free Church's anti-Government polemic slowed down and eventually ground to a halt at about the time when some of their ministers were added to the Government chaplaincy payroll, and when some of their elders who were also prominent members of the medical, military and Indian establishments undertook to interpret the motives of their colleagues to their fathers and brethren.

Since this also took place at a time when the evils abolitionists wished to abolish were becoming too distant and too complicated for the average British citizen to wish to understand, especially as the Contagious Diseases Acts which might have affected him or his sister had long since been repealed, abolition was no longer the popular cause it once had been. Without such popular support and the resources of a great movement the United Free Church could do little for the cause, even if it had wanted to.

The abolitionist tradition of the Free and U.P. churches more or less died out therefore long before the Union of 1929. What survived was a compromise between the anti-establishmentarian Free Church policy of denunciation and the establishmentarian Church of Scotland policy of silent influence, but when the former flared up, as in the 1940's case of the 'available' contraceptives, it was soon smothered by the smooth words of the latter. The genuine abolitionist tradition had long since run out of steam.

The fact that the genuine abolitionist tradition had long since run out of steam did not, however, mean that the abolitionists had laboured in vain, however much the Church and Nation committee's demand for compulsory
notification and examination might suggest this. A brief consideration of what had happened to regulation in Britain shows that this was not the case.

To Acton the Contagious Diseases Acts had seemed an excellent public health measure, abuses of which could be corrected by ensuring that the medical profession was firmly in control of its operations. If he and many members of his profession - perhaps the majority - regarded abolitionists as religious fanatics and obscurantists, intent on impeding the beneficent progress of medical science, this would have been highly understandable, for medicine had frequently been in this position before. The fact that the abolitionist movement received vocal support from Scotch Nonconformists would have done little to undermine this view.

Regulation was not supported only by doctors, however, but also by the military authorities, who had more pressing concerns to attend to than that of devising safeguards to mollify the abolitionists. Even if General Chapman was not typical it is likely that many and perhaps the majority of his colleagues were in favour of some form of state-regulation of prostitution in order to keep venereal disease in check as simply and efficiently as possible.

1. Regulation 33B was in fact used sparingly and of those notified under it only half were compelled to attend for examination and very few indeed were prosecuted. The great majority of those notified were women, but some men were also notified (in 1944 at least. Vide R.S. Morton: op. cit., p.31).

2. I.e., if Godlee (p.416 above) is to be believed. A. Comfort (in The Anxiety Makers, 1968 ed., p.148) suggests that prior to 1914 'advocacy of licensing on the one hand and of prophylaxis on the other was limited to eccentrics', and that the profession as a whole was silent, preferring to leave things as they were. But unless Lister and Grainger Stewart were regarded as eccentrics, or unless it is stretching the meaning of licensing too far, the fact that they were willing to express the opinions they did, in the House of Lords and more, in the Free Assembly, suggests that they probably were conscious of considerable support for their views among their colleagues. These were of course also, as Josephine Butler observed (op. cit., p.12) 'among the men who gradually rallied around us ... from all ranks and all professions, pure hearted physicians ... among the foremost, both in action and in indignant denunciation of the theories and practices which we abhorred'.

3. See Appendix Note 10.
They had, after all, wars to fight and an Empire to defend.

But in the end the decision about regulation had to be taken not by the military or medical authorities, but by Parliament, and Parliament could not afford to ignore public opinion. This was where the abolitionists, and with them the churches, played an important and perhaps decisive part in preventing the totalitarian elements in the medical and military professions from extending regulation at home and from making it work as completely as they wished abroad.

It remains of course an open question whether or not much human suffering would have been spared had the regulationists had their way. But the relative ineffectiveness of the medical methods at their disposal suggests that regulation was not at that time an adequate way of dealing with venereal disease and that consequently the abolitionists prevented the authorities from pre-empting a problem to which a more adequate response, both medical and social, had yet to be found. Whether or not in medical terms penicillin, and in social terms the de-professionalising of prostitution, are that response is of course another question.
PART THREE:
Scripture and Common Sense.

In October 1871 a letter to the ministers of the Nonconformist Churches of England was signed by 'the most eminent theological and leading Ministers of the Church of Scotland, the Free Church of Scotland, the United Presbyterian Church, the Reformed Presbyterian Church and the Original Secession Church'. Not everyone in Scotland would perhaps have agreed that the Church of Scotland signatories really were the most eminent: of Lord Sand's catalogue of her greatest preachers of the period - 'Norman Macleod, Caird, Tulloch, Flint, Maagregor, Boyd, Burns and Milligan', only the last was represented, and other great names, not least Charteris, were absent. The credentials of the Free Church signatories, however, could not be questioned: R.S. Candlish and Patrick Fairbairn, Principals of the Free Church Edinburgh and Glasgow colleges, Duff, the retired missionary, the inevitable James Begg and Thomas Guthrie, and - a late signatory - Rainy, all signed, as did, from the U.P. Church, John Cairns and Dr. Andrew Thomson of Broughton Place, together with others from the other churches mentioned. It was an impressive exhibition of unanimity

1. The Marriage Law Defence Union: Tracts, 1884, Tract VIII, "What the Presbyterians say".
3. Professor of Divinity and Biblical Criticism at Aberdeen. The other Church of Scotland signatories were T.J. Crawford (Professor of Divinity, Edinburgh), W. Stevenson (Divinity and Church History, Edinburgh), A.F. Mitchell (Ecclesiastical History, St. Andrews), N. Christie (Divinity and Church History, Aberdeen), W. Lee (Church History, Glasgow), J. Macrae (Minister of Hawick) Robert Nisbet (Minister of West St. Giles's Parish, Edinburgh), and K.M. Phin (an influential ecclesiastical bureaucrat).
unanimity on the part of churches which often appeared to be bound to one another only by their common investment in Scotland and mutual suspicion. Alongside their lack of public agreement about banns and about repeal of the Contagious Diseases Acts it was perhaps even more remarkable, for the subject of their letter also concerned legislation relating to sex and marriage.

The subject of the letter was Marriage Affinity, or more exactly the proposal to legalise Marriage with a Deceased Wife's Sister (hereinafter referred to as MDWS). This proposal - of which, the signatories reminded their readers, the Lord Chancellor had said: 'I would rather hear of the landing of 300,000 French at Dover than of the passing of this Bill' - had been made year after year in Parliament since 1847 and would not finally be settled until 1907. Our concern here is with the statements made by Assemblies on the subject. These however will be incomprehensible unless something is first said about the historical and legislative background to the controversy. We shall begin therefore by giving some account of this background. This will be followed by a review of the Assemblies' pronouncements. We shall then conclude with an exploration of some theological presuppositions and implications of the controversy.

CHAPTER SIXTEEN

THE DEVELOPMENT OF THE AFFINITY LAW.

1. Before the Reformation.

Early Christian teaching on consanguinity and affinity impediments to marriage was unsystematic and largely a matter of practical and pastoral concern. Christians obeyed the civil marriage law of the Roman Empire, which prohibited marriage with any direct ascendants or descendants and with relations in the collateral line to the third degree.¹ This was something which their apologists were careful to point out. For Christian worship and brother/sister language could be misunderstood and led to accusations of immorality and even incest between them.

Christians were also subject however to the Church's own understanding of marriage. This was based upon the fragmentary teaching of the New Testament on the subject and upon Jewish law. The latter held that the impediments of consanguinity and affinity actually mentioned in the Mosaic law made a marriage incestuous and void from the beginning: but consanguinity and affinity impediments added later and collected in the Talmud were not regarded so seriously, although they could be grounds for the cancellation of a betrothal or for divorce. These laws were not of course taken over in toto by the Early Christians, for their attitude to Judaism - not least on the subject of divorce² - was far from uncritical. Their ambivalence however did not lead them to reject the Levitical roots of Jewish teaching on consanguinity and affinity.

¹. The collateral line, i.e. descended from a common ancestor by a different line. The Roman computation of degrees of relationship involved counting from one of the parties back to the common ancestor and thence to the other party. A man was thus related to his female first cousin, for example, in the fourth degree, and to his female second cousin in the sixth degree.

². Vide: Matthew, 19, 3 - 9, etc.
For several centuries the Western Church, whose discipline
remained distinct from Roman marriage law even after the latter
came under its influence, had no very clear marriage law of its own.
During these centuries its teaching on consanguinity and affinity
was somewhat haphazard and subject to a variety of authorities and
local customs. Gregory the Great\(^1\), for example, informed Augustine
of Canterbury that the church could not approve of certain marriages
allowed under Roman law, because they were prohibited by Leviticus,
condemned by John the Baptist, and infertile in practice. At the
same time however he advised Augustine to deal gently with Englishmen
who had already contracted such marriages, and not to deny them
baptism or to separate them from their women. And then on another
occasion he told Augustine that two brothers might marry two sisters
since Scripture did not condemn it\(^2\).

But although christian teaching on marriage was haphazard, it
was making headway. As one commentator has put it: 'The divine law
was crudely conceived in terms of the Levitical books, but even so
it conquered men's imagination. Of those sacred books the spiritual
chiefs of the Church were the guardians and interpreters\(^3\). Thus
in the eleventh and twelfth century the church was assuming control
over the constitution of marriage, codifying its canon law, and
attempting, with a varying measure of success and failure, to impose
that law on a chaotic variety of local folk-laws and customs\(^4\).

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1. Circa 540 - 604 A.D.
2. Vide: T.A. Lacey (ed. R.C. Mortimer), Marriage in Church and State,
   1947, pp.113f.
3. Ibid: p.117.
4. Vide: Ch.4, 2.1., above.
In codifying its teaching on consanguinity and affinity the church relied for the most part on the Old Testament book of Leviticus. There had, however, been two schools of thought on how it should be interpreted. Some authorities held that only the impediments of consanguinity and affinity actually mentioned in Leviticus were of importance, others that these were part of a more general law prohibiting intercourse or marriage with near kin. The second view predominated and, by analogy with the recognised limits of kinship in the civil law of succession, marriage was forbidden with kin up to the seventh degree of the Roman computation. But matters had been complicated when in the 9th century the Western Church had adopted the German method of computation, without abandoning the notion that prohibitions should extend to the seventh degree.

This change in computation widened the range of kin with whom marriage was prohibited to an extent which made the system virtually unworkable, and in 1215 the Fourth Lateran Council limited the prohibition to the fourth degree, at the same time making it a diriment impediment (that is, an impediment which prevented such a marriage from coming into being at all), and ruling that sexual intercourse whether inside or outside marriage created consanguinity.

The Pauline 'one flesh' argument which lay behind this last point was also the basis of the church's rules on the impediment

1. The German method of computation differed from the Roman in that it did not count back from one party to the common ancestor and thence to the other party, but only back to the common ancestor, from whichever of the parties was the farther removed therefrom. A man was thus related to his female first cousin, for example, in the second degree, and to his female second cousin in the third degree. (Under Roman Law these were the fourth and sixth degrees.)

2. 1 Corinthians, 6.16.
of affinity. By the 8th century these prevented a man from marrying not only his own blood-relations up to the seventh degree, but also any kin, up to the seventh degree, of his wife or any woman with whom he had sexual intercourse. The husbands and wives of these women's kin were also prohibited, as were any wives or husbands whom they as widowers or widows might subsequently marry. In such cases the number of prohibited degrees was soon reduced, as it was in the case of affinity between the children of a widow's second marriage and the kin of her first husband. But even so, such notions of affinity went well beyond the provisions of Roman or Mosaic law, and created a situation in which not only was the system virtually unworkable, but in which it was virtually impossible to determine whether or not it could work. The fact that spiritual kinship, which was a form of affinity established by participation in the baptism of a child by parents, sponsors and the priest, also had to be taken into consideration, only compounded this difficulty, and it was a singularly wise child who knew all his affines. The fourth Lateran Council consequently thought it best to restrict affinity as well as consanguinity prohibitions to the fourth degree.

The Lateran Council's action thus removed some practical difficulties, but by removing obstructions which had been viewed as part of the divine law it again raised doubts about the principle underlying the system. These doubts were compounded by the fifteenth century practice of granting papal dispensations in cases where impediments had hitherto been regarded as of divine origin. This practice provided many opportunities for the satisfaction of doubtful motives and for corruption. The case of Henry VIII of England illustrates both the complexity and the corruption of the system.
2. The Reformation: Calvin and Leviticus.

Subsequent developments in the law of England provided the context in which the 19th century controversy concerning MDWS arose. But the tradition which Scottish churchmen - whose part in this controversy we are primarily concerned with - fell heir to, had developed rather differently, and we shall consider this first. Their tradition of course stemmed from the Reformers, who, rejecting the complexities of ecclesiastical law noted above, turned to Scripture for advice, and particularly, as their predecessors had also done, to the book of Leviticus. At this point therefore we should briefly take note of the way in which Calvin interpreted the Scriptural teaching on consanguinity and affinity.

This subject was dealt with by Calvin in *The Harmony of the Four Last Books of the Pentateuch*, which he wrote towards the end of his life. In it, he divided the four books - Exodus, Leviticus, Numbers and Deuteronomy - into two principal parts, the Historical Narrative and the Doctrine. He sub-divided the latter by taking each of the Ten Commandments in turn, and adding to each the remaining chapters as 'Supplements' - 'by which word', he wrote, 'I mean with respect to the First Table' 2, the Ceremonies and the outward Exercises of Worship; with respect to the Second Table, the Political Laws, for the object of both these parts is merely to

1. In the *Institutes*: IV,XIX,37, Calvin alluded scornfully to the 'mire' which the church had got into in its handling of matrimonial cases.

2. In Calvin's view the First Table comprised the 1st. to 4th. Commandments, and the Second, the 5th. to 10th. Augustine's opinion, that the First Table comprised only the 1st. to 3rd. Commandments, so 'that believers might learn to worship God in the Trinity, and thus adore God in three persons' was 'frivolous' (Calvin: *Harmony*, (1854 Translation), vol.III,p.6.). It also enabled Calvin to include Sabbath Observance (the fourth commandment) among the vertical rather than the horizontal ones, and thus to reinforce its importance over against those who argued that Sabbath Observance was Judaistic - *vide*: *Institutes*, II, VIII,33.
aid in the observance of the Moral Law. Calvin believed that the law had not been abrogated except insofar as it no longer condemned Christians: its function now was 'to pinch them awake to their imperfection'. The Ceremonial Law however had been abrogated 'in use', but not 'in effect', by Christ, who provided release from the sin of which the ceremonies were confessions, and thereby 'terminated them, but has not deprived them of anything of their sanctity; rather, he has approved and honoured it'. Similarly, wrote Calvin,

'the form of their judicial laws, although it had no other intent than how best to preserve that very love which is enjoined in God's eternal law, had something distinct from that precept of love. Therefore, as ceremonial laws could be abrogated while piety remained safe and unharmed, so too, when these judicial laws were taken away, the perpetual duties and precepts of love could still remain.'

In this context the chapters of Leviticus (18 and 20) which deal with consanguinity and affinity were included by Calvin under the Seventh Commandment, as one of the Supplements dealing with the Political Laws. Before noting his comments, it will be useful to quote the passage around which controversy was later to rage. It is Leviticus: chapter 18 verses 6 to 18, quoted here in the R.S.V. translation.

1. Harmony, Vol. I, p. xvii (Calvin's Preface.) According to Calvin, the Moral Law 'is contained under two heads, one of which simply commands us to worship God with pure faith and piety; the other, to embrace men with sincere affection' (Ibid).
2. Institutes, II, VII, 14.
4. Ibid, IV, XX, 15.
6 None of you shall approach any one near of kin to him to uncover nakedness. I am the Lord. 7 You shall not uncover the nakedness of your father, which is the nakedness of your mother; she is your mother, you shall not uncover her nakedness. 8 You shall not uncover the nakedness of your father's wife; it is your father's nakedness. 9 You shall not uncover the nakedness of your sister, the daughter of your father or the daughter of your mother, whether born at home or born abroad. 10 You shall not uncover the nakedness of your son's daughter or of your daughter's daughter, for their nakedness is your own nakedness. 11 You shall not uncover the nakedness of your father's wife's daughter, begotten by your father, since she is your sister. 12 You shall not uncover the nakedness of your father's sister; she is your father's near kinswoman. 13 You shall not uncover the nakedness of your mother's sister, for she is your mother's near kinswoman. 14 You shall not uncover the nakedness of your father's brother, that is, you shall not approach his wife; she is your aunt. 15 You shall not uncover the nakedness of your daughter-in-law; she is your son's wife, you shall not uncover her nakedness. 16 You shall not uncover the nakedness of your brother's wife; she is your brother's nakedness. 17 You shall not uncover the nakedness of a woman and of her daughter, and you shall not take her son's daughter or her daughter's daughter to uncover her nakedness; they are your near kinswomen; it is wickedness. 18 And you shall not take a woman as a rival wife to her sister, uncovering her nakedness while her sister is yet alive.

These verses were prefaced by a warning from God that the Israelites should not follow the customs of the Egyptians and the Canaanites. The existence of such customs, Calvin observed, was what made it necessary for God to list here 'the kinds of incest of which the mention would else have been superfluous': for 'since all the Orientals are libidinous, they never had any scruple in polluting themselves by incestuous marriages'. Not every kind of incest however was mentioned in this passage. But, Calvin argued, the 'monstrous indecency in the connexion of father and

1. Vol. III, p. 97. Calvin instanced brother-sister marriages among the Egyptians, who were (ibid) 'so dead to shame, that they were carried away by their lusts to trample upon all the laws of nature'.
daughter, or mother and son\textsuperscript{1} was sufficient indication (verses 7 and 10) of a ban on intercourse with all ascendants and descendants. In the case of the collateral line, intercourse with uncles (in the case of females) and aunts on both sides (verses 12 and 13) was \textquotesingle a somewhat similar impropriety\textquotesingle\textsuperscript{2} to intercourse with one\textquotesingle s parents, as was connection with a step-mother (verse 8) or a mother-in-law, and with a paternal (verse 14) or maternal uncle\textquotesingle s wife; similarly intercourse with a step-daughter (verse 17) or daughter-in-law (verse 15) was like that with a daughter; in all of these cases \textquotesingle the same rule affects affinity\textquotesingle\textsuperscript{3} as consanguinity. The list, Calvin admitted, did not prohibit a maternal or paternal uncle from marrying his niece. Here, he said, \textquotesingle we must form our judgment by analogy as to what is prohibited\textquotesingle\textsuperscript{4}. Thus, \textquotesingle since the nephew is interdicted from marrying his paternal or maternal aunt the mutual relation of the inferior to the superior degree must prevail\textquotesingle, especially since \textquotesingle the reason added by Moses\textquotesingle in the former case (verses 12 and 13) - \textquotem She is thy father\textquotesingle s or thy mother\textquotesingle s near kinswoman\textquotem - could refute any objection to this. Intercourse or marriage with sisters or half-sisters (verses 9 and 11) was also prohibited, he added.

Calvin emphasised that this list applied to marriage as well as to illicit intercourse, pointing out that although such marriage

\begin{footnotes}
1. Ibid. p.102.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
\end{footnotes}
regulations were 'a part of the political constitution which God established for his ancient people', they were not 'merely political' nor were they dissolved because of the abrogation of the Law. 'Whatever is prescribed here' he stated, 'is deduced from the source of rectitude itself, and from the natural feelings implanted in us by Him'. The non-observance of these prohibitions by certain nations at certain times did not detract from the fact that 'the prohibition of incests here set forth...flows from the fountain of nature itself, and is founded on the general principle of all laws, which is perpetual and inviolable'. God was displeased with the heathen customs against which this chapter was directed 'because nature itself repudiates and abhors filthiness': the incests prohibited here were thus 'absolute prohibitions'.

Although the New Testament said little on the subject, it was clear that when Paul condemned incest of a stepson and his father's wife as falling short even of Gentile standards, he endorsed the general prohibition which even the secular Roman laws accorded with - 'as if their authors had learnt from Moses what was decorous and agreeable to nature'.

Calvin recognised however that three cases might seem as problems. The first of these concerned first cousins, who were permitted by scripture to marry. Calvin was rather uneasy about this. 'Since from long custom', he wrote, 'it is established that cousins-german should not marry, we must beware of giving scandal lest too

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1. Ibid, p.99.
2. Ibid.
3. Ibid, p.100.
4. Ibid.
unbridled a liberty should expose the Gospel to much reproach; and we must bear in mind Paul's admonition, to abstain even from things lawful when they are not expedient. 1.

The second problem lay in the interpretation of verse 16 of Leviticus chapter 18, which concerned marriage with a brother's wife. 'Bad interpreters,' he wrote, tried to make this verse into a prohibition of illicit intercourse with a brother's wife or marriage with her after divorce from, but during the lifetime of, the brother. But they were wrong: for it was incongruous to twist into different senses declarations which are made in the same place, and in the same words. 2. Calvin was 'not, however, ignorant of the source from whence those, who think otherwise, have derived their mistake' - which was Deuteronomy chapter 25 verse 5, where 'God gives a command... that if a man shall have died without issue, his surviving brother shall take his widow to wife, in order that he may raise up of her seed to the departed.' 3.

What the 'bad interpreters' overlooked, observed Calvin, was the 'well-known Hebrew idiom' which embraced 'under the name of brother all near kinsmen in general,' a usage also employed by the Latins to designate first cousins. 4. The Deuteronomic command thus only

1. Ibid, p.105.
2. Ibid, p.103.
3. Ibid.
4. Ibid.
5. Calvin makes much the same points when dealing with this passage at another point in the same commentary (Ibid, pp.177f.) In defence of his argument about the meaning of 'brother,' he adds here that (Ibid, p.178) 'if any should object that it is not probable that other kinsmen should dwell together, I reply that this passage is improperly supposed to refer to actual living together, as if they dwelt in the same house, but that the precept is merely addressed to relations, whose near residence rendered it convenient to take the widows to their own homes; for if any lived far away, liberty was accorded to both to seek the fulfillment of the provision elsewhere. Surely it is not probable that God would have authorised an incestuous marriage, which he had before expressed His abomination of.'
applied to relations not barred by the consanguinity and affinity prohibitions mentioned above. The case of Ruth and Boaz,¹ 
illustrated the point, said Calvin, while

'if any object that Er, Onan, and Shelah, the sons of Judah, were own-brothers, and still that Tamar married two of them, the difficulty is easily solved, viz., that Judah, following the common and received practice of the Gentiles acted improperly in permitting it. By evil communications then, as is ever the case, Judah was led into giving the same wife to his second son as he had before been married to his eldest'.²

This case therefore did not constitute any objection or exception to the rule.

The third problem noted by Calvin was that of the meaning of verse 18. 'Certain froward persons'³ he wrote, were arguing that

1. Ruth, l-4.
2. Calvin: Harmony, III, p.104. It is interesting to compare this comment with Calvin's treatment of this story (Genesis, chapter 38) in his Commentaries on Genesis. In the latter (1850 translation, Vol.II, pp.275ff.) Calvin is highly critical of the whole episode and especially of Judah's part in it. However, he remarks on verse 8 (ibid., p.281):

Although no law had hitherto been prescribed concerning brother's marriages, that the surviving brother should raise up seed to one who was dead; it is nevertheless, not wonderful that, by the mere instinct of nature, men should have been inclined to this course. For since each man is born for the preservation of the whole race, if any one dies without children, there seems to be here some defect of nature. It was deemed therefore an act of humanity to acquire some name for the dead, from which it might appear that they had lived.' This act, wrote Calvin, 'does not proceed from any rule of piesty, yet the Lord had impressed it on the hearts of men as a duty of humanity; as he afterwards commanded it to the Jews in their polity'. With this last phrase Calvin inserted a reservation about the universal application of this 'duty of humanity' in the particular form mentioned, yet there is some inconsistency in all this, which is compounded by Calvin's criticism of Onan for his 'outrageous act of barbarity in denying seed to his brother.
that this allowed MDWS, since it forbade (polygamous) marriage with a wife's sister only during the wife's lifetime. Had this simply been a prohibition of uncovering her 'turpitude', then 'there would have been some colour to their pretext'. It was necessary however 'to consider the intention of the legislator from his own express words', which 'expressly stated' that 'she, who was legally married should (not) be troubled by quarrels and contentions'. It was therefore, wrote Calvin, 'plain that the licence for polygamy is restricted by this exception, in order that the Israelites should be contented with one evil, and, at least, should not expose two sisters to hostile competition with each other'. Polygamy, in other words, was bad enough for Israelite women to put up with - they were to be spared the additional burden of having to put up with rival wives among their own near kinswomen - here again Calvin interprets sister in a very broad sense. Finally, wrote Calvin, the prohibition of a brother marrying his brother's widow shows that MDWS was not meant here. 'But hence', he added, 'we see the diabolical arrogance of the Pope, who by inventing new degrees of kindred, would be wiser than God; whilst he also betrays his cunning, because from this kind of sport he made himself a fat game-bag.'

1. Calvin prefers this to 'nakedness' because it showed the filthiness and shamefulness of the act (*vide: ibid*, p.99).
4. *Ibid*.
Having noted how Calvin dealt with these three possible problems, and at the same time with his antinomian and papal opponents, it is worth repeating that the two main points made in his commentary on Leviticus 18 were: (1) that the prohibitions, while part of the law given by God for the political government of Israel, and as such merely aids to the observance of the Moral Law, were also absolute, since they had been deduced from the natural feelings implanted in men's hearts by God, and thus should be part of the law under contemporary civil government also - a law which Christians as much as others should, in Calvin's view,¹ be subject; and (2) that while not all the prohibited degrees were mentioned in Leviticus 18, the general outline was given and should be reasonably clear by analogy to those who used their judgment.

One further point to be made about Calvin's interpretation of the question concerns his handling of Leviticus chapter 20, verses 11, 12, 14, 17, 19 and 20 - 24, of which list penalties, mostly capital punishment, for sexual intercourse within some of the degrees mentioned in chapter 18. Although Calvin does not explicitly say that these penalties ought to form part of contemporary law, and although he perhaps takes something from the importance of the passage by adding (in some editions) the qualifying sub-title 'These Supplements as Judicial',² he does not seem to dispute the appropriateness of the penalties.

1. Vide, e.g., Institutes, III, XIX, 15; and IV, XX, 14, 15.
3. The Law of Scotland and the Confession of Faith.

Calvin's commentary on Leviticus was written in 1563 and published in 1564, the year of his death. But before this time the question of consanguinity and affinity was being considered by the Reformed Church of Scotland. At its first meeting the General Assembly declared:

"The question being proposed anent marriage in second and other degrees of consanguinity forbidden by the Pope to be solemnized betwixt parties being of second, third, and fourth degrees of affinity and consanguinity and others such as are not prohibited expressly by the Word of God, and therefore to desire the Lords and Estates to interpone their authority and approve the same and make laws thereupon."

This declaration, by omitting any mention of the first degree of consanguinity and affinity, suggests that the General Assembly, like Calvin, wished to imply that the Levitical prohibitions (as verse 6 of chapter 18 might be taken to mean) were intended as prohibitions of marriage of a male or female with a female or male related to him or her by consanguinity or affinity both in the direct line and in the collateral line up to the first (German) degree.

In making this declaration then the Assembly was requesting Parliament to replace the existing ecclesiastical law with a new civil statute. The existing ecclesiastical law had been enacted in Canon 65 of the Scottish Provincial Council at Perth in 1242, which embodied the teaching of the fourth Lateran Council of 1215. It recognised, in respect of the prohibited degrees, a distinction between those prohibited by the divine law, and those which could be sanctioned (but only by dispensation) by the Church which had forbidden them. MDWS and marriage between an uncle and niece were among the latter.

The Scottish Parliament did not respond to the Assembly’s request until 1567, when in an Act of that year ‘Anent theme that committis incest’ it provided the death penalty for those ‘that abusiis their body with sic personis in degree as Goddi Word has expresslie forbidden in any time cummin as is contenit in the 18th chapter of Leviticus’.\(^1\)

The following section (c.15) enacted that it was lawful for all related in the second and further degrees to marry, provided the marriage was not otherwise repugnant to God’s Word. Until the 19th century this was the basis of the statute law of Scotland on the subject. Whether or not those who drew it up intended MDWS to be included is not certain, but since there is on record one case in which the Court exacted the death penalty for intercourse between a deceased wife’s sister and her deceased sister’s husband,\(^2\) it seems likely that Calvin’s interpretation of Leviticus 18:18 was commonly accepted.

The next development took place a century later, in 1690, when the Scots Parliament ratified the Westminster Confession of Faith, voting upon each article. Article 24, section 4 of this read:

‘Marriage ought not to be within the degrees of consanguinity and affinity forbidden in the Word; nor can such incestuous marriages ever be made lawful by any law of man, or consent of parties, so as those persons may live together as man and wife. The man may not marry any of his wife’s kindred nearer in blood than he may of his own, nor the woman of her husband’s kindred nearer than in blood of her own.’

This interpretation of Leviticus was based upon parity of reasoning of the kind employed by Calvin (as in the uncle/niece, nephew/aunt cases). The prohibition thus applied to all persons related by

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1. Ibid.
2. Ibid.
consanguinity and affinity in the first degree, the relationship being determined by counting either from the female or from the male.

Having approved this interpretation as the law of the Church, the Scottish Legislature did not go on to alter the civil law. But subsequent practice and the opinion of legal authorities on the subject agreed that although the penal Act 1567 c.14 might not justify capital punishment in MDWS cases (because the wording of that Act made everything hinge on the ambiguous verses 6 and 18 of Leviticus 18), the Act 1567 c.15 clearly prohibited MDWS (because the parity of reasoning employed in the Confession of Faith, and endorsed by Parliament, brought MDWS within the scope of the first degree of affinity). This was finally established by the Court in the case of Fenton v Livingstone, 1861, which confirmed that MDWS was illegal in the civil law of Scotland. The controversy which we are concerned with here, however, also involved English law, which had developed somewhat differently.


Sixteenth-century English law on the subject of consanguinity and affinity tended to follow Lutheran practice, by keeping close to the letter of Leviticus. At the same time however it was beginning to move in the direction of Calvinist parity of reasoning. It was also much affected by the domestic entanglements of Henry VIII and

1. Ibid, p.1272, 1273.
by Elizabeth's need to secure her succession. By the end of the century - whose second half had seen 'one of the most sordid chapters of English legislation'¹ - there were thus several different laws on the subject in the statute book.

The church as well as the state was making laws, however. In 1603 a Canon enacted by the Provincial Synod of Canterbury endorsed a table of sixty prohibited degrees of consanguinity and affinity which had been issued on his own authority in 1563 by Matthew Parker, the Archbishop of Canterbury. Parker's Table was based on Leviticus 18, interpreted by the process of parity of reasoning discussed above. When the Canon endorsing it received the Royal Assent this became the Church's official list of prohibited degrees.

The Canon of 1603 required marriages within the prohibited degree to be dissolved, after being declared incestuous and unlawful by the ecclesiastical courts. (These retained their jurisdiction over marriage, whereas in Scotland jurisdiction had passed, in 1560, to the Crown.) The civil authorities, however, were to execute this, and were consequently in some difficulty, since it was far from clear that the civil law prohibited all the unions listed by Parker. In an attempt to resolve this difficulty, efforts were made to establish the legality of MDWS. These were unsuccessful. The civil courts however were successful when they prohibited the ecclesiastical courts from declaring - after the death of either or both parties to MDWS - that the union was void and the children were illegitimate.

This was an important move, because it affected the question of inheritance. Jealous relatives could and did bring actions before the ecclesiastical courts, in order to bastardise and thus disinherit children of such unions after their parents' deaths. The civil courts' prohibition made such unions voidable rather than void. They

¹ Lacey, op. cit., p.157.
They were thus relatively safe unless or until an action was raised in the ecclesiastical courts, and absolutely safe after the death of one of the parties. So matters stood until the 19th century.

During this period it was sometimes assumed that MDWS was legal. One reason for this was that some of those whose marriages were thought to be voidable arranged for friends to bring to court against them an unsuccessful but indefinitely prolonged suit which effectively prevented any other and potentially successful suit being brought. Practices of this kind, and in other cases the cost of proceedings, meant that many illegal and voidable unions were unchallenged. Parker's Table was thus not always adhered to in practice, and the future of children involved was uncertain.

To remedy this situation Parliament, in 1835, passed Lord Lyndhurst's Act, which adopted Parker's Table into the civil law and ruled that any marriage thereafter contracted within the prohibited degrees should be no longer voidable, but simply and without the need of any legal process void from the beginning.

To some people this remedy seemed worse than the disease - especially as some assumed that MDWS had hitherto been legal. Although Lyndhurst's Act left voidable marriages contracted before 1835 as they were and applied only to new ones, it created considerable opposition and controversy. By 1847 petitions were being presented to Parliament, signed by Anglican and Dissenting clergymen among others, asking for the law to be made more liberal. As a result of this the Government set up a Royal Commission to investigate the whole question of consanguinity and affinity. In the course of its enquiries the Commission discovered that, even since 1835, the number of cases of MDWS contracted in England had been considerable, and that such marriages had been contracted by people of all classes, including five mayors and several clergymen. Its report, after it

had heard this and a great deal of argument on either side, recommended that the law of consanguinity and affinity should be made more liberal, and specifically, following the example of a number of European countries and American states, that MDWS should be made legal.

This report strengthened the movement to legalize MDWS and a Bill to that end was introduced into Parliament and given a second reading by the House of Commons in 1849, only to founder at the committee stage. A second attempt was made in 1850, when the Bill got as far as the House of Lords, but was then withdrawn. Brought there a year later it was defeated by a large majority, only to re-appear in the Commons in 1855, where it again foundered in committee. In 1859, after some further attempts, it was once again passed by the Commons, only to be defeated yet again in the Upper House. The margin by which the MDWS Bill, now and for the rest of the century firmly established as an annual Parliamentary event, either passed or failed in either the Lords or the Commons was generally small. The nation, if Parliament reflected its views, was unable to make up its mind. But what was the mind of the Scottish churches? In the next chapter we shall look first at the Established and Free Churches' views from 1849 to 1900, then at the view of the U.P. Synod, and lastly at the views of the Church of Scotland and U.F. Church after 1900.

1. The Established and Free Assemblies: 1849 - 1900.

When the first MDWS Bill was introduced into Parliament in 1849 neither the Established nor the Free Assembly were in any doubt of their opposition to what it proposed. Their position on MDWS had been clearly re-stated only ten years earlier, when the General Assembly had ruled that marriage between a man and the sister of his deceased wife was prohibited by the Word of God and contrary to the Confession of Faith. On this subject at least, the Disruption had not divided them, and when Bills began to appear in Parliament so too did petitions against them from both Assemblies.


The reason for the Free Church's opposition were stated in its 1849 Assembly by William Cunningham, the orthodox and influential New College Professor. MDWS, said Cunningham, was prohibited by the Confession of Faith, which was based (although 'the mass of business before the house precluded' him from proving this) on Scripture; and the Confession was built in to the law of Scotland, which was in turn protected by the Treaty of Union. The Confession's view moreover was 'in accordance with sound reason and calculated to contribute to the welfare and comfort of the community'. Two

1. Vide, C. of S.G.A. Commission, May 28 1839. The reference was to a case in which Robert Lauder, who had married his deceased wife's sister Margaret Farlane, appealed from his Kirk Session to the Presbytery of Stirling for admission to church privileges. The Presbytery referred the matter to the Assembly, whose Commission, for the reasons given, stated that it was 'not at liberty, under present circumstances', to allow Lauder to be admitted. It instructed the Session involved to proceed in discipline against both parties.


3. Ibid.
Members of Parliament present, Fox Maule and Charles Cowan, agreed. The former accepted the Confession, 'which had been framed by wiser heads than his', and was of the opinion that MDWS was abhorrent to the people of Scotland. In the unlikely event of the Bill getting as far as the Committee stage in the Commons, he would introduce a clause exempting Scotland and the property of Scots from its provisions. Charles Cowan was equally opposed. To illustrate his concern he read a letter from a Scotchwoman resident in England, expressing 'her alarm' at 'this anti-scriptural, unhinging and domestic-peace-destroying bill, which would bring them back to the days before the flood, when men took wives wherever they chose'. It was Cowan's intention to do what he could in Parliament, 'in behalf', as his lady correspondent put it, 'of the weaker vessels, alas! unrepresented in your Honourable House!'

The thought of women in Parliament was greeted with 'loud laughter' in the Assembly, but did not detract from the earnestness of their efforts 'in behalf of the weaker vessels' and against MDWS. The subject was taken up again at the following Assembly, the Church's objections re-stated, a further petition despatched, and

1. Ibid.
2. Ibid, p.88.
3. Ibid, p.89.
4. Ibid.
5. Ibid MDWS was not according to Behrman (op. cit., p.494) a subject which feminists were very interested in. They were, Behrman suggests, more concerned with the subject of married women's property. That, needless to say, was a matter never even mentioned in the Free Assembly.
the inferior courts urged (as they had been in 1849) to send up their own petitions also. A committee was set up 'to take all competent steps for opposing' the Bill.

The pattern of Free Church opposition to MDWS was now set. The principal reasons continued to be those stated in 1849: Scripture, and hence the Confession of Faith, and hence again the law and constitution of Scotland were against MDWS: so too were the Scottish people. MDWS was socially harmful, and if it were allowed, worse would follow. Much the same points were to be made by the Church of Scotland Assembly. Summing up its objections, already voiced in previous petitions, the Assembly of 1869 stated that it opposed MDWS:

'Because it is one of the relations in affinity prohibited by the law which is in accordance with the Standard of the Church of Scotland, which declare that in the Divine institution of marriage the relations of the one, whether by consanguinity or affinity, become the relations of the other.'

'Because the observance of the existing law secures the sanctity of home, and the comfort of domestic relations, and many social and family advantages which the proposed relaxation would tend to disturb and overthrow.'

'Because the relaxation sought would pave the way for others of a kindred nature prejudicial to the peace and purity of family life.'

'Because your petitioners are convinced that the proposed measure is against the sentiments and feelings of the people of Scotland.'

1. Ibid., p.195.
The Churches' opposition was grounded then, in Scriptural, Scottish and social arguments. As one Bill followed another during the 'fifties and sixties, much more was to be heard from the Assemblies on these subjects than had perhaps been anticipated in 1849.

Before turning to see what happened to the churches' opposition after 1870, we can look a little more closely at some of the ways in which these objects were elaborated in the Free Assembly.

A good deal of the Free Assembly's time was spent on the Scriptural argument against MDWS. One reason for this was the admitted ambiguity of Leviticus 18:18, which allowed English Nonconformists and Evangelical Anglicans to support the movement in favour of MDWS. R. S. Candlish, the leading Free Church minister of the time, accused the former of 'not asking the question - What saith the Lord?', and the latter of showing 'a strong tendency to evade the conclusions of the Word of God, by some wretched considerations of expediency'.

Another speaker, Mr. Montgomery of Innerleithen, explained that the curious attitude of both English groups arose because they associated MDWS with the pre-Reformation Canon Law, and failed to realise that the Reformers - even in England - had opposed MDWS on Scriptural grounds, just as the Free Church now did. Neither threats nor explanations from the Free Church were enough to convince the non-Calvinist Evangelicals of England of the error of their

1. It should however be noted, so as not to get the subject even more out of proportion than the Free Church itself did, that its debates on MDWS occupied only a few hours during the 12 days on which it met each year.

2. F.C.G.A.P. & D., 1850, Debates, p.195. The MDWS controversy incidentally made bedfellows of the Free Church and High Anglicans, since, as Cunningham defensively explained to the 1861 Assembly (F.C.G.A.P. & D., 1861, Debates, p.349) their views were 'generally very sound upon questions of this kind'.

ways - for as we saw earlier, Scottish churchmen were still trying to win them over in 1871. Their contrary attitude did however make it important for the Free Church to make sure of the Scriptural foundations of its own position.

The challenge of undertaking this task was accepted, at his own invitation and with his own characteristic zeal for orthodoxy, by James Gibson, a Free Church minister who at the beginning of this period was Presbytery Clerk of Glasgow, and by its end was Professor of Church History and Systematic Theology in the Glasgow Free Church College. In the early 'fifties, fresh from his labours as policeman, prosecutor and judge of the unfortunate Mr. Macbeth, Gibson sat down to write the definitive Free Church book on MDWS. The resulting concatenation of quotations, refutations and speculations was described by James Begg as a 'masterly volume...which exhausted the whole subject'; and the Free Assembly of 1869 was treated by its author to a lengthy resume of its arguments.

2. James Gibson: Marriage Affinity Question: Or, Marriage With The Sister of A Deceased Wife Fully Discussed, In The Light Of History, Ecclesiastical and Civil Law, Scripture, Reason, And Expediency; 1854. There were in fact many definitive books on MDWS. E.S. Turner (Roads to Ruin, Penguin 1966 Edition, p.112) notes that 'it would take a man more than a year, reading the equivalent of a book a day, to toil through the vast morass of literature inspired by the theme of marrying a deceased wife's sister'. Mr. Turner does not however provide a comprehensive bibliography: but then if the rest of this literature is like Gibson's book, or the Marriage Law Defence Tracts, one can hardly blame him.
MDWS, according to Gibson, had been prohibited by the Jews, the Church, and all of Protestant Europe until 'Rationalist and French principles began to prevail'\(^1\) at the end of the eighteenth century. Up to this point everyone who acknowledged the Word of God had agreed that, in Leviticus 18, what applied to men also applied to women; and that the general principle of nearness of kin applied to affinity as well as consanguinity. But then, turning from this more or less orthodox exposition of Leviticus 18 to the special case of its 18 verse, Gibson branched out on an ingenious sideline of his own. He had, 'after reading and re-reading, and reading again and again the Hebrew',\(^2\) come to the conclusion that this verse, far from being a prohibition of polygamous marriage with a living wife's sister (which could by implication allow MDWS), was in fact a prohibition of polygamy as such. It should be read simply as 'thou shalt not take a wife (or woman) to her sister in her life':\(^3\) the last 'her', Gibson argued, could apply to either the first or second woman, either of whom might or might not be actual sisters. It was quite clear, Gibson stated, that polygamy had been unlawful from the Creation to the time of Moses, 'that is for the space of 2,500 years'\(^4\) (the 'one flesh' argument of Genesis 2: 23 and 24 proved this); that Christ prohibited it (Matthew 19); and that there was 'nothing in the Mosaic period, or in the character and conduct of the men of

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1. Ibid, p.274.
2. Gibson: op. cit., p.82.
4. Ibid.
that period\(^1\) that made it more lawful than at any other time—as God’s displeasure, voiced by the prophet Malachi (Malachi 2: 14 and 17) had shown.

Among the reasons for Gibson’s vehemence on this point was the fact that the protagonists of MDWS had quoted in their support no less a figure than Chalmers. In his Daily Scripture Readings, Chalmers had noted not only how ‘remarkable’ it was that Leviticus 18:18 ‘implies a liberty to marry’ a DWS, but also that it implied ‘a connivance at polygamy’;\(^2\) and James Wortley, the Buteshire M.P., who led the Parliamentary campaign to legalise MDWS had written, in no less a place than the *Free Church Magazine* that ‘by the whole Church of Scotland, notwithstanding recent differences, the judgment and opinion of Dr Chalmers will command respect’.\(^3\) Gibson, staunch Freechurchman though he was, was thus forced to contradict this with the views stated above, and with the comment that Chalmers, although eminent in many fields, was ‘not remarkable for Biblical scholarship’;\(^4\) nor had he studied the passage in any detail.

On this and on other points however, Gibson was eccentric, even in the Free Church; and it was a pamphlet by one of his colleagues, Dr Douglas, the Professor of Hebrew and Old Testament Exegesis, rather than Gibson’s book which the 1858 Assembly chose to send to Members of Parliament. When Rainy, by 1871 Convener of the committee dealing with the subject, outlined the Free Church’s objections, he emphasised the dangers of being misled by the view that ‘on very minute processes of biblical criticism the whole issue of the case depended’,\(^5\) and

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stressed that the Confession of Faith was the ground on which their stand should be taken. (The same point had been made by Cunningham in 1853.)¹ Polygamy, Rainy went on to observe, was contrary to 'the permanent principles obligatory on men with respect to marriage'; but God had 'claimed and exercised the right of varying the application of them (the principles) in particular circumstances'.² God had thus 'exercised...forbearance...for wise reasons and in certain circumstances'³ in the case of polygamy and in the case of the Levirate marriage. But this forbearance on God's part was now at an end and did not constitute a precedent. God expected 'superior strictness' among Christians than among 'His people of old'.⁴

But Rainy was also concerned with the present; and here too he was more willing than Gibson to admit that there might be problems. He conceded, for example, that some of the forbidden degrees were 'more shocking, more manifestly objectionable and demoralising when permitted than others'.⁵ But this, he argued, with the passion for clear distinctions so characteristic of his century, made it all the more 'important to draw the line at those points with more care, because those are the very points at which laxity begins; and when it begins it will be found pervading the

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3. Ibid, p.273-4. Rainy did however later claim that the interpretation of Leviticus 18:18 as a reference to polygamy was 'dubious' (ibid, p.276) and not fully established.
5. Ibid.
whole subject and relaxing the sense of the obligation in connection with this matter.\(^1\) Even without 'the Divine Rule' it was clear 'in the light of nature' alone, that legislators had 'to draw a line somewhere'.\(^2\) The problem was, where?

To Rainy, developing his metaphor, it seemed clear that the circle described by the line drawn round consanguinity and affinity by the Confession of Faith was so small 'that if you break it at any point it is impossible after that to establish a principle which will maintain the line you draw'.\(^3\) When the Dutch Jews,\(^4\) for example, had once allowed MDWS, uncle-niece marriages soon followed. The Confession's unbroken circle was based on the simple 'one flesh' principle, covering affinity as well as consanguinity. A break in this circle, he believed, would undermine the public's attitude to marriage, and would lead to further laxity even in matters such as divorce. It would also present the Church with the 'pretty'\(^5\) problem of having to maintain its discipline against marriages which the civil law did not prohibit.\(^6\)

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1. Ibid.
2. Ibid, p.275.
3. Ibid.
4. Jewish advocates of MDWS were usually given short shrift in the Free Assembly. Dr. Adler, the Chief Rabbi in London, had given evidence in favour of MDWS to the Royal Commission. In his book Gibson roundly contradicted Dr. Adler (Gibson: op.cit., pp.12f.); and Mr. Montgomery of Innerleithen asked the 1855 Assembly (F.C.G.A.P. & D., 1855, Debates, June 5) why they should regard as an authority on Jewish Law and the Old Testament one who was 'the living representative of the very men of whom our Saviour said, that they made the law of God void through their tradition.'
6. Similar views to Rainy's were expressed by Begg, who addressed the Assembly of 1870 (among others) on the subject. (Vide, F.C.G.A.P. & D., 1870, Debates, p.329.) Begg wanted 'simple and clear' principles, such as the Confession, he believed, gave, and appealed 'to the God of holiness and order'.

Social and constitutional considerations such as these were noted by other speakers in the Assembly debates of this period, although not always in Rainy's reasoned tones. The fact (?) that there were 20,000 divorces in France in 1793, a year after MDWS had been legalised, was seen by one speaker as a clear case of cause and effect; and similar observations were made about German and American states which had legalised MDWS. Mr. Montgomery of Immerleithen used the inevitable metaphor: the MDWS Bill was 'nothing else than the opening of a floodgate, through which a torrent of vice and immorality would pour in'; and Mr. Matheson of Kilmuir Easter declared that 'it would have the effect of separating the unmarried sister from the married sister, preventing that close intercourse and family interest which has hitherto existed in such relations'.

Any suggestions moreover that the Libertarians, as Gibson called them, might have altruistic motives, was ruled out of court — or at least out of the supreme Court of the Free Church. The Libertarians frequently argued that MDWS would help the many poor families in which a DWS often took charge of the children, by allowing the widower and the woman, if they wished, to marry. This argument however was swept aside by Lord Dalhousie (formerly Fox Maule) as an 'argument for the multitude, which did not consider the Scriptural relations of the matter'. In fact, the Free Church peer believed, such arguments were misleading, obscuring

2. Ibid.
3. Ibid.
the fact that 'this agitation originated in a breach of the law on the part of a few who now wanted the law altered, so as to sanction their breach of it'. The protagonists of MDWS also got a bad character from Candlish, who described them in 1855 as 'a small number of interested individuals, whose purses are very full' and in 1869, as 'millionaires...moneyed people in London who had an interest in the question'. This meant, Candlish rather optimistically believed, that the MDWS agitation 'must become weaker and weaker in proportion as those who wish to contract that kind of marriage became older and older, and pass away'. It was not, however, any reason why the Free Church should relax its vigilance.

This vigilance was certainly not relaxed on the specifically Scottish grounds of opposition to MDWS: no doubt, remarked Mr. Montgomery of Innerleithen, it was 'to get quit of the dreaded opposition of Scotland' that the proposers in that year (1855) had introduced an MDWS Bill the provisions of which did not apply north of the border. But who could imagine that if the promoters of this bill were to gain their object for England, Scotland could long remain exempt from its operation? This view was widely held in the Free Assembly, and in 1861 Cunningham took issue with the five Scottish M.P.s who had voted for the current Bill. After naming them, he remarked:

'I would rather shrink from making any one question the turning point of an election, for I think that might be carried too far...but...the Presbyterian people of Scotland...are at least entitled, nay bound, to see to it that no one of their representatives shall vote for the change'.
The least the M.P.'s could do, Cunningham said, was to abstain; and turning to the case of Mr. Adam Black, a pro-MDWS Edinburgh M.P., he added ominously: 'I hope that the people of Edinburgh will take care that no man shall again represent them in the House of Commons unless he is prepared to pledge himself at least to that extent'. 1 Mr. Wortley, the Bute M.P. and leader of the MDWS party, had also been reminded (by Candlish) that 'the pleasure of his constituents tended' 2 to his giving the whole business up.

1.2. Colonial MDWS. Scripture and Unanimity: 1871-1900.

In the 1869 Free Assembly, Sir Henry Moncrieff, the retiring Moderator, had remarked that he 'took it for granted that the General Assembly will petition both houses of Parliament against the Bill'. 3 He was not disappointed. The pattern established in 1849 was repeated not only on its twentieth anniversary, but also for the next thirty years. Some changes in the pattern did take place however, and three of these can be mentioned here. They had to do with MDWS in the colonies, the Scriptural arguments against MDWS, and the unanimity of the Free Assembly on the subject.

The committee on the Marriage Affinity Bill, still under the convenership of Rainy, informed the Free Assembly of 1872 that the South Australian legislature had passed a Bill legalising MDWS. The committee had accordingly written to Gladstone urging the Government to advise the Queen against giving her assent. The Colonies, the

1. Ibid.
2. F.C.G.A.P. & D., 1855, Debates, June 5.
3. F.C.G.A.P. & D., 1869, Debates, p.3.
Committee believed, should manage their own affairs, but this case introduced 'dangerous and perplexing anomalies' into the law of the Empire: the MDWS party, 'anxious to unsettle the existing law throughout the Empire', had chosen to begin where they would meet the least opposition, rather than in the Imperial Parliament, where the matter would be much more fully discussed. It was therefore 'imperative' for the British Government to use 'the suspensive power of the Crown'. In reply to this request Gladstone, himself an opponent of MDWS, had been sympathetic but unhelpful. The Colony, he observed, had passed an MDWS Bill five times since 1857 and the British Government was no longer in a position to advise against the Royal Assent: the majority in the South Australian legislature favouring MDWS was overwhelming.

Victoria (the State, not the Queen) soon followed South Australia - despite an attempt by its Presbyterian Church to persuade the British Government to refuse the Royal Assent and despite that church's threat to enjoin its own ministers not to

2. Ibid.
3. Gladstone's own views on MDWS were quoted by Candlish in the 1879 Assembly. (F.C.G.A.P. & D., 1879, Debates, p.227) He had remarked, in his characteristic prose: 'The culmination and perfection of the Christian morality was found in that high and severe doctrine of marriage, against which we may confidently anticipate, and almost venture to predict, that the anti-Christian spirit will direct its first attack, encouraged by those preliminary operations in the legislative reaction of divorce, which have already, through a variety of ill-omened causes, found a place upon our own as well as upon other statute books'. Gladstone had also said (ibid) that the existing law, 'with its restraint of kin, of unity and of perpetuity, is perhaps the subtlest as well as the most powerful of all the social instruments which the Almighty has put into use for the education of the race, and it is one, I am firmly persuaded, which no self-acting force, or any considerations of policy, will ever be able to uphold in modern societies when it shall have been severed from its authoritative source'.
solemnise MDWS but to discipline the parties.\(^1\) Thus, even before Canada followed suit some years later,\(^2\) the Free Assembly's fears were realised when a Bill was introduced in the House of Commons, designed to legalise Colonial MDWS for inheritance purposes in the United Kingdom.\(^3\) Neither this Bill, nor a similar one, introduced to the Lords in 1879,\(^4\) were successful, but they showed the way in which MDWS might get a foot in the British door.

A restatement of the Free Church's position in the Committee's report to 1879 Assembly showed very little movement in its position. The Committee, whose convener was now James Candlish (son of the Candlish already mentioned), argued against MDWS on the usual grounds that it was unscriptural, that it was harmful to social morality and well-being, and that it would lead to greater laxity, especially in connection with divorce. This last point was established by the usual references to countries where MDWS and divorce were both to be found, and by the statement that 'laxity in regard to the contraction of marriage is naturally connected with laxity in regard to its dissolution'.\(^5\) There were however some signs that the Committee's views on the Scriptural arguments against MDWS had shifted very slightly, for it now spoke rather more respectfully of the 'highly

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esteemed and learned men who took the view that Leviticus 18 forbade only the cases mentioned therein.

This change was more clearly seen in the Committee's 1883 report, which had to deal with a pamphlet published by the Marriage Law Reform Association - the pro-MDWS body. This pamphlet listed the replies of the Hebrew and Greek Professors of the European Universities to the question of whether Leviticus 18 and Ephesians 5,31 (and they two shall be one flesh) prohibited MDWS. The enquiry, to make matters worse, had been conducted by Lord Dalhousie, heir of Fox Maule mentioned above. (In the debate on this, James Begg 'regretted that a young nobleman, who held a name of great repute in the past, was making himself so very officious in an attempt to break down the Scotch law of marriage'.

The Committee dealt with the pamphlet by denying that the New Testament case against MDWS was ever seriously based on Ephesians 5,31, and by stating that the question of whether Leviticus 18, 18 prohibited MDWS was the only one 'on which Hebrew scholarship has

1. Ibid, p.1.
3. Ibid, Debate, p.167. Begg also 'regretted to see princes of the blood busying themselves in connection with this foul proposed change'. The Prince of Wales (later Edward VII) was in favour of MDWS. Dalhousie, at this time representing the Home Office in the Lords in Gladstone's administration, went on to introduce an MDWS Bill soon after. He was not however able to lead the Marriage Law Reformers for long, for he died, in 1887, of apoplexy, within twenty-four hours of his wife's death. He was only forty. Local (Brechin) Free Church as well as U.P. and Church of Scotland ministers joined in paying memorial tributes to him. (Vide: S. Hay: Biographical Sketch of the Life of the Earl and Countess of Dalhousie, 1888, passim.).
any bearing'.¹ It conceded that Hebrew scholarship had somewhat changed its view on this, and admitted the possibility of verse 18 being a prohibition of marriage with a wife's sister during the wife's lifetime. But, it argued, the subject was not to be decided on verse 18, but on verses 6-17. This being so, the prohibition was either only of the cases mentioned, or was based on a principle of which the cases were illustrative. The first alternative was not possible - since it would allow marriages with a daughter, grandmother or niece, which was 'unthinkable'.² A principle must therefore be involved, and since the principle of consanguinity alone failed to cover all of the cases the principle of affinity must also be involved.

All the cases involved would be covered, the Committee observed, by the principle of consanguinity plus the principle of affinity if these principles forbade marriage with the wives of blood-relations but not marriage with the blood-relations of wives (except in the ascending or descending line). This complicated principle would prohibit marriage with a deceased brother's wife, while permitting MDWS. The possibility that this principle lay behind the Levitical prohibitions was one which the Committee was prepared to concede.

The Committee was prepared to concede this however only if it was understood in its proper relation to Scripture as a whole.

² Ibid, p.3.
The law contained in the Pentateuch (it wrote), was given to the ancient people of Israel, and it is recorded in the Bible, not because it is as such directly binding on us, but because it forms an important part of God’s special training of his people, and gradual revelation of truth and duty .... In many respects, we know from the teaching of Christ, the legislation of the Old Testament was imperfect, adapted to the necessities of a rude and hard age and people. It was the best possible for them, at the stage of moral progress which they had reached; but it was not absolutely the best, or the best fitted for the higher advancement of those who received Christ’s teaching, and followed him as their Lord. But the elevation of Christian morality was not indicated by Christ or His apostles giving a new code of laws, or a detailed revision of the Old Testament legislation, but by laying down some general principles, and showing the spirit by which men ought to be guided.

In this context the Committee considered that the church should be guided by ‘two general principles that seem to be mentioned very emphatically in the New Testament: the... inviolability of the marriage union, and... the equality of the sexes in the eye of Christian precept’. The first of these principles was ‘asserted by Jesus in his teaching about divorce; the second was ‘implied in that teaching when our Lord founds it on the creation record that God made them male and female; and (was) brought out by Paul when he declares that in Christ there is no distinction of male or female any more than of Jew and Gentile’. It was, the Committee considered ‘an undoubted fact of history that the spirit of Christianity, as it has tended to abolish slavery, has elevated woman to be the equal and help-meat of men’. This being the case the preferred modern

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1. Ibid., pp.41.
2. Ibid., p.5.
3. Ibid., p.6.
4. Ibid.
interpretation of Leviticus 18, which allowed MDWS, had to be qualified by the knowledge that the society to which it applied also allowed polygamy and arbitrary divorce to the men, the women not being protected. But this was not a law 'which God's regulation in Christ teaches to be proper for the state of enlightenment and humanity that we have now reached'. The Committee thus preferred the 'symmetry' of the position they had hitherto upheld - as, they noted, did a number of the Professors of Hebrew consulted by Dalhousie, including Wellhausen.

Modern scholarship then had not destroyed the scriptural foundations of the Church's position. Nor, in 1883, did its other foundations seem insecure. To its own satisfaction the Committee effectively dealt with what it believed was the principle by which the Marriage Law Reformers were guided. This was the notion that a man should not marry his own blood-relations or their wives, but could marry the blood-relations of his wife, since his own blood really was in the former but not in the latter. This idea, the Committee conceded, might have some physical basis, but those who held it overlooked the fact that the law had been established for social rather than physical reasons. The additional confusion caused by bringing in 'the law of nature' was also criticised by the Committee,

1. Ibid.
2. Ibid.
which held that 'incest' was an unscriptural and imprecise term. Its use led people to suppose that matters could be settled by asking if a union was incestuous and then allowing it, if the idea of it did not 'arouse immediate horror'. It was, by contrast, enough, in the Committee's eyes, 'to warrant a law of prohibited degrees, that the preservation of chastity among near relations having close and familiar ties absolutely requires that all conjugal union between them be forbidden'. Such close and familiar ties, it considered, were formed by both husband and wife on marriage, and the prohibition was sufficient 'to prevent the rise of unlawful passion among those who have free and affectionate intercourse with each other'. Thus, in the case at issue, the law against MDWS allowed the DWS to 'live with him as a sister, take care of his children, as their aunt, have the freest possible intercourse with him and be joined in the warmest sisterly love'. The only reason for MDWS was thus no 'higher motive' than 'the gratification of sensual passion in one particular way'. The Committee then summed up its argument in these words:

'The morality of the marriage law in general consists in this, that the sexual instinct that belongs to human nature is to be never separated from, but always, as it were, wrapped up and veiled in personal and faithful love; and the ground on which marriage between near kin kindred is essentially immoral is that between such a moral and personal love already exists, so that a desire for marriage could only be an animal passion. Thus the matter comes to this, that

1. Ibid.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
if marriage with a deceased wife's sister is to be morally pure there must be no affection between them during the wife's lifetime. This might indeed be possible in oriental society, where a wife’s unmarried sister would be secluded from all intercourse with men, even her brother-in-law; but in other circumstances it could hardly be. Nor would it be desirable, even if it were possible, to put a check on the diffusion of family affection among those who are related by marriage. It is to be feared that the legitimising of marriages within the near degrees of affinity will tend to lower the idea of marriage, and to increase temptation to immorality. A man who after his wife's death receives his sister to live with him and take charge of his family, will presumably already feel for her all the affection of soul of which he is capable; and the desire for marriage in such a case cannot be a truly moral one, and, being merely or predominantly animal passion, may but too readily seek its gratification outside marriage.

In the much-advertised case of the very poor's need for MDWS, the Committee added, why were the Marriage Law Reformers not arguing for brother-sister marriage also? For the aunt called in to help with the children, and for whom there was only room enough to live as the widower's wife, might equally be a paternal as a maternal aunt. And even if she were the latter 'a man could not marry his sister-in-law immediately after his wife's death, nor could he safely have living with him one whom he loved with a view to marriage'. In any case, if people really were 'to the shame of this Christian land' so poor that they had not enough room, the answer was to improve their circumstances rather than to change the law.

Despite this return, at the end of the 1883 report, to Begg's universal remedy, it is not surprising that one member of the Free

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1. Ibid. pp.7f.
2. Ibid.
3. Ibid.
Assembly, after a few more years of hearing such arguments, remarked that the apprehension of moral chaos entertained by some of his brethren in connection with MDWS was 'merely the figment of a brain accustomed to deal with such matters in a theoretical way in the quietness of the study instead of working them out in the exigencies of practical life'. This speaker, Mr. R. H. Falconer of Carnbee, was not the first to break the unanimity of the Free Church's opposition to MDWS. This third change in the pattern was already discernible in 1879, when the M.P. Charles Cowan, although still opposed to MDWS, quoted Brougham's remark that 'he had just told his wife's sister that nothing on earth would persuade him to marry her' and urged the Free Church to stop agitating the question. This appeal had been totally unsuccessful. More open opposition however emerged in response to the report of 1883. In the Assembly of that year, Mr. Watson, an Edinburgh Advocate, challenged the view that the present law either prevented cases of MDWS or was supported by public opinion: the 1847 Royal Commission had disproved the former, and the statement, recently made in the Lords, that there were at least 5,000 couples living in this way in London 'not condemned by public opinion' disproved the latter. He proposed that the Free Church should leave the question alone, and was seconded by Charles Cowan. One or two other elders supported this, but then Rainy got

up and said that 'it was good that the difference had come out,' but someone had to draw a line somewhere and the Church ought to make its own views on the subject clear. These smooth words, followed by alarmist talk about everyone going to the Establishment to get married if MDWS was legalised and the Free Church was true to its principles, ensured that the traditional position was held by a vote of 194 to 52.

The argument about the Free Church holding to its principles after MDWS became legal was raised again a year later, but to the opposite purpose, when Brown Douglas the Edinburgh advocate and sometime Lord Provost, suggested that in view of the difficulties this would involve, the Free Church should drop its opposition. He had also found the Scriptural arguments unconvincing, especially as Leviticus was so full of other regulations, about 'the manner of worship, social duties, dress, food, etc.' which nobody now wanted to enforce. Again however, Rainy smoothed matters over with the observation that the church had to have a clear position on the subject; and the report and an anti-MDWS petition were again approved by a vote of 118 to 18.

In that speech Rainy had remarked that he had been 'unable to observe an intelligible theological position' in what those who argued for MDWS or for dropping the church's opposition said. Judging by the speeches of the minority who supported MDWS in the Free Assembly,

1. Ibid, p.169.
this was fair comment. Their commonest argument was that it was all very confusing: and in 1883, one elder, Mr. Tod of Edinburgh, had even remarked that since 'the Biblical question was practically given up' the whole thing now 'therefore turned on a question of expediency'. This was not strictly accurate: but it was understandable that the change in the church's method of presenting the Scriptural argument should have seemed - however logical its new arguments were - to have been something of a backtracking exercise, which undermined the Church's position.

Despite this however the minority remained a minority: only 46 voted for a do-nothing policy in 1888; in 1890 Mr. Falconer of Carnbee, amid laughter, did not even press a division; and in 1895, after a few years of silence from the Committee, only ten members supported a motion to discharge it. The majority decision was taken, as so often, on Rainy's advice. But the house was far from full, and it seems as if interest on all sides was flagging. A year later indeed only three members voted to discharge the Committee. Thus it

3. Vide, F.C.G.A.P. & D., 1890, Debates, p.253. Opposition to MDWS may have hardened at this point, since a Bill to legalise it in Scotland was before Parliament in 1889 and 1890. (Vide ibid. p.252, and F.C.G.A.P. & D., 1889, Report XXVIII, p.1.)
remained, silent but secure, to the end of the Free Church's separate existence.

By the end of the century the Church of Scotland Assembly also was silent on the subject of MDWS. The silence here however had fallen much earlier. Perhaps this was because the Establishment's unanimity on the subject had been broken earlier than that of the Free Church. The anti-MDWS petition of 1869, mentioned above,² had been opposed by a small but apparently determined minority of ten members; and although it was sent, and further petitions were sent by the 1872 Assembly and its March Commission,³ these appear to have been the last. (The terms in which they were couched were strongly constitutional, mentioning the protection of the Confession by the Union, and only adding a brief sentence about the 'mischievous consequences'⁴ of the Current Bill). A Committee to watch over an MDWS Bill was set up in 1876,⁵ and its Convenor, Dr. Phin, an opponent of MDWS, gave a brief verbal report in 1880⁶ but the Committee was not heard of thereafter.

1. The Committee's silence may in part have had to do with the fact that J.S. Candlish, its dedicated convenor during the last two decades of the century, died in 1897.
2. Vide, p.1.1 above.
4. Ibid, p.81.
2. Law and Liberty in the U.P. Synod: 1847 - 1900

The U.P. Synod was much more openly divided on the subject of MDWS than was either the Free or the Church of Scotland Assembly. The matter was first brought to its attention in 1853 when an overture from a member of a Glasgow congregation asked it to modify the relevant section of the Confession of Faith, on the ground that MDWS 'does not seem to be forbidden by the Word of God, and the civil law of Scotland'.

This request was turned down, and when a year later it was repeated, and memorials on the subject were received from two Glasgow congregations, the Synod again declined - but by a narrow majority - to pass any judgment on the matter, refusing even to set up a committee of investigation. The reason given in the overture and the memorials for raising the subject, was that since the church was divided on the question, and since Sessions were dealing with it in different ways, some U.P. members were under discipline for having done something in which many other U.P. members could see no wrong.

The Synod did not discuss MDWS again until over twenty years later, but when it did, in 1878, the question was raised in the same terms. On this occasion however the Synod was faced with a concrete problem. Mr. Steele, a member of the Sir Michael Street Congregation in Greenock, had married his deceased wife's sister (quite legally, for the marriage had taken place while they were

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1. U.P.S.P. (1847-1856) 1853, p.436. This request was made prior to the decisive case of Fenton v. Livingstone of 1861. It was also made by the same Synod which declined to pass judgment on the 'separation of Christian Spouses' question: Vide, Ch.8, 1 above.

abroad) and was consequently suspended from church membership. His minister and Session now wanted to know from the Synod whether they should excommunicate him, or whether he could be restored to full membership. The problem was one which the Synod found difficult to solve. It regretted that Mr. Steele had married his deceased wife's sister, especially 'as he contracted said marriage after he had been warned of the consequences'. At the same time however Mr. Steele had professed and promised 'to regard its claims as sacred', and at least some members of the Synod believed that 'the peace and edification of the congregation would be 'furthered rather than hindered' by restoring him to membership.

This was not the view of the majority of members however, and the Synod ruled that the law of the church made Mr. Steele's restoration 'inadmissible'. But it did not order his excommunication, and sent down to Presbyteries and Sessions an overture which it had received from his minister, asking it 'no longer to base the discipline of the Church on higher grounds than the consciences of many of the members and office-bearers of the Church will warrant'. When returns were collected in the following year, it was found that a majority of the office-bearers were in fact unsympathetic to retaining MDWS as a bar to church membership.

2. Ibid.
3. Ibid.
5. Ibid, p. 597.
This however was not decisive, for the Synod now rejected by a narrow majority a motion suggesting that MDWS cases should be left to the discretion of Sessions, and set up instead 'a large Committee' to consider the related questions of the civil law, and of liberty and diversity of opinion in the church. As a result of this committee's report, the 1880 Synod decided 'that no change be meanwhile made in the law and practice of the Church in this matter'. But again the vote was close, and the case of those who voted that the question should be left to Sessions' discretion had now been strengthened by the Synod's adoption of its Declaratory Act in 1879. This had extended to United Presbyterians greater freedom of opinion on questions dealt with by the Confession of Faith, and those who wished to leave matters to the Sessions argued that it had been 'authoritatively declared that' MDWS 'was a subject on which liberty of opinion is allowed'. The weak point in this argument however was the continuing illegality of MDWS.

Thus matters stood for another seventeen years, during which time the Synod did not discuss the question. But then in 1897 the Presbytery of Greenock brought an overture, advancing the same arguments as before, and observing that the 1880 decision had been 'to the effect "that no change be meanwhile made in the law and practice of the Church in this matter"'. In reply to this overture and to another, from the Session of Carron, the Synod by its customary narrow majority agreed that the overtures' proposal - that Sessions

1. Ibid
3. The Free Church did not pass its Declaratory Act on the subject until 1892.
4. U.P.S.P. (1880-1882) 1880, p.43. MDWS was not of course specifically mentioned in the Act, but it could easily be argued by analogy that it was a case of the type with which the Act could deal.
should use their discretion – should be sent down to Presbyteries and Sessions for their opinion.¹ The returns, reported to the 1898 Synod, were strongly in favour of the proposals: twenty-nine were fully in favour, five approved with qualifications, and only six disapproved. Of those which approved with qualifications, two (Lanark and Kelso) wanted the Synod to go farther and alter the Church's law so as to ensure uniformity among Sessions; and one (Kelso) decided by a majority 'that every effort should be made to get the law of the land relating to such marriages altered'.² Very few of the Presbyteries voting either way were unanimous in their decision, and two of those which fully approved, and one which disapproved, did so by their Moderators casting vote. But 122 of the 173 Sessions which replied fully approved, so that the majority undoubtedly favoured the proposal.

Despite this clear majority the Synod was still not ready to settle the matter. An overtureist put forward the argument that it was 'the obligation of Church members to obey the law of the land as a religious duty, except only where such obedience is, in the judgment of conscience, contrary to the law of God',³ and after the customary motions, to leave the question as it was, and to leave it to Sessions, had been proposed, the decision was shelved for a

¹. Ibid., p.49.
². U.P.S.P. 1898, p.213.
³. Ibid., p.51.
further year. When it was then reconsidered the two motions were again put. But the Synod adhered to its former position, deciding in this penultimate year of its existence that it was not 'expedient to proceed further meanwhile in the matter'.

The subject was not raised at its meeting in 1900, and thus the Synod left it, avoiding what no doubt could have provided the anti-unionists in the Free Church with further grounds for complaint.

3. The Flood and After.

For the first few years of the twentieth century the Church of Scotland and United Free Assemblies remained silent on the MDWS question. But in 1906 a Bill to approve Colonial marriages with a deceased wife's sister was passed by Parliament. The Bill was supported by the Government and not even debated in the Commons.

Winston Churchill, then Under-Secretary for the Colonies, attempted to reassure the Bill's opponents that the question of legalising any such marriages other than those of returned colonialists was not involved. But they had good reason to be apprehensive, for only a year later the Government introduced an MDWS Bill for Britain.

Hitherto such bills had been brought forward by private members. Now Government support was decisive, and the Bill was passed.

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1. U.P.S.P., 1899, p.23. It may be added here that some individual U.P.S. were notable opponents of MDWS. Duncan McLaren, for example, (although his brother-in-law, John Bright was an advocate of MDWS) took Free Church petitions against it to Parliament (vide e.g. F.C.G.A.P. & D, 1880, debates p.55); and William Kinnasy, the U.P. Professor of Sacred Languages and Biblical Criticism published in 1871 his Inquiry into the Christian Law as to the Relationships which Bar Marriage, a more readable anti-MDWS volume than that of Gibson. The opposition to MDWS of John Cairns and Andrew Thomson has already been mentioned.

3.1. The Peace of the U.F. Church.

What were the Assemblies to do? That of the U.F. Church, meeting in 1908, was presented with overtures asking advice, and after some discussion which exposed the conflicting opinions and traditions represented in it, decided to set up a Committee to look into the Church's position. One member of the Assembly, the minister from Carron who had brought an overture on the subject to the 1897 Synod, remarked that 'this came rather late in the day for many people. In his own Presbytery there had been at least two cases in which such marriages had been celebrated, and the Presbytery had taken the wisest course of dealing with the subject when they left the matter alone'.

The committee's report, presented to the 1909 Assembly, was not a long one. Noting the recent legislation, in which 'a difference has for the first time been created between the law of the Church and of the land', it briefly summarised the position of the Reformers and the Confession. In practice, it suggested, all Protestant churches accepted that Leviticus chapters 18 and 20 referred to marriage within certain degrees rather than to 'breaches of the Seventh Commandment'. These churches accepted, it continued, that 'strictly parallel cases' were implied (or else marriages 'revolting to morality' would be permitted) and that in the light of New Testament teaching what applied to men must apply to women. The only point at issue then was verse 18, which 'many in this and other Churches, whose loyalty to Scripture

cannot be questioned;\textsuperscript{1} understood as a prohibition not of MDWS but of marriage with a wife's sister during the wife's lifetime. Many others did not take this view: but the point was clearly disputed within, as well as outside, the church. 

Given that the law had now been changed, the Church, the Committee observed, had certain precedents provided by other Presbyterian Churches in countries where MDWS had previously been legalised. Of these, the strictest was the Church of Victoria, which had ordered its ministers 'to adhere to the Confession of Faith'.\textsuperscript{2} Secondly, there was the position of the Presbyterian Church in the United States, which had struck out from the Confession the words: 'The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own'. A third position was that of the Canadian Presbyterian Church, which had struck out only the first half of that sentence; and a fourth was that of the United Church of New Zealand, whose Presbyterian predecessors in 1885, "without committing the Church to an approval of such marriages, left it to the individual ministers and members to determine what course they shall pursue in celebrating or entering upon any such marriage, as they have to give account to God".\textsuperscript{3}

Of these precedents, the first did not appeal to the Committee, because of the number of U.F. members who did not believe that MDWS was contrary to the word of God. Nor did it like the second, related

\textsuperscript{1} Ibid, p.3.
\textsuperscript{2} Ibid, p.3. The Federated Church of Australia had given no judgment on the subject.
\textsuperscript{3} Ibid.
as it was to the laws of the several States which 'greatly vary and are in many cases extremely lax'. And the third, by making a distinction between the sexes, was not only contrary to New Testament teaching, but also failed to provide 'definite guidance as to what degrees of consanguinity and affinity forbid marriage to the man'. The New Zealand example however did commend itself, being compatible with the statement of the Declaratory Acts, by which MDWS could be interpreted as 'one of the "points which do not enter into the substance of the Reformed Faith"'.

Recommending this procedure to the Assembly, Dr. Archibald Henderson - convenor of the Committee, one of the Assembly Clerks, and formerly a Free Churchman - remarked 'that the line we have taken is in the interests of the peace of the Church'. Most members of the Assembly, he believed, would 'agree it would be an undesirable thing to have this sent down to the Presbyteries to be debated as an alteration on the Confession of Faith'. But the proposed deliverance - which declared 'that those entering into such regular marriages are not to be regarded as having thereby forfeited their standing and privileges as Church members, and that while every

1. Ibid.
2. Ibid, p.4.
3. Dr. Henderson was married to a sister of J. S. Candlish.
5. Ibid.
minister is entitled to refuse to solemnise such marriages, those taking part in solemnising such marriages shall be regarded as at liberty to do so'; obviated this difficulty by treating it as a matter of discipline, stating, as it were in advance, the position the Assembly would take were a case brought to it.

Personally, said Dr. Henderson, he was 'one of the old-fashioned people who stand by the Confession of Faith', but he was 'satisfied that others, studying the Word of God with more intelligence perhaps, hold a different position'. Under the circumstances therefore, he believed that the report and the motion 'will satisfy all parties in regard to our position and leave us all quite clear'. Strangely enough, after so many years of argument, Dr. Henderson was right. His motion was agreed to without even being debated.

3.2. The Church of Scotland: Scriptural, Philosophical and Constitutional Considerations.

The question of the recent MDWS legislation was raised in the 1908 Church of Scotland Assembly by Lord Belfour of Burleigh on behalf of the Church Interests committee. Balfour, a former Conservative Scottish Secretary, was convenor of this committee, which had been created in 1882 as the spearhead of Church of Scotland resistance to the Liberals' Disestablishment policy. Now another issue which threatened to disturb the church's relation with the state had arisen, and a special committee, with Balfour as one of its members, was

1. Ibid.
2. Ibid.
3. Ibid. Dr. Henderson added that the Committee had thought about making a statement on marriage with a deceased brother's wife, since there had 'been cases of that kind within our Church' (ibid). In the end however they decided not to raise this question.
appointed to examine the problem.  

The committee, under the convenorship of Christopher Johnston, the Assembly's Procurator (later Lord Sands, and one of the architects of the 1929 Union), began its work by examining 'the question whether marriage with a deceased wife's sister is to be condemned as contrary to divine law revealed in the Scriptures'.

Four Hebrew and four New Testament Professors from the Universities were asked for and produced memoranda on this carefully phrased question. None of the Old Testament scholars was willing to condemn MDWS on the evidence of Leviticus 18, although each dealt with the question in different ways. Professor D. M. Kay of St. Andrews argued that verse 18 was the prohibition of a special case of bigamy in a system prohibiting polygamy, and presenting evidence for and against the idea that the prohibition extended beyond the death of the wife's sister, left the question open. Professor W. B. Stevenson of Glasgow attempted to find some principle or principles according to which the list had been constructed, but admitted that the special phrasing of verse 18 meant that 'it cannot well be understood except as leaving the way clear for marriage with

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3. In the course of which he touched, not very conclusively, on the examples of Adam, Abram, Jacob and others. These cases, which were mentioned from time to time during the 19th century controversy were ones which anti-MDWS churchmen had never been very sure how to deal with.
a deceased wife's sister'.

Professor James Gilroy of Aberdeen rejected the idea that the cases mentioned in chapter 18 were 'illustrations of a principle, for no principle is laid down, and none is suggested - except it may be expediency or experience'; and in any case verse 18 was clearly a prohibition valid only during the wife's lifetime. And Professor A.R.S. Kennedy of Edinburgh, repeating this argument about verse 18, pointed out that since the wife became a member of her husband's family at marriage, but not vice versa ('according to the view widely prevalent in antiquity') the argument from analogy with the prohibition on marriage with a deceased brother's wife (verse 16) was invalid. Nor, he noted, was MDWS explicitly prohibited in mainstream Judaism (Professors Kay and Gilroy had also remarked on this, noting the exception of the 9th century Karaites' school).

Nor did the New Testament scholars condemn MDWS. Each of them-Allan Menzies of Aberdeen, William Stewart of Glasgow, Thomas Nicol of Aberdeen and John Patrick of Edinburgh - failed to find anything relevant to MDWS in the New Testament. The only New Testament reference they took up was the 'one flesh' phrase (Mark 10, 8, Matthew 19, 5ff., 1 Corinthians 6, 16 and Ephesians 5,31). But this quotation from Genesis 2, 24, had, they argued, nothing to do with the case. As Professor Stewart put it:

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1. Ibid, p.1280.
2. Ibid, p.1291.
4. Professor Nicol remarked that he 'deplored' the MDWS Act, but on social and not scriptural grounds. Ibid, p.1285.
Those who find in the words an utterance germane to the question of affinity must go back to the passage in Genesis, and find in it, if they can, a recondite, physiological doctrine. Whether Genesis in this passage does teach physiology I leave to the Old Testament exegetes to say."

This however was not a subject on which the Old Testament exegetes had chosen to say anything.

At this stage the way seemed clear for the committee to find that MDWS was not to be condemned on Scriptural grounds. But it was not going to be so easy. One of the committee's members was James Cooper, the high-church Professor of Ecclesiastical History from Glasgow, who had long been a violent opponent of MDWS; and who now presented the committee with a memorandum setting out the Scriptural and other arguments against allowing ministers liberty to celebrate such marriages.

In this memorandum, Cooper argued that the Church of Scotland, which did not make out a table but laid down a principle of consanguinity and affinity, was in accord with Scripture. The advice of the Hebrew experts, that MDWS was allowed under the Mosaic law, might be taken - but it should be understood that MDWS was only allowed in Leviticus as an exception which, it might be expected, would disappear (as it did in some Jewish quarters and in the church) with the further 'education of Israel' and when the principle was set forth in its logical completeness by Jesus. Jesus' teaching in Mark 10 and

1. Ibid., p.126a.
2. Vide, R.J. Wotherspoon, James Cooper, 1926, pp.128, 219, 239ff., 261 and 330. Cooper was later to be an active opponent of what he considered to be doctrinal watering-down in the discussions about Union with the U.F. Church.
Matthew 19 did not explicitly deal with MDWS, Cooper admitted (adding that 'we did not require to learn...that' from the New Testament experts). It was however reasonable to infer that his teaching on 'one flesh' dealt with the establishing of a relationship which had not simply one consequence - greater limitations on divorce - but many, including the prohibition of polygamy and 'a stricter and more consistent role as to affinity'. In addition to these texts however, Cooper went on, the consistent New Testament teaching on marriage was to the effect that the husband should 'restrain his passion', and Christendom had strengthened this check on the husband's desire, already present in the Mosaic legislation, by extending the prohibition to the deceased wife's sister.

Cooper's argument was in many ways similar to the revised Scriptural argument of the Free Church in the 1880s. He added to it by observing that MDWS was 'hardly consistent with the Golden Rule (S.Matt vii.12)' since he doubted whether the husband would be willing 'to extend a parallel encouragement to his wife', and remarked that the church should also consider 'the law of Christian Chivalry'. This law, whose Scriptural basis was found in Romans 15, 1 ('We that are strong ought to bear the infirmities of the weak'), and whose practical application in 1 Peter 3, 7 ('Giving honour to the wife, as unto the weaker vessel'), was endangered, Cooper believed, by

1. Ibid.
2. Ibid. p.1294.
3. Ibid. p.1295.
4. Ibid. p.1295.
5. Ibid.
'If (he wrote) Marriage with a deceased wife's sister is to receive the Church's sanction, a man may bring his brothers quite freely to his house, because his wife can never be their wife. But she (if she have any reason to dread his "passion of desire") must not invite her sisters! He can have the pleasure of his relatives' company; she, who, by the very fact of her sex, is likely to be more dependent on the society of her kindred, is to be debarred, in many cases, from their dear company! The weaker, in short, is to go to the wall. The man is to please himself, instead of giving himself up for his wife. And this, again, in the teeth of Scripture, which enjoins, not that the wife shall forgo her family, but "the man shall leave his father and mother and shall cleave unto his wife". 

How seriously Cooper's colleagues on the committee viewed the social and moral dangers he described here is not recorded. Many churchmen in the previous century had taken them seriously, and some still did. But was Cooper the best authority on the subject? At sixty-three he was still a bachelor, who 'throughout life...cultivated...old ladies...with ungrudged attention', and whose 'other main affection was for youth and especially for boys and young men'; since 1895 and until her death in 1909, he had lived with his aging mother; 'and never were mother and son more to each other', remarked his biographer. Only in 1912 did he marry, and begin 'a union of unbroken happiness'.

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1. Ibid, pp.1295f.
2. H.J. Wotherspoon, op. cit., pp.34.2f.
4. Ibid, p.266.
which lasted until his death in 1922. Such biographical details probably did not raise for Cooper's colleagues the suspicions they would have raised in a more cynical post-Freudian generation. At the same time, however, even they were unlikely to have considered him the best guide to the social implication of MDWS.

For guidance on the social and moral aspects of the question the committee had in fact turned elsewhere, and alongside Cooper's memorandum they had two others: from W. R. Sorley, the Cambridge Professor of Moral Philosophy, and from the Reverend William Davidson, the Aberdeen Professor of Logic and Metaphysics. Sorley, after comparing the near universal horror of incest with the widespread aversion to inter-racial marriages ('one might ask the question, is it worse for an Englishman to marry his deceased wife's sister than for him to marry a Hottentot?'), pointed out that what constituted incest varied from one society to another.

In the case of exogamous societies, he argued, 'a reflective member of an exogamous tribe' might 'anticipate McLennan' and the rest and

2. I.e. J.F. McLennan (1827-81) the Scottish lawyer whose Primitive Marriage (1865) had put forward the view that marriage and kinship customs went through the stages of (1) promiscuity, (2) kinship traced through females only, (3) kinship traced through males only, and (4) monogamy with kinship traced through males and females. This idea of Universal Evolution was discarded by later anthropologists, because, among other reasons, the data on which it was based was insufficient and contradicted by later fieldwork. (Vide R. Fox, Kinship and Marriage, 1967, pp.17ff.) Sorley seems to accept this.
understand that the 'curious prohibition' on his 'marrying a girl within the tribe' derived from the tribe having been 'originally constituted "maternally"'; if he did this 'he would or might see' wrote Sorley, 'that, whatever its original justification, that justification no longer held'. This, however, did not help to provide a universal rule of incest, since other kinship systems were different. Sorley therefore left this problem and made 'a jump to the modern question'.

The problem here, he wrote, was threefold: 'the criterion of the morality of the act in question is to be found in the ideal of marriage as moralising the individual, promoting social order and securing the education and welfare of the race'. If MDWS was neither illegal nor believed to be sinful, Sorley observed, it could not hurt individuals' morals, nor was there any ground for supposing that it affected offspring. Social order was the only real question. Marriage made a man to some extent a member of his wife's family, it was true: but her death, he held, altered 'the household (or rather "visiting") relations'; and in any case cousins, with whom marriage was allowed were as much involved in these social relations as sisters-in-law. The only other point was the notion that 'one flesh' made the wife's sister her husband's sister also - but while this satisfied 'some people's desire for a principle' it

2. Ibid.
3. Ibid.
4. Ibid. p.1288.
5. Ibid.
was 'arguing from a metaphor', and those who held the principle did not 'carry it out to its logical conclusion' which would extend indefinitely and perhaps even prohibit marriage with all (equally metaphorical) Christian brothers and sisters in the land. MDWS, Sorley therefore concluded, was 'not to be condemned on these grounds'.

Professor Davidson reached the same conclusion by a similar route. Beginning with roughly the same argument Sorley concluded with, he went on to ask what would be the social effect of legalising MDWS after it had been so long forbidden. Only good, he concluded. For a prohibition 'that is found not to rest on a rational basis cannot, in the long run, be favourable to character'. People would begin to resent it. 'Nor', he added, 'need the peace of a household be disturbed by the possibility of the sister of a wife becoming her successor, any more than it need be disturbed by the possibility of any other unmarried lady, who is a frequent guest in the house, becoming her hostess's successor': the sister was if anything less likely to be feared.

To these philosophical arguments, Davidson added some considerations of Christian Ethics, which brought a breath of fresh air into the foetid drawing-rooms of the ecclesiastical imagination:

1. Ibid.
2. Ibid.
3. Ibid. p.1289.
4. Ibid.
The whole tendency of Christianity (he wrote), as taught by Christ and as formulated by St. Paul, is to remove unnecessary burdens and enactments that have become burdens, and therefore hindrances, in the interests of morality and the higher life (see, for instance, Christ’s treatment of divorce). Nor must the "authority" of the Church be allowed to interfere with this. Surely the Spirit is constantly revealing truth and adjusting it to circumstances, — to wider knowledge and deeper experience on our part, and progress is possible in religion as in other spheres. Christianity is not a closed system, but is still a living and progressive thing; and that makes all the difference.

With the philosophers as well as the Biblical scholars finding no reason to condemn MDWS, the committee had now only the constitutional hurdle to get over. This was not a subject on which Professor Cooper had been able to put up much of a case. His only arguments had been, that since the 1907 Act confined itself to marriage as a civil contract, and since it provided clauses protecting Church of England clergymen from being compelled to celebrate MDWS (but not protecting them from ecclesiastical censure if they themselves contracted MDWS), there was no reason why the Church of Scotland should set the "very dangerous precedent" of changing her law or doctrine on the subject. This, he held, would be abandoning the church's hard-won position, and would "make Parliament, and not the Church, the authority according to whose findings ministers were to discharge their sacred functions." But Cooper had only three supporters on the committee, D.M.M. Milligan, an Aberdeen Elder, the Reverend Dr. T.W.B. Niven of Pollockshields, and Lord Balfour of Burleigh. The remaining twenty-two members seem to have been convinced - if they were not convinced

2. *A form of protection unnecessary in Scotland where clergymen were not compelled to marry anyone.*
before - by the Biblical scholars and the philosophers that there was no real reason for the church to disagree with the state. All that they needed now was a smart lawyer, and with the Procurator as their convenor and Mr. James Crabb Watt K.C. among their number, that difficulty was easily overcome. In a memorandum on the legal aspects of the subject Mr. Watt enabled them to argue that although the Church, under the 1707 Act of Security had 'a constitutional obligation to the state, as regards fidelity to her doctrine as ratified by law', 1 the state could not now make a constitutional complaint against the church if it changed its law on MDWS, because the 1907 Act had withdrawn the state's endorsement of MDWS as an incestuous marriage. (Although the Scots Parliament in endorsing the Westminster Confession had declared that its interpretation could not 'ever be made lawful by any law of man' Parliament, having unlimited powers, had been in a position to make MDWS lawful.) In any case it could also be argued that MDWS was not a matter of doctrine, and, further, that the clause added to the Churches (Scotland) Act of 1905, 2 giving the Church of Scotland power to amend her ministers' formula of subscription to the Westminster Confession, made change even easier. The Church, after the 1907 Act, was thus in a position where it could change its law, and was thus certainly, in the committee's view, in a position where it ought at least to reconsid

1. Ibid, p.1262.
2. The Act which had been necessary to sort out the Free Church case. The new formula gave the Church of Scotland ministers some of the freedom granted by the U.P. and Free Church Declaratory Acts.
its attitude now that it was free to do so. If it still believed that MDWS was contrary to divine law it could maintain the prohibition. But, if not, it was faced—as the committee believed it was—with the consideration that 'all the arguments of social expediency' against the Church legalising MDWS did not outweigh 'the inexpediency of attempting to maintain in the Church, on such grounds, the prohibition of a marriage regarded as valid by the civil law'. Such a prohibition would not work, would alienate people from the church, and could not 'preserve to the sister-in-law any position of privilege which she has hitherto enjoyed in virtue of the prohibition'.

Thus, protesting that their examination of the issue had 'been in no way influenced by the action of the State' and promising that any future changes would have to be considered afresh and not with this as a precedent, the committee recommended that an Overture, declaring any ministers celebrating or parties contracting MDWS free from ecclesiastical censure, should be sent down to the Presbyteries. Cooper, Balfour and their two allies lodged their dissent, on the grounds: that the proposal attacked the principle of affinity laid down in the Confession and reasonably inferred from scripture; that the Church would now have to find a new principle, thus disturbing 'the whole doctrine of marriage' and giving 'currency to loose and degraded views of this fundamental ordinance of Christian Society'; that many ministers would 'certainly refuse to obey'; that further prohibitions would be

1. Ibid, p.1236.
2. Ibid, pp.1236f.
relaxed; that the Church was not required to change; that 'for the Church slavishly to follow the State is to inflict a blow on its independence'; and that the desirability of keeping church and state laws in step could 'not justify a change of front so sudden and so complete'.

Despite all this the Assembly agreed to the committee's request; and the overture was sent to the Presbyteries, who approved it by 81 to 3. After this had been reported to the next Assembly, the Act XII 1910 was passed in terms of the committee's overture.

3.3. Some Subsequent Developments

Professor Cooper, defiant to the last, had along with five others recorded his dissent to the Assembly's MDWS Act. Eleven years later, in September 1921, he noted in his diary:

"Today (I think - anyhow this week,) Mrs. - "married" her deceased husband's brother - the first to avail themselves of the new Act of Parliament legalising it... The Headship of Christ' does not seem to require obedience to the Divine Law of Marriage: this comes apparently of denying that Marriage is a Sacrament, and feeling it needful to make it as much of a civil matter as possible. It is a sad feature of our Scottish Church History since the Reformation. Our standards are all right, but there is scant respect paid to them. The Chancellor, Lord Selborne, was right when he said the Deceased Wife's Sister Bill meant the destruction of a code.'

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1. Ibid, p.1268.
4. Ibid, p.29. "Whereas marriage between a man and the sister of his deceased wife has hitherto been prohibited by the law both of the Church and of the State: Whereas Parliament has now enacted that this marriage shall be lawful and valid as regards civil relations, and whereas this marriage is not contrary to any rule expressly declared in or plainly deducible from the Holy Scriptures, and the matter is one of interpretation which does not enter into the substance of the faith, the General Assembly, with consent of the majority of the Presbyteries of the Church, hereby enact and declare that marriage between a man and the sister of his deceased wife shall not be visited by any ecclesiastical censure or disability either upon the minister proclaiming the banns for this marriage or celebrating it, or upon the parties contracting it.'
5. Vide, Ibid, p.82.
Cooper had lived to see his fears further realised in the 1921 Deceased Brother's Widows Marriage Act. According to the traditional interpretation of Leviticus 18, this Act relaxed a prohibition clearly laid down in verse 16 of that chapter. None of the special arguments used in connection with verse 18 and MDWS applied here, although a case might perhaps have been made out in connection with the levirate law of Deuteronomy, chapter 25. In the event however the subject was not pronounced upon by the now re-united Church of Scotland. Nor did the Assembly say anything about the 1931 Marriage (Prohibited Degrees of Relationship Act). This Act permitted marriage between a man and (1) his father's brother's widow, (2) his mother's brother's widow, (3) his deceased wife's father's sister, (4) his deceased wife's mother's sister, (5) his brother's son's widow, (6) his sister's son's widow, (7) his deceased wife's brother's daughter and (8) his deceased wife's sister's daughter. All of these relationships were prohibited by the parity of reasoning argument of the Confession, and the first was explicitly mentioned in Leviticus 18, 14, such a union (according to the traditional interpretation) being threatened with childlessness in Leviticus 20, 20.

Although the Assembly said nothing about the 1921 and 1931 Acts at the time when they were passed, its Committee on General Administration did touch upon them in a 'Memorandum on Marriage Questions and Problems' which appeared as an appendix to its report to the 1933 Assembly.¹ The memorandum noted that the Assemblies of 1921/2 had not pronounced, and commented: 'it may be assumed that the liberty given by the Acts mentioned (U.F. 1909 and C. of S. 1910) would be extended to cover this relationship'.² It then went on to

¹ C. of S.G.A. Reports, 1933, pp.41ff.
² Ibid. p.46.
say, in relation to the 1931 Act: 'It may probably be assumed, with regard to the marriages of persons' mentioned in that Act that the attitude of the Church will be the same as that adopted in 1909 and 1910 by the two sections of the Church now united'.

These assumptions were perhaps fair enough in the light of the U.F. Assembly's earlier judgment. But in the case of the Church of Scotland they appear to have broken the promise given by the 1909 Committee: 'if any proposal should hereafter be made to alter the civil law in regard to any such marriage' (i.e. any other marriage involving the remaining prohibited degrees of affinity as well as consanguinity) 'it will be the duty of the Church carefully to consider her position in relation to any such proposal, and to resist and to refuse to recognise legislation sanctioning any marriage which she holds to be contrary to divine law'.

No such consideration of the matter by the Church as a whole appears to have taken place.

Nor was this the end of the story. The question of the Consanguinity and Affinity prohibitions was considered by the 1951-1956 Royal Commission on Marriage and Divorce, which recommended that a man or woman, after divorce, might 'marry during the lifetime of his or her former spouse any person whom he or she could lawfully marry at the present time if that former spouse were dead'. This proposal was opposed by the Archbishop of Canterbury. Giving evidence to the Commission he stated: 'It is supremely important for

1. Ibid.
the stability of the family and for the protection of its members from indulging in unlicensed thoughts or desires that there should be the strongest possible barrier against any thought or possibility of marriage with the brothers or sisters of a partner.¹ The possibility of marriage with an affine after death did not threaten the stability of the family and was in accordance with Canon law.² but divorce which could 'be planned for and brought about'³ did. It is interesting to see how the form of the nineteenth-century social argument was still being used although the point at issue had changed.

The Church of Scotland witnesses were also opposed to the Commission's proposal, but it passed into law under the 1960 Marriage (Enabling) Act. This further liberalisation of the law was in many respects a different issue to the 1907-1931 legislation, since it involved divorce, and it was the question of the remarriage of divorced persons as such rather than the marriage of a divorced wife's kin which concerned the Church of Scotland Assemblies during the late 1950s. As far as the Church of Scotland's attitude to the 1960 Act is concerned, Cox's Practice and Procedure in the Church of Scotland (1964 revision) uses much the same formula as did the General

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1. Ibid, p.300.
2. The Church of England initially (Lambeth Conference 1908) decided to regard MDWS as 'a marriage ecclesiastically irregular while not constituting the parties "open and notorious evil livers"', but there had been some difficult cases involving church-state dissension, and a revised Table of Consanguinity and Affinity, excluding the degrees relaxed by the 1907-1931 legislation, was adopted in Canon 99 of 1946. (vide Haw, op. cit., pp.122ff.)
Administration Committee in 1933, stating that 'it may be assumed that the Church will take no disciplinary action against persons contracting, or ministers officiating at' such marriages.

Those who believed, in 1909, that the legalising of MDWS would shatter a logical system and lead to further relaxation of the law have thus been proved right by subsequent legislation. Any attempt to find the application of a consistent principle in the Scots law of consanguinity and affinity is virtually impossible, and the 1969 Secretary of State's Committee on The Marriage Law of Scotland remarked of this branch of the law that 'its form is undoubtedly deplorable. It is the despair of the student and a labyrinth to the qualified practitioner'. What this committee’s findings also indicated however was that the process of progressive relaxation of the consanguinity and affinity laws which the opponents of MDWS feared was not unlimited. The committee, in attempting to rationalise the system did, it is true, recommend the removal of the now anomalous prohibition on grand-uncle - grand-niece marriages, but basing its arguments on social as well as genetic considerations, it recommended the extension of the prohibition to cover certain adoptive and illegitimate relationships.

1. Cozp. 56.
2. Cmd. 4011, p. 16.
CHAPTER EIGHTEEN
THEOLOGICAL AND OTHER PRESUPPOSITIONS

In concluding this part of the present study we shall review the churches' arguments against MDWS and ask what theological presuppositions informed them. The arguments used by the nineteenth century Established and Free Churches were of three kinds: Scottish and Constitutional, Social and Scriptural.

1. The Scottish and Constitutional Arguments.
It seems fairly clear that the Free and Established Assemblies' opposition to MDWS arose in the late 'forties not as the result of theological reflection, but in consequence of constitutional considerations with special relevance to Scotland. The Scottish churches, as we have seen, were not at this time particularly interested in theological reflection, and the forces of critical scholarship and evangelical liberalism, although gathering strength, had not yet cracked the hard shell of Hyper-Calvinism. The Westminster Confession, as the classical statement of that Hyper-Calvinism, was still uncritically adhered to, and because of the peculiar status awarded to it by the Scottish Parliament in 1690, any criticism of its teaching was seen as criticism of the Presbyterian Church itself. Had the Confession not enjoyed such status and influence it is at least possible that the Free and Established churches might have been more sympathetic to the permissive fundamentalist view of MDWS put forward by its English Dissenting and Evangelical Anglican supporters. For, as we have seen, it was among the United Presbyterians, who had been the first to grow restive under the Confession, that most support for MDWS was to be found.
Prior to the U.P. and Free Church Declaratory Acts of 1879 and 1892, and the Church of Scotland clause in the 1905 Churches (Scotland) Act, the churches' obligations to the Confession continued to play an important part in their attitude to MDWS. The fact that it was, until 1907, prohibited by the law of the land, also inhibited those who supported it, even when as in the U.P. Church they were in the majority. At the same time however those who opposed MDWS found it necessary to advance their case with scriptural and social arguments, and these were to be found in the petitions sent to Parliament by the Free and Established Churches. In the latter's case such petitions ceased after the early seventies, but the Free Church continued with its opposition to the end. In opposing MDWS and finding arguments to support its opposition the Free Church was lending to the MDWS issue the appearance of an ever-deepening constitutional crisis.

The Free Church, having perceived a constitutional crisis, defined the major issue involved as the question of whether the law of the land should rest upon Christian foundations. MDWS thus appeared to be a battle, perhaps a decisive one, in a war concerned with the question of Christianity's authority in contemporary society. It was possible, however, to define the issue differently. Considering the company the Free Church kept - High Church Anglicans and the Bishops of the Church of England, Scoio-Catholics like Cooper and members of the Scottish Church Establishment in general - and considering those who were in favour of MDWS - Anglican Evangelicals, Nonconformists and U.P. voluntaries - it could have been said that the issue was not so much the authority of Christianity as the authority of high-churchmen and conservative religious establishments. It was therefore by no means obvious (as the Church of Scotland leaders after 1875 perhaps realised) that MDWS was crucial or a crisis.
Despite this it is possible that many members of the British public may have seen the U.F. and Church of Scotland Assemblies' response to the 1907 Act as an undignified climb-down by these churches, and perhaps even as a defeat for religion. At the time Cooper characterised the Act as

'a reversal to the Naturalism (which at this moment is so strong and dangerous an element in popular literature), and to purely animal conceptions of the sexes...a return to pagan ethics - to lax Hellenic standards, even lower than those of pagan Rome'.

He then went on to describe the Church of Scotland's position as

'slavish Erastianism, an uncalled-for abandonment of the Church's whole tradition of spiritual independence, and the way to public contempt...a surrender of the claim to educate the general conscience'.

Hearing this, members of the public, if they took the matter at all seriously, may well have found Cooper's view plausible, for the Churches were now accepting, for the sake of their peace, what they had so long resisted as if it had been a matter of life and death - a law which one of their authorities (Gibson) had once attributed to "the spirit of levity, latitudinarianism and German rationalism". The general impression that once again the church had been made to submit to the state would have seemed even more plausible to those who remembered earlier nineteenth-century battles in which the right to civil marriage and divorce had been won - but who forgot that the Anglican bishops had been in favour of civil marriage, and that neither battle had been fought in nineteenth century Scotland thanks to public opinion at the time and the Scottish Reformers in the past.

2. Ibid.
MDWS thus became a constitutional battle which the churches appeared to lose, not because MDWS was intrinsically an issue of such great significance, but because Free and other Scottish churchmen decided to define it as if it were. When Parliament acted in 1907, it did not unsettle the Christian foundations of the state. It acted rather out of political expediency (made necessary to some extent by the prior action of the colonies), in a matter which the churches had failed to settle among themselves.

In the light of this it becomes clear that the constitutional arguments about MDWS did involve theological presuppositions and that these theological presuppositions had very little to do with MDWS as such. The theological presuppositions involved were rather about the nature of the church. The Scottish opponents of MDWS spoke as if faithfulness to the Confession made them almost automatically the accredited interpreters of God's will for church and nation. There seems to have been little doubt in their minds that God addressed society and the civil government through the church, and that the church's right to address all and sundry was guaranteed by adherence to its tradition and spiritual independence. This point of view, which is most obvious in what the Free Church had to say, overlooked many things, and not least the many divisions in the church - within Scotland and within Britain as a whole - which made it difficult for Parliament, even if it was willing to listen, to know whom to listen to. But it also overlooked the equally important consideration that God might address mankind in other ways than through a church which adhered to the letter of its tradition, and that a better way of understanding God's contemporary word might be by the church engaging its tradition in dialogue with other possible sources of Divine illumination, however unexpected these sources might be. As it was the churches chose the less profitable way of opposing many other possible sources of Divine
illumination so long and so vehemently that when they eventually found a point of agreement which could be accommodated by a modification of the church's tradition it looked as if the church had once again lost a battle. If the church had accepted in a more positive spirit the advice of Professor Davidson in 1909, that 'the spirit is constantly revealing truth and adjusting it to circumstances', that 'the "authority" of the Church' must not 'be allowed to interfere with this', and that 'progress is possible in religion as in other spheres', then not only might the consanguinity and affinity laws of Scotland thereafter have been dealt with less unsatisfactorily, but also perhaps the church might have been able to shed some of that defensiveness about her own authority which was to make her response to the spiritual needs of the twentieth century less than adequate.

2. **The Social Arguments.**

The churches' arguments against MDWS were not however solely constitutional and ecclesiastical. Social arguments, as we have seen, played an important part from the beginning. These arguments seem to have rested from an early stage upon theological presuppositions which can be summed up by saying that in the Divine economy the combination of original sin and sexual desire could not be held in check, nor positive sexual affections between members of the larger family allowed room to develop, unless a carefully maintained system of consanguinity and affinity prohibitions was maintained by law in every traditional detail. If the legal circle was broken at any point, original sin and sexual desire were so strong that no end could be seen to the number of further prohibitions which would be dispensed with.
These then would seem to be the theological presuppositions of the social arguments against MOWS. But take away the words 'in the Divine economy', and replace 'original sin' with 'human nature' and you are left with a view so fully congruent with the conventional nineteenth-century conservative middle-class view of the family that it is difficult to know what significance to give to theological reflection as a determining factor in creating the social arguments. No doubt the theological reflection of previous centuries had helped to create the conceptual framework of nineteenth-century conservative middle-class thinking about the family, and no doubt Evangelicalism had helped to create the mood which produced that thinking. But the form which it took and the intensity with which it was defended also owed a great deal to factors of a sociological rather than of a theological nature.

By about 1850 the middle class family had become an important, ubiquitous and moralising social institution. Its way of life was not in many respects new, and it owed not a little to that of well-to-do puritans in earlier centuries. But it was now enjoyed by a greatly enlarged number of people, many of whom had only recently risen to wealth and respectability. To these people middle-class family behaviour signified their social identity, distinguishing them from the upper and lower classes alike (although the former were perhaps now more moral, and great efforts were being made to moralise the latter). At the same time however, in the mid-century equilibrium the middle classes and their family life were far from secure. For the time being the threat of a violent revolution in Britain had passed, but it had not been forgotten. And the security of the middle-class home depended upon the fluctuations of a commercial and industrial world which was far from stable, and which,
if things went wrong, could spell disaster and disgrace. There
was, certainly, still an abundance of servants, on whose presence
the smooth running of the home depended; and to some extent the habits
of deference engendered by centuries of feudalism had been transferred
to the master-servant relationship. But deference was far from
universal (it is difficult to see how it could have been, for
example, in households where the mistress’s mother had herself once
been in service, especially when alternative forms of employment
began to become available), and the precarious order created by wealth
had to be reinforced by a firm insistence upon the observance of the
proprieties.

For the family life of the new middle classes to survive it
was therefore important for the principles by which it was governed
to be clearly recognised and carefully observed. Without the
weight of a stabilising tradition behind them, the new middle classes
had to make great efforts to ensure that the pattern they chose to
follow was established. Thus they were not sufficiently confident
of their way of life to tolerate anything which threatened to upset
any part of it, for that might well threaten the whole.¹

The new middle classes were not however unanimous about what
constituted a threat to their way of family life. Some thought
that prostitution was a threat to it, others that it reinforced it.
Divorce, by contrast, seems to have been very commonly seen as a
threat, which is understandable, since unlike prostitution it in-
evitably undermined the principles which were being established.
In this context some and not others perceived a threat in MDWS.

¹. On this subject vide Franz Steiner, Taboo, 1967 Pelican
The threat perceived in MDWS was two-fold: MDWS was a threat in itself, and it was a threat as the first of many other relaxations. How far the social realities of the time were reflected in the first of these is difficult to say. Opponents of MDWS hinted that legalising MDWS would probably lead some husbands and their sisters-in-law to poison the unfortunate wife; and Gibson, putting the case in more general terms, remarked:

'It is a well-known fact, exhibited in many frightful instances in the Bible, recognised even as a principle of law in modern times, verified in the history of mankind, and awfully demonstrated in the records of criminal courts, that cruelty and lust, impurity and bloodshed, are fearfully allied. Everything that tends to break down the just and reasonable barriers which God has raised to restrain the gratification of impure passions, is not only a restraint and check upon impurity, but upon cruelty and violence. Every one who can read and observe, knows what multitudes of murders and acts of violence are the fruit of impure passions, and the danger, consequently, of diminishing the horror of their indulgence. To go no further, look at the cases of Rush and the Mannings in England, Kirwan in Ireland, and the late Glasgow murders in Scotland.'

Even if it could not be proved that MDWS would lead to murder being committed or contemplated, the reality in Gibson's eyes was bad enough. 'I believe', he wrote 'that it could be made out, could we get access to the actual facts, that in almost every one of the cases where marriage has ensued between a man and the sister of his deceased wife, the attachment has been formed, and the arrangement contemplated, before

1. Turner, op.cit., p.122. The suggestion was made at a Glasgow meeting and (ibid) 'received with cries of "hear, hear"'.
2. Gibson, op.cit., p.143. As an afterthought he added, in a footnote (ibid), 'The history of Nunneries furnishes an illustration of the same terrible truth'.
the first wife was removed from the stage of time'.

Gibson's views were, of course, as we have seen, extreme even in Free Church circles, but in a modified form views of this kind do seem to have been prevalent among considerable numbers of the opponents of MDWS. But their origin need not necessarily require evidence that they reflected either contemporary social reality or even repressed and frustrated sexual desires in men like Gibson.

Once perceived, a crisis in society whether real or imaginary, takes time to disappear, especially if influential individuals or groups have an interest in keeping it plausible. That the MDWS issue might be a social crisis was something which could be made to seem plausible in the context of nineteenth century middle-class society, and all the more so when the possibility of its leading to further undermining of the middle-class family was also made to seem plausible. Evidently not all members of the middle classes were convinced that there was fire behind the verbal smokescreen, and additional reasons were required in some cases to believe in it. But members of the Assemblies, already predisposed by constitutional considerations to sense a crisis, had additional reasons sufficient to activate their latent apprehension about society.

3. The Scriptural Arguments.

The Assemblies' apprehension about society was also activated by their fears for scripture. By the 'eighties a crisis had been perceived here also, and the modification which the Free Church's scriptural arguments underwent in that decade was a reflection of the wider

1. Ibid. (This conviction gave him the incidental bonus of an extra scriptural argument against MDWS, for, if true, it was, according to Matthew, 27, 28, adultery.)
problem. The particular form taken by the scriptural arguments against MDYS deployed in the 1883 report, reflected the fact that J.S. Candlish, the committee's convenor, had been a supporter of Robertson Smith the Semitic Scholar, and the fact that Robertson Smith had, in 1881, been removed by the Free Assembly from his professorial chair on account of his advanced views about the Old Testament.

The 1883 report, as we have noted, modified the scriptural arguments against MDYS in at least four ways: it abandoned arguments based upon the Old and New Testament use of 'one flesh'; it accepted that Leviticus 18, 18 might be a prohibition of polygamous marriage with a wife's sister during the wife's lifetime; it accepted that the underlying principle of the whole chapter, as far as affinity outside the direct line was concerned, might be a ban on marriage with the wives of blood-relations, but not the blood-relations of wives; and it declined to argue on grounds which had anything to do with the natural horror of incest.

The significance of these modifications was two-fold: they represented a much more open-ended attitude to the findings of higher criticism, and they represented an attempt to establish a more rational and modern basis for consanguinity and affinity prohibitions. Both of these tendencies were congruent with the spirit of the movement of thought in which Robertson Smith had been involved, which attempted by the use of modern scholarships to disentangle the positive ethical religion of Hebrew monotheism from the savage and primitive taboos of magic and superstition.¹

Modern biblical scholarship thus led to the conclusion that

¹. Vide F. Steiner, op. cit., chapters IV - VI, passim.
Leviticus marked an earlier stage in the development of those 'rules of conduct for the regulation of man's contact' with 'a friendly God' which were part of 'religion proper' and which were fully revealed in the Christian era. The Christian 'general principles' of the inviolability of marriage and 'the equality of the sexes' were, in this context, guides to the proper understanding of scriptural teaching as a whole, which provided the tools for drawing out from Leviticus a social and moral code suitable 'for the state of enlightenment and humanity that we have now reached'. This code was not to be confused with superstitions and irrational survivals of primitive and magical views about incest.

This revised version of the scriptural arguments against MDWS involved both continuity and discontinuity with Calvin's approach to the subject. Two key ideas are present in both, but in each case they take a different form. Both Calvin and Candlish assume (1) that it is rational to interpret Leviticus 18 by parity of reasoning, and (2) that God's revelation is a progressive one. The first of these, the rationality of the system was of course always a strong plank in the churches' defence of the system; and in Calvin it was supported, as we saw, by the argument that although scripture, confirmed by the witness of the spirit, made God's will in these matters plain to men who might otherwise be blinded to it by their own sinfulness, even those who had not this advantage sensed in these matters what God's will was. They sensed it in the light of nature alone, so deeply had God engraved it in human hearts.

1. Ibid, pp.74f. The phrases are from Robertson Smith's Religion of the Semites (1889 and 1894)
Now this view of the natural had, since Calvin's time, been considerably undermined. Philosophy had undermined the possibility of arguing from it and anthropology the practicability of doing so. Calvin's own position indeed had foreshadowed these developments. For with his many hidden assumptions about the 'clear' meaning of scripture as an index to the natural he had moved the discussion forward from mediaeval concepts of natural law to a point where his emphasis upon the effect of sin upon human understanding became a precursor of later scepticism. These developments meant that Protestant theologians and legal theorists distrusted arguments based upon natural law, and that the theologians relied if anything more heavily upon scripture. Gibson, for example, discussed the bearing of natural law on MDWS only very briefly, concluding that since so little could be learnt from it 'we must therefore have recourse to the word of God'.

The change which thus overtook Calvinism meant that it had 'turned for support from speculative argument to scripture and experience', even that it had begun 'over again as a scriptural piety'. The rationality of interpreting Leviticus 18 by parity of reasoning had thus, by the 1880's, become the common-sense of so doing. In essence this common-sense was no more precarious than Calvin's rationality. In practice however it was much more precarious, for such common-sense depended upon contemporary notions of what was the right understanding of scripture and what was the right understanding

of social utility; and these notions were now much more subject to change. Nor moreover were they any longer notions held in common by a sufficiently large proportion of the population for them to be easily enforced by law. The theological presupposition of Calvin's position - that the prohibition of incest was not simply a political law but something which God had implanted in human nature at its deepest level - might have been sufficiently plausible in the sixteenth century for affinity laws based upon it to be generally accepted. But, in the nineteenth century, the implied theological presupposition, that the same laws were a code which God wished men to disentangle from and construct upon the Levitical foundations in the general context of scripture, was much less plausible, especially as christians themselves were so divided about the line of reasoning involved.

Thus, as we have seen, the discontinuity in the idea that the code was a rational one tended to produce the impression that the scriptural argument against MDVS had in fact been discredited, and in the end the attempt to establish a more rational and modern approach to consanguinity and affinity prohibitions was carried much farther than Candlish and his committee had intended. The other key idea present in their thinking as in that of Calvin - the notion of a progressive revelation - had a similar fate.

That the idea of a progressive revelation was part of Calvin's teaching is not immediately obvious from his handling of Leviticus 18, but there is evidence elsewhere in his writings that he held it. 1

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1. Vide, e.g. Institutes II, 10, 20: 'The Lord held to this orderly plan in administering the covenant of his mercy: as the day of full revelation approached with the passing of time the more he increased each day the 'brightness of its manifestation'.
It was of course a progressive revelation which culminated in Christ and was thereafter embodied in Scripture. This too was also clearly intended in the 1883 report with its emphasis on New Testament principles. At the same time however the 1883 report contained an element of discontinuity which is discernible not so much in what was said as in the way in which it was said. Phrases like 'the stage of moral progress which they had reached', referring to Leviticus, and 'the state of enlightenment and humanity which we have now reached' have an unmistakable nineteenth-century ring about them, which signal the discontinuity. They seem, in short, to owe a great deal to the favourite nineteenth-century view of progress; and although this idea may have had its antecedents in Christian ideas of providence it had become sufficiently secularised, before passing back into the ecclesiastical discussion of MDWS, for some discontinuity to become apparent.

One consequence of this appearance of progressive revelation in the guise of nineteenth-century progress (or nineteenth century progress in the guise of progressive revelation) was the possibility that further progress might imply change rather than stability in the consanguinity and affinity code. Once the argument had reached the stage of interpreting Leviticus in terms of general principles of New Testament teaching such as the inviolability of marriage and the equality of the sexes, it was equally possible to interpret it, as Professor Davidson did, in terms of other general principles of the New Testament such as those aimed to remove unnecessary burdens and enactments which have become burdens, and therefore hindrances, in the interests of the

higher life'. This possibility however was not seriously taken up by the churches either in 1883 or during the following quarter of a century; and when it was taken up, it was seized not at all enthusiastically, and simply as a way of getting out of difficulties over MDWS, rather than as a way of re-appraising the whole consanguinity and affinity system.

Why was this option not taken up? Several reasons may be suggested for what happened around 1883. At that time the Free and Established churches were still tightly tied to the Confession; and in the Free Assembly at any rate, the social arguments against MDWS still seem to have carried a good deal of conviction. But of at least equal importance was the vexed question of Biblical Criticism. Robertson Smith's removal in 1881 had not removed the problem, and had revealed a deep division of opinion. Those, like J. S. Candlish, who supported him were not going to abandon their critical studies. But if it were to be shown that these critical studies might have practical consequences in the realm of morality, consequences which might moreover, by overturning the church's position in the MDWS case, undermine her authority, then perhaps neither the church nor criticism would gain anything. Nor for that matter did the prospect of further public wrangling over criticism appeal to many of those who had defended or sympathised with Robertson Smith.

But if these considerations go some way to explain why the Free Church did not develop its thinking on MDWS in 1883 along the lines of a more positive approach to the whole subject, it is more
difficult to explain the U.F. and Church of Scotland Assemblies' action in these terms. In the U.F. case many of those who had opposed the development of criticism had either become Free Presbyterians or Wee Frees or had died: the U.F. Assembly also contained a substantial proportion of ex-U.P.s, in whose Synod the idea of modifying the Confession of Faith had once been canvassed.¹ Nor, after its long silence, can it be easily assumed that anti-MDWS opinion in the Church of Scotland was strongly represented outside the small group of Scoto-Catholics led by Cooper. Neither church moreover was so bound by constitutional factors that it could not afford to re-appraise the whole question of consanguinity and affinity prohibitions and the scriptural arguments were now seen to be so ambiguous that the subject obviously demanded re-appraisal—especially since the law was now too anomalous to remain for long in its present state.

If these arguments are not in themselves enough to account for the churches' failure to re-appraise the subject as a whole, the only conclusion must be that the social arguments, even yet, carried considerable weight in the churches, and that those, like Dr. Henderson, who still held on to the Confession's interpretation in the teeth of biblical criticism, were still too influential to ignore. It is more difficult to say whether such considerations were responsible for the churches' silence on later occasions when further prohibitions were

¹ Vide: Ch.17, 2, above. The arguments against following the Canadian and U.S. solution of modifying the Confession, used in the U.F. Assembly in 1909 discussed the possibility only in terms of the problematic methods of modification used by those churches. The possibility of dealing with it in other ways was not discussed.
relaxed. Perhaps by 1921 and 1931 the subject was considered too unimportant to consider, and certainly too unimportant to stir up the old hornet's nest over.

Beyond these considerations however, it is difficult now to escape the impression that a compelling reason for letting these sleeping dogmas lie was the fear of disturbing the peace of the church not so much from internal conflict as from a situation in which it would be forced into battle in defence of a lost cause. The fear perhaps was that neither scripture nor the church could have anything authoritative to say, and that hence the authority of the church would be damaged. The practical question was thus left to the lawyers on the General Administration Committee, and the theoretical one abandoned to anthropologists.

Perhaps this was wise. The prospect of another battle like MDWS being conducted by a General Assembly promised no less absurdities than its nineteenth-century counterpart, for membership of that body did not afford an individual any greater protection from muddled thinking or folly than membership of the general community. Yet the issue of consanguinity and affinity prohibitions, although perhaps not the most pressing one facing the general community, was now somewhat muddled and might have benefited from a little reflection. But should such reflection have been left entirely to lawyers and anthropologists, who might have known a great deal about legal and anthropological aspects of the question, but were not thereby qualified to express the mind of the community upon it? And was it not perhaps incumbent upon the Church of Scotland, which continued to be very intimately involved in the marriages of the people, to undertake a re-appraisal of the subject on behalf of the people it married and in dialogue with them and with those who had studied the scriptures,
the law, anthropology and, eventually, genetics?

The reasons why it did not do this, as we have seen, arose from its crisis of confidence in its own and scripture’s authority. But since this crisis was largely self-manufactured, it might have been possible to manufacture a way out of it. Above all it might have been possible to look once again at the two key concepts of human nature and of a progressive revelation, asking what sense could be made of the former, despite all that had been said about it by philosophers and anthropologists, and asking what sense could be made of the latter, despite all that had been said against the idea of progress after the Great War. If this had been done, the question of the theological presuppositions of the churches’ pronouncements on MDWS would not have had to end with the observation that in the end they had none.

It is perhaps a necessary post-script to this to point out that contemporary Old Testament scholars, such as N.H. Snaith and M. Noth make the following observations on Leviticus 18:

"It is always assumed that this section deals with the prohibited degrees, but the Hebrew does not say ‘marriage’ and some of the instances can scarcely involve marriage."

And

"the chapter...forbids sexual relations within certain degrees of ‘relationship’ (there is no reference in the basic form to marriage).... It looks as though originally it had not been a definitely demarcated circle of blood-relationship that was being considered, but rather those normally living together in the circle of the grandparents, in tents or houses. The basis of the whole would then seem to have been a tribal code strictly forbidding all promiscuity within the circle. To this code Israel held fast, even in settled conditions, in opposition to the despised adherents of the ‘Canaanish’ city culture and all

In connection with the once-momentous verse 18, Noth observes:

"Verses 17, 18 deal specially with marriage... simultaneous marriage with a woman and her daughter or granddaughter or sister are forbidden, which is understandable, if marriage was also reckoned a blood-relationship"...The reference to the lifetime of the woman in v.18 expressly forbids such marriages only if they are simultaneous. For the rest, vv.17, 18, dealing with the marriage-bond are perhaps a later accretion on vv. 7 - 16.²

Snaith, writing in the British context, is even more to the point:

"18. This has nothing to do with marrying a deceased wife’s sister".
What were the theological presuppositions of the church's pronouncements? What problems did those pronouncements and presuppositions create for the churches? And can subjects of the kind pronounced upon be set in some contemporary theological perspective which helps to resolve these problems? In concluding this study, and taking the three preceding parts into account, some attempt to answer these questions may now be made.

1. Nineteenth-century Presuppositions.

What were the churches' theological presuppositions? Although 'theological presuppositions' has been used throughout this study in an inclusive sense, embracing not only explicit theological judgements but also the theological presuppositions of value-judgements, and even the theological implications of pronouncements, the crop of theological presuppositions has been extremely meagre. It may of course be that a more rigorous search for the theological implications of the pronouncements would have yielded a richer harvest of presuppositions. The danger however is that such a search might also have yielded theological presuppositions which those who made the pronouncements never entertained - for the fact that pronouncements are ecclesiastical does not establish that the presuppositions on which they rest are of necessity theological. Before summing up the theological presuppositions of the church's pronouncements therefore it may be useful to distinguish between theological presuppositions and non-theological presuppositions, and between presuppositions related to sex, marriage and the family.
and presuppositions unrelated (or not directly related) to sex, marriage and the family. Such a distinction must to some extent be an arbitrary one, and in practice it is not always easy to maintain because the churches' pronouncements normally rest on more than one kind of presupposition. It may however help at this point to clarify some issues.

1.1. Non-theological Presuppositions.

The major non-theological presuppositions of the churches' pronouncements may be said to have reflected social, cultural, ecclesiastical, political and personal factors in the context of pronouncement-making. In the first part of this study such factors were seen to have influenced not only what was said and how it was said, but even the fact that anything was said at all. Among other factors, the following were noticed. The middle classes were interested in social stability, and identified sexual and spiritual disorder among the lower orders as a threat to that stability. Middle-class Scotsmen were interested in finding in their national past a cultural identity which would deliver them from the disorienting effect of having lost both their political independence and the real or imagined certainties of a pre-industrial society. Middle-class Scottish church leaders were interested in recovering something of the authoritative role they had once played in society; they were interested in turning whatever they said to the advantage of their respective denominations; and a relatively small number of them were able to promote interests they believed in as long and as far as the silent majority of their colleagues were prepared to trust them.

Not dissimilar non-theological factors were noted in the second and third parts of the study. Social and political factors clearly played an important part in the strongly middle-class and constitutionalist
Free and Established churches' discussion of the marriage affinity question, which appeared to threaten not only the stability of society, but also the constitutional and social authority of the church. In the case of state-regulated prostitution also, the authority of the church seemed to be in danger. Here, while the political factor of church-state relationships divided the churches, and what they said or did not say thus varied, the sense of Imperial responsibility (a national factor of a different kind) provided a common bond.

Personal factors were influential in these pronouncements also. For since public opinion on both subjects was divided, and since the Christian tradition provided no teaching sufficiently coherent and sufficiently widely acceptable to the British churches for them to take a united stand, and since any examination of the complicated moral issues involved provided arguments equally supportive of policies of attack, defence or silence, the Scottish churches tended to accept the advice of those among their leaders who were most committed to the respective attacking or defending movements. The remarkably passive way in which church courts seem in the main to have deferred to the opinions of their leading members and the absence of more than minority opposition to the policy of committees which in turn often reflected the opinions of those leading members, suggests not only that the matters discussed in the second and third parts of this study were peripheral to the interests of average churchmen, but also that average churchmen attending the Assembly were participating in an exercise much less genuinely democratic than has sometimes been supposed. The great influence exerted by leading churchmen thus tended, in general, to make for consensus pronouncements and to inhibit serious criticism.
of these within the churches.  

Taking the non-theological presuppositions as a whole then we find a large measure of congruence between them and the social, cultural, ecclesiastical, political and personal interests of the middle-class and middle-aged Scottish churchmen who made the pronouncements.

1.2. **Theological Presuppositions Unrelated to Sex, Marriage or the Family.**

The theological presuppositions of these pronouncements are not easily disentangled from those which have just been considered. Often all that justifies a distinction being made between them is that the former are presuppositions of pronouncements which make reference to God, Scripture or the Confession, while the latter are presuppositions of pronouncements which make much the same points without making such references. But given this, what were they?

The major theological presuppositions which bear little direct relation to sex, marriage and the family concern for the most part: (a) each church's own self-image and its relation to the state, society and its membership; (b) Scripture; (c) social relationships. Few of these theological presuppositions, as has been suggested, are markedly different from those of a non-theological nature; but at the same time it cannot be denied that theological factors were among those which kept the churches apart and which shaped each church's peculiar relationship to the state, society and its own membership. Nor can it be denied that a theological basis was presupposed

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1. Professor Cooper's biographer (Wotherspoon, *op.cit.*, pp.230ff.) argued that a shift in this direction took place as a result of the enlargement of the Assembly (i.e. that of the Church of Scotland) during the later nineteenth century. It became (ibid)' less of a Court and more of a popular gathering, less of a deliberative body and more of an audience. Its lay element had become more fluctuating in composition and the proportion of members strange to its forms and unfamiliar with its topics was larger'.

by each church for the authority with which it interpreted God's will, and for the belief that this authority derived from the authority of the Scriptures which were being interpreted. Nor again can a theological foundation be denied to the churches' sense of obligation with regard to 'the lawful procuring and furthering the wealth and outward estate of ourselves and others' - as the Shorter Catechism (Question 74) and James Begg put it. How far the churches' pronouncements actually furthered this or any of their other theologically-based aims is of course a different question. The point being made here however is that theological factors were involved in presuppositions of this kind and that presuppositions of this kind are reflected in the pronouncements. In the light of this it is not unjustifiable to suggest that when the pronouncements were not primarily influenced by non-theological presuppositions, they were frequently influenced by theological presuppositions which bore little direct relation to sex, marriage or the family.

1.3. Theological Presuppositions Related to Sex, Marriage and the Family.

What then of the presuppositions directly related to sex, marriage and the family? The substance of these can perhaps be stated adequately enough in the following summary fashion.

1. According to God's Word: monogamous marriage was ordained by God for the mutual help and comfort of husband and wife, for the increase of mankind and of the church, and for the prevention of uncleanness; the legal basis of marriage should be consent, provided the parties are not related
within the forbidden degrees; and divorce and re-marriage of the innocent party should be allowed on the ground of adultery or wilful desertion.

2. God requires all men and women to be chaste in heart, speech and behaviour.

3. God requires all men and women to preserve the honours and duties of their places and relations as superiors, inferiors or equals in the family and society.

In addition to these three it might be necessary to add a point about the status of women, since this was raised by the U.P. and Free churches when they defended the civil liberty of women in the matter of state-regulated prostitution, and by the Free Church when it argued that women were not at liberty to marry their sisters' widowers because in God's sight they were equal with men. Exactly what point should be added about this, however, is difficult to determine. In principle it can be argued that the Calvinist tradition acknowledged the equality of male and female. Commenting on Genesis 2:18, Calvin prefers to read, 'I will make him a help "which may be like him"', since, as he puts it 'Moses intended to note some equality'; and in general Calvin emphasises the element of companionship, which implies some idea of equality. But how far Calvin intended the idea of equality to go is not clear for the woman's role is defined only in relation to the man ('woman is given as a companion and an

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1. Given that the MDWS controversy did not raise the question of the forbidden degrees as such, but only whether or not MDWS was among them, this point can stand.
associate to the man*); and when he comments on I Corinthians, 14:34, Calvin argues that the reason for women being commanded to keep silent in church is obvious: 'how unsuitable it would be for a woman, who is in subjection to one of the members, to be in an authoritative position over the whole body'. Admittedly, Calvin allows that 'a situation can arise where there is a need of such a kind as calls for a woman to speak': but the note of male chauvinism keeps on breaking through: 'there is no doubt that wherever natural propriety itself has its effect, women in all ages have been excluded from the control of public affairs. And common sense tells us that the rule of women is improper and defective'. The principle is thus rather a doubtful one, and this is reflected in the churches' pronouncements, or rather in the lack of them. For whatever importance they may have attached to female equality in the two cases mentioned (the C.D. Acts and M.N.S.), they do not seem to have considered it sufficiently important to make equally vehement pronouncements about female equality in relation to the then controversial issues of women's entry into the professions, their civil enfranchisement, and, if they were married, their

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1. Ibid., p.129.
3. Ibid.
4. To be scrupulously fair, however, it must be admitted that in the U. P. and Free churches, women were allowed to take part when congregations called a new minister. This voting right was conferred on women by the Burghers in 1747, and was continued in the United Secession and, later, the United Presbyterian church. By an extension of the Veto Act in 1843 they were given the same right in the Free Church, with the warm approval of James Begg and in the teeth of opposition by James Gibson, who argued 'that the Word of God made it plain that this was "not a right which females should exercise" and...desired "to protect them from the habits of public debate and collision"'. (J.R. Fleming, op.cit., vol i, pp.4f. Cf. R. Small, History of the Congregations of the United Presbyterian Church, 1904, vol i, pp.71ff.)
property rights. An additional summary theological presupposition on this subject is thus perhaps unnecessary, especially since point 1, above, by indicating no distinction (in principle) between the sexes in relation to divorce, and point 3, by indicating that women like everyone else should know their place, cover the essentials.

If then the three points mentioned adequately summarise the major theological presuppositions which bear some direct relationship to sex, marriage and the family, the churches can be congratulated upon their orthodoxy. The first point is a paraphrase of part of the Westminster Confession's chapter (XXIV) on Marriage and Divorce. The second and third points are paraphrases of the Westminster Shorter Catechism's answers to its questions (71 and 64) about the Seventh and Fifth Commandments. And none of these points really requires radical rephrasing to stand as a summary of the churches' theological presuppositions two centuries after the General Assembly first approved them.

2. Problems.

Here then we seem to have reached a more fundamental level of theological presupposition, on which the churches' pronouncements seem to be influenced less by the social, cultural and political pressures of a passing age than by the unchanging truths of Christian faith. But is this really so? If we look again at the three summary presuppositions we can question this on at least two grounds. Firstly, the presuppositions contain elements which all who adhered to the Christian faith were far from agreed upon. Christians of a more Catholic tendency, for example, would not have accepted the order in which the aims of marriage are listed here, nor would they have accepted the view expressed about divorce and re-marriage - not to mention the
position eventually reached by the churches on MDWS. Secondly, the presuppositions contain elements which by their lack of clear definition leave openings for a range of interpretation so wide as to put their meaning in question. The definition of chastity in heart, speech and behaviour, for example, is one which can and did mean very different things in different social and cultural contexts, and in the case of the third point, concerning the honours and duties of places and relations, this is even more obvious. Thus the three points which we have listed, partly because they are selected points and partly because their meaning is so dependent upon their context, are far from being unchanging truths of Christian faith.

Even at the level of theological presuppositions then we find a large measure of congruence between the pronouncements and the interests of those who made them. Two observations can be made here which may go some way towards explaining this. The first of these concerns nineteenth-century Scottish theology, the second, middle-class society.

2.1. Scottish Theology.

According to J. R. Fleming, Scottish theology until the mid-eighteen-seventies,

"was more alive as an inspiring principle of Church life than as a regulative force in religious thought. The humblest Scottish peasant regarded himself as an authority on "The Headship of Christ," but no one attempted a worthy theological treatment of the theme. The oracles were still sought among the divines of the sixteenth and seventeenth centuries; the application had to be found in actual experience."

Fleming (whose view of the Scottish peasant we have reason to doubt) believed that Scottish theology did not really revive until Flint, since within Scotland earlier writers such as Erskine of Linlathen and

Macleod Campbell were largely ignored. But although Flint and other theologians of the last quarter of the century may have revived Scottish academic theology, their efforts seem to have had little effect upon presuppositions of the kind we are concerned with here. Flint, as we have seen, was aware and critical of this, attributing the poor state of Scottish theology to the discordant ecclesiastical controversies of the time. But even among the theologians there does not seem to have been much interest in critical theological reflection about the presuppositions we are concerned with here; and although Flint himself conducted a spirited defence of 'the bourgeois Family' in his volume on Socialism, most of what was written on the subject seems to have been on a level with the popular writings

1. Vide, Ch.10, above.

2. R. Flint, Socialism, 2895, pp. 282ff. Flint argued that Socialist criticism of 'modern domestic life' was not without foundation, but that the Socialist alternative, 'absorption of the family into the community, free love, the separation of spouses at will, transfer of children from the charge of their parents to that of the State' would 'introduce evils far worse'. He did not produce any evidence to prove this however. He then went on to state that 'the autonomy of the Family' must be protected from 'the encroachment of the community', and to argue in favour of extending women's rights and opportunities. This would 'favour the formation of a better class of women' and would 'increase the number of women who are not necessitated to enter upon loveless marriages'. As such, it was a superior alternative to the 'slavery' women, forced to work by being freed from their families, would have to undergo under Socialism.
of W. G. Blaikie, who, by his own confession, had left himself
'little time for the deeper studies of the systematic theologian...
had no great turn for the philosophy of theology', and considered
that it was solely as a practical man that I had any fitness" for the New College chair of Apologetical and Pastoral Theology.
There is no reason to suppose, of course, that had Blaikie and others
been more systematic theologians, their writings would have been any
more critical of their own presuppositions. But the fact remains that
little in any depth seems to have been written in nineteenth-century
Scotland on the subject of Christian sexual ethics. Even in the early
twentieth century, when W. S. Bruce of Banff wrote his Social Aspects
of Christian Morality, his chapters on 'Marriage' and on 'Family
Life and Relationships', although replete with reference to sociology,
and critical of eugenicists, socialists, neo-Malthusians and others,
were for the most part a reiteration of what other churchmen had
already written. 2

The point here then is that the theological presuppositions of
the sixteenth century were not subjected to any serious theological
criticism during this period (except in the very limited sense in which
MDWS was considered by the Free Church). When they wished to make
pronouncements, the churches selected what they felt to be a suitable
theological presupposition, and supported it with an appeal to
selected passages of Scripture and to selected aspect of their own

2. W. S. Bruce, Social Aspects of Christian Morality, 1905, Chs. III
   and IV.
experience. Despite the increasing amount of research being conducted in the fields of biblical criticism, anthropology, sociology, psychology and history, this was a procedure which the churches were able to utilise during and even after this period, either by ignoring that research (as frequently happened in the case of biblical criticism), or by selecting from the many social scientific points of view that which was closest to their own. The procedure was not of course as cold-blooded, or as consciously premeditated as this description makes it sound, but it does seem fairly clear that the churches handled their theological inheritance in a manner which was both uncritical and arbitrarily selective.

2.2. Middle-class Society.

The second observation to be made about the congruence between the theological presuppositions of the pronouncements and the interests of those who made them is related to the first. The procedure which the churches adopted was possible because of the existence of a broad area of agreement on the subjects in question, between the churches, their members and the Scottish middle classes in general. And this broad area of agreement owed a great deal to the theological thinking of previous generations.

How far it can be established that such an area of agreement existed, and if it did how broad it was, are of course questions which may be disputed. It may well be argued, for example, that the second and third summary presuppositions, concerning chastity and the honours and duties of places and relations respectively, scarcely reflect a nineteenth-century cultural consensus - on the one hand because prostitution was so common, and on the other because employers were so rarely loving patriarchs. Too much is now known about the sheer
inhumanity of the Victorian era for its more idealised self-images to be taken at their face value, or for its moral and social aspirations to be seen apart from its hypocrisy.

But if too much is known, from whom has it been learnt? To a certain extent, of course, from the victims of the age, and from working men and women who registered their protest against it. It has also however, and to a greater extent been learnt from members of the middle classes, from men and women who either in defiance of convention or in the service of officialdom were not afraid to expose the inhumanity of their age. And when they did this, they and others expressed a sense of moral outrage not simply because the inhumanity was morally outrageous, but because great numbers of their middle-class contemporaries felt it to be morally outrageous when it was pointed out to them.

Of course there undoubtedly was a good deal of hypocrisy and of the fear of revolution in the highmindedness which led many middle-class Victorians to feel morally outraged by the inhumanity of their age; and in many cases it led to little improvement. But in many cases things did improve; and the prospect of what might have happened had the middle classes not been as highminded as they were is even more bleak than what in retrospect actually did happen. As the tribute paid by vice to virtue even hypocrisy can be turned to good advantage; it can be noticed - as it so often was by the Victorians themselves - and can thereby set up a tension between profession and practice which, while eventually often lowering the former, often eventually raises the latter. In very general terms a result of this kind can be claimed as a long-term consequence of the nineteenth-century tension both in
relation to prostitution and in relation to conditions of life and labour in general. Neither the decline in prostitution, nor the improvement of living and working conditions can be seen simply as a long-term consequence of Victorian highmindedness - since economic changes affecting both women and the population in general were important preconditions. But these factors alone were probably not enough. As well as to these, the decline in prostitution and the improvement in living and working conditions owe not a little, and perhaps something decisive, to the Victorian emphasis on the value of the individual personality, both in sexual and social terms. The Victorian middle classes may not have been as faithful to their moral and social ideals as they sometimes, although far from always, pretended. But they cannot, taken as a whole, be accused of not having any.

Generalisations such as these however do not of course take us very far. They do however help to suggest that there was a broad area of agreement among the middle classes about the subjects upon which the churches made their pronouncements. How far this broad area of agreement was influenced by and in continuity with the theological thinking of previous generations is of course another and even more tangled question. Much depends upon whether one chooses to believe that theological thinking influences anyone, or that it is a way of rationalising dispositions and behaviour already formed by decisive historical, sociological and psychological factors. Here, however, we need not choose to regard this as an either-or question,

nor need we enter upon the interminable controversy about the
Protestant Ethic and the Spirit of Capitalism, or attempt to establish
a hierarchy of casual connections or infra-and super-structures. We
can instead limit what has to be said to the observation that the
middle classes, like the churches, were selective in what theological
thinking they allowed themselves to be influenced by, and that since
their selection was often similar to that of the churches, the
pronouncements of the latter were able to accord both with the canons
of middle-class respectability and with the canons of theological
orthodoxy.

Although their theological presuppositions were largely
congruent with the canons of middle-class respectability, the churches,
as we have seen, did sometimes find themselves at odds with other
members of the middle classes over particular issues related to sex,
mariage and the family. Certain classes of the population, in
their sexual, marital and familial behaviour, did not even pay the
tribute of hypocrisy to the churches' teaching. There were the
immoral rustics, the irregularly married and the prayerless families
of the lower classes, whom we considered in the first part of this
study, the fornicating British army and their prostitutes, whom we
considered in the second, and the would-be (if not actually)
incestuous working-class widowers and their sisters-in-law, whom we
considered in the third. Most of these classes (except in the MDWS
case) were beyond the pale of respectability, but the middle classes
were not unanimous on the subject of what should be done about them.
Some believed that the point at issue was sin, and its suppression
by an appeal to the consciences of the individuals involved. Others
however believed that the causative factors were more complex and
environmental, and that these factors should first be dealt with.
There was therefore some disagreement within the cultural consensus.

This disagreement however did not seriously disturb the churches' agreement with contemporary culture since, as we have seen, disagreement was to be found within as well as outside the churches. During the period we have been concerned with, what we have termed the therapeutic mood seems to have been gaining ground within the churches, and as it did the churches became more sympathetic to a social-problem-centred diagnosis and to social-environmental remedies. At this stage the therapeutic mood was given little or no theological expression. And it was ill-sustained when the problems were of a sexual nature, for where sex was concerned the churches on the whole preferred a sin-centre diagnosis and an individualistic remedy. But since many other members of the middle classes agreed with them, this again did not threaten an immediate parting of the ways between the churches' teaching and middle-class public opinion.

The real problem was the long-term result of this agreement. This, as we have seen, was most vividly illustrated by the embarrassment which the churches' attitude to farm servants and MDWS caused their successors. The fact that they undertook no serious re-appraisal of their theological presuppositions about sex, marriage and the family, but rather by reiteration reinforced the form those they selected had become fixed in, was to make any consequent re-appraisal of these presuppositions very difficult for the twentieth-century Scottish church.

3. Theological Perspectives.

In the light of what has been discovered in the course of this study can subjects of the kind pronounced upon be set in some contemporary theological perspective which helps to resolve problems of the kind just mentioned? A possible answer to this question may be
found by examining in rather more detail some implications of the nineteenth century cultural consensus. For the present purpose this examination can be limited to the question of what nineteenth-century churchmen called ante-nuptial fornication, and what their twentieth-century successors term pre-marital intercourse. Many other issues touched upon in the summary list of theological presuppositions are of course also a matter of contemporary debate, but this one is worth singling out because of the way in which it has obsessed churchmen in both centuries.

3.1. From Ante-nuptial Fornication to Pre-Marital Intercourse.

In their pronouncements on this subject then the churches were able to combine respectability with orthodoxy. The problematic implications of this combination however were (a) that orthodox views on sexual behaviour became confused with those of the middle classes, and (b) that these views were put forward by the churches so frequently and vehemently that any modification of them or even the failure to reiterate them with comparable frequency and vehemence looked like a departure from orthodoxy and a failure of nerve on the churches' part. On the other hand it was not possible for the twentieth-century churches to disregard the fact that the middle-class cultural consensus on sexual morality was breaking down. Social and economic changes were affecting the character and composition of the middle classes and of their family life. Alongside this the therapeutic mood was capturing the imagination of many members of the middle classes, and the Freudian idea that nineteenth-century middle-class standards of sexual behaviour were both unhealthy and ultimately unattainable was
gaining plausibility. The Marxist suggestion that these standards were essentially determined by the economic interests of the bourgeoisie was also helping to diminish their hold among many more liberal and radical members of the middle classes, as was their association with Christianity among those who were disenchanted with the church.

Unable entirely to disregard these aspects of cultural change, but at the same time anxious to remain true to orthodox standards, the church was caught in a cleft stick. If it went on pronouncing as if nothing had happened it could be accused of being irrelevant and out of touch. But if it agreed that there was some truth in the modern criticism of nineteenth-century middle-class sexual standards and modified its teaching accordingly, it could be accused of servile conformity to the spirit of the age and of a betrayal of its trust. Neither of these alternatives moreover would do much to make its teaching as a whole seem more plausible, and this would be reflected in declining church membership. And since the church saw a close relationship between its own institutional objectives and the progress of Christianity and civilization, such a decline was manifestly undesirable.

The twentieth-century Church of Scotland was thus in an unenviable position not entirely of its own generation's making. In response it did try to take seriously both the demands of orthodoxy and the therapeutic mood, and in some respects it was successful. On the subject of the remarriage of guilty divorcees, for example, it was able (thanks to the teaching of the Reformers and the silence of their nineteenth-century successors on this point) to adopt a position which satisfied both the demands of orthodoxy and therapeutic considerations; and this together with its less rigorous attitude to contraception made it seem positively liberal beside the
Anglican and Roman Catholic churches. In other respects however it was much less successful, not least in connection with pre-marital sexual behaviour.

Twentieth-century Assemblies, pronouncing upon this subject, produced remarkable echoes of their nineteenth century predecessors. The 1944 Report of the Assembly’s Commission for the Interpretation of God’s Will in the Present Crisis showed in a number of respects how little things had changed:

"The Christian position is that the sex instinct must either be controlled within the bounds of a disciplined married life or sublimated in noble tasks of social service, art, and religion.... Abstinence outside marriage is the debt all men and women owe, both to society and to their possible or actual partners in marriage... Promiscuity and adultery are offences against society, confusing and disrupting its rightful order." 1

The introduction of the idea of sublimation at this point was perhaps something of a novelty, but the other ideas, including the equation of all forms of pre- and extra-marital sexual intercourse with promiscuity or adultery were not. Nor was the Commission’s comment that

"The sexual life is closely related to the higher activities of the human mind, especially on the imaginative and emotional side. Robert Burns knew what he was talking about when he spoke of the sins that harden all within. They deadened a poet’s characteristic reactions and obscured his vision." 2

Although fundamentally similar arguments were still being used by Assembly committees twenty-five years later however, 3 echoes of

1. Vide, God’s Will For Church And Nation, 1946, pp.124f.
2. Ibid, p.125.
the nineteenth century were being increasingly muffled by the use of therapeutic arguments alongside and in support of them. Whether these therapeutic arguments proved any more convincing to adolescents than the more straightforward exhortations of the nineteenth century proved among ploughmen is not a question which can be answered here, although it seems extremely unlikely that they did. What their increasing use in pronouncements arguing against pre-marital intercourse, and the re-iteration of such pronouncements, and above all the fact that the Assembly felt it necessary to make pronouncements on this subject at all, does suggest however, is that the church had once again decided to fight what it suspected might be a rearguard action in the sexual sphere, on ground neither of its own choosing nor to its own liking. This suggests, further, that the Assembly like its nineteenth-century predecessors was neither sufficiently critical of its theological presuppositions nor sufficiently critical of contemporary culture.

3.2. The Calvinist View of Fornication.

That the Assembly's choice of pre-marital intercourse as a crucial subject for pronouncement indicates insufficient criticism of its theological presuppositions, should be clear from what has been said in previous chapters about the development of the churches' attitude to fornication. The Scottish churches' views on this subject, as has been noted above, can be traced back to Calvin's interpretation of the Seventh Commandment as a prohibition not only of adultery but also of fornication. To Calvin this seemed obvious. The natural law, which he often equated with conscience, 'in a sense
asserts the very same things that are learnt from the two Tables'. But to compensate 'for our dullness and for our arrogance...the Lord has provided us with a written law to give us a clearer witness of what was too obscure in the natural law'. In the case of the Seventh Commandment it was clear to Calvin that this written law forbade fornication as well as adultery, since 'as a general principle the opposite things are enjoined when evil things are forbidden'. The opposite thing in this case was marriage: hence 'any other union apart from marriage is accursed in his sight'.

In Calvin's view then the clear meaning of Scripture, conscience and common-sense is that fornication is contrary to God's law. Carried forward by his Presbyterian successors this theological presupposition takes on in the seventeenth-century Shorter Catechism the form paraphrased above, and in the contemporary Longer Catechism (Q.139) it is taken as a prohibition of, among other things, 'impudent or light behaviour...undue delay of marriage...idleness, gluttony, drunkenness...(and) lascivious songs, books, pictures, dancings, stage plays'. What it led to in the nineteenth century has already been amply discussed. After this, in the late twentieth century, we find the argument, supported with a variety of none-too-secure therapeutic buttresses, being stated

2. Ibid., II, VIII, 9.
3. Ibid., II, VIII, 41.
by saying that pre-marital intercourse is contrary to God's apparent intention for man and woman, which is that intercourse is for marriage a sacramental expression of the union of hearts. If it is not that, then it becomes a mutual exploitation, a socially irresponsible act.

This argument, apparently directed against pre-marital intercourse in any context from that of the promiscuous to the engaged couple, bears the traces of nineteenth-century romanticism ('a sacramental expression') and utilitarianism ('a socially irresponsible act'), and has evidently travelled far from Calvin. Structurally however, in its polarisation of marital and extra-marital intercourse, it can be seen as a development of Calvinist teaching.

This however raises two problems, since the consensus of common-sense, conscience and the clear meaning of Scripture which enabled Calvin to formulate the basic argument is no longer evident. The first problem is that it is now common knowledge that although sexual behaviour is normally subject to social control, this control takes different forms in different cultures, and that in those cultures which diverge from the Calvinist ideal there is little evidence of 'natural' guilt over non-conformity to that ideal. As we have seen, some such divergent form of social control may well have operated with minimal conscience-pangs in the older rural culture; and it seems possible that another divergent form is currently operative among many adolescents.

The second problem concerns the clear meaning of Scripture, since Calvin's impression that the Seventh Commandment included the prohibition of simple fornication is nor supported by the internal evidence of the Old Testament. Of course Calvin interpreted the Old Testament in the

2. Vide e.g., W. G. Cole, Sex in Christianity and Psychoanalysis, 1966, p.11.
light of the New, and here he was able to find confirmation of his interpretation. 'Christ...and Paul,' he wrote, 'constantly pronounce a curse against all fornicators.' ¹ Where exactly Christ does this - even once - is difficult to find, so it is not surprising that Calvin goes on to add that it 'is not worth while to quote the particular passages in which they do so.' ² But with Paul he was on safer ground.

In Paul's case, after all that can be said has been said about his eschatological concern, and his relative freedom from the influence of Hellenistic dualism, and the overtones of prostitution in his use of 'πορνεύω', there undoubtedly remains what Calvin was looking for, condemnation of fornication as such. Curiously, at the point where Paul appears to have made an explicit condemnation of pre-marital intercourse between engaged couples ('If any one of you thinks he is not behaving properly towards his betrothed, if his passions are strong, and it has to be, let him do as he wishes:

2. Ibid. In the gospels Jesus mentions fornication explicitly only once, in Mark,7, 21 (and parallel, Matthew 15,19) and the list of evils, in which it is there included, 'is usually regarded as an early Christian interpretation' of Jesus' general point (D. E. Nineham, St. Mark, 1963, p.192). Jesus' reference in the Sermon on the Mount (Matthew, 5, 27-30,) is to adultery and lust rather than to pre-marital intercourse. And in John 8, 1-11, Jesus quite explicitly refuses to condemn the woman taken in adultery. Calvin (Commentary on Genesis, Vol 2, p.287) replied to the use of this passage as an argument against the capital punishment of adulterers by saying that Jesus was refusing here to act as an earthly judge. But his action also seems to imply that punishment is an over-reaction to adultery, and that it may not be as important as the scribes and pharisees made it out to be.
let them marry - it is no sin'), Calvin adopts an alternative reading ('If any man judges it unseemly for his virgin daughter, and if she passes the flower of her life...') which denies Calvinistic status to the modern commentator on the passage (I Corinthians, 7,36) who writes that 'to those who would justify premarital relations on the basis of love and intention to marry Paul also had a word to say'.

But then there is always 'if they cannot exercise self-control, they should marry (I Corinthians, 7,9) to fall back upon; and Calvin notes that this, by comparison with the advice Paul had just given on celibacy, is not conditional: 'there is no doubt that the person who is not continent tempts God, by neglecting the remedy of marriage. This is a situation which needs, not advice, but strict prohibition'.

If then Paul's condemnation of premarital intercourse is taken as the authoritative Christian norm, contemporary church pronouncements are perhaps right to anathematise all pre-marital sexual intercourse. Neither arguments about the Old Testament's teaching, nor arguments about Hellenistic and later modifications of the original gospel, absolve the church from the obligation to teach this.

3.3. The Church's Teaching and its Cultural Context.

The Church of Scotland however is not obliged to teach this, since it does not equate the whole of Pauline teaching with the Word of God. In its Declaratory Articles the church 'receives the

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Word of God which is contained in the Old and New Testaments as its supreme rule of faith and life and reserves the right to be the sole judge of whether or not its subordinate standards are in accordance with it. In practice the Church of Scotland has already questioned whether Pauline teaching in the sexual sphere accords with the Word of God. It has ordained and thus allowed women to speak in church in a fashion clearly contradicting Calvin's interpretation of I Corinthians, 14, 35, 35. It therefore has the option, perhaps even the obligation, of asking itself whether it receives Paul's teaching on fornication as the Word of God.

How can a church with such great freedom about what it may choose to believe make such a decision? A sufficient guide to how it may proceed is provided by the basic structure of Calvin's argument. Using this method, the church decides on the basis of the Moral Law of Mark 12, 29-31 (i.e. love for God and neighbour), the Ten Commandments, Scripture as a whole, conscience and common-sense. Before applying this method however, the church has to ask if, while it may be permissible to question Pauline teaching on fornication, it is also necessary. This prior question can be answered by comparing the cultural contexts of Pauline and contemporary teaching and seeing if they differ in any essential way.

Without going into great detail on this, one point is immediately obvious. It is that while Paul and Calvin were attempting to establish a new and higher morality in the context

1. Declaratory Articles (11 & 12 Geo 5) I. Church of Scotland Act 1921.
of what they considered to be a decadent and sinful culture, the contemporary Church of Scotland is attempting to maintain an old morality in the context of a culture it is curiously ambivalent about. This ambivalence is clearly seen in the report of 1970 already referred to. This report talks about 'the sexual revolution of our times' and

'acknowledges that a new freedom has been attained in the area of sex, because it has taken man till the twentieth century to understand and begin to control the mechanisms, physical and psychological. We are (it continues) witnesses to a genuine liberation from ancient taboos and fears. What we say and do about it now rests on freedom rather than fear - at least we are slowly moving in that direction'.

In the same context the report describes contemporary culture approvingly by talking about its 'greater tolerance and understanding of moral failures', its 'honest questioning, notably among young people', its 'new found freedom and its healthy intolerance of humbug and hypocrisy'. In all this it seems to be admitting the possibility that some sort of new morality may be emerging. But then it denies this by arguing that what is emerging cannot be described as a new morality. What we are witnessing, it suggests, is 'a weakening of standards' which follows from 'the weakening of faith' consequent upon 'the rejection of institutional religion today' (it states that 'real faith is diminished by neglect of the divine means of support provided within the community of the faithful'). What is to be

3. Ibid.
seen today therefore is not a new morality but

'a departure from the former morality...a blurring of the categories of right and
wrong (and) at worst...the old Adam, the
eternal rebel, who for selfish reasons flouts
the very necessity of standards by which,
alone society can be saved from anarchy'"

On this basis the reports travels no farther in the direction of
acknowledging a new morality and rapidly reverts to arguing against
pre-marital sexual intercourse in all its forms, without allowing any
substantial distinction to be made between these forms.

3.4. The Re-affirmation of Pauline Teaching.

In answering the question about the comparison of cultural
contexts then, the church seems in practice to be saying that as
far as premarital intercourse is concerned there is no decisive
difference between the contemporary cultural context and that of
the Apostle and the Reformer. If this is what the church really
believes, its attempt to make pronouncements which are sympathetic
towards contemporary culture is perhaps ill-advised; and if its
belief is confirmed by history, these pronouncements may well prove,
in their insufficiently critical view of that culture, an embarrassment
to succeeding ecclesiastical generations no less serious than the em-
arrassment caused to their successors by Victorian church pronouncements.
For if the church really believes that the contemporary context is best
characterised in terms of the weakening of faith and consequently of
standards stemming from a rejection of institutional religion, it has a

1. Ibid.
remedy. It can declare its conviction that there has been no essential change and re-affirm the fundamental Pauline teaching amid a decadent and sinful generation. It will not, presumably, under the existing circumstances of religious pluralism, be able to ensure the social conformity which true Calvinists desire. But if it proceeds on a voluntary basis to teach that all extra-marital (and presumably some intra-marital) sexual intercourse is to be condemned as a distraction to the development of spiritual insight and as forbidden by God, and makes it clear that therapeutic arguments against fornication can only be secondary, there is no reason to suppose that this teaching will be rejected by a certain proportion of the population. How great this proportion is cannot be answered until the attempt is made. But on present evidence some proportion at least of adolescents seem either to have inhibited or sublimated their pre-marital sexual urges in accordance with the teaching of fundamentalist Christian and other religious sects or movements; and among those who sympathise with or adhere to those movements while retaining some connection with the institutional church, teaching of this kind would be welcomed.

An unapologetic declaration by the church that the cultural context is not essentially different and that it has decided to endorse Pauline teaching is thus one way in which the Church of Scotland may dispel the appearance of defensive and uneasy ambivalence toward the theological and cultural presuppositions which it has inherited from its nineteenth-century predecessors. There are however two further alternatives.
The Affirmation of a New Morality

The second alternative is for the church to travel farther along the path of a positive evaluation of the new morality. We can explore this possibility by asking (1) what it is that is new; (2) what the church might affirm and why it might affirm this; and (3) why it is hesitant to affirm it.

Two New Factors: Contraception and Emotional Integrity.

Two factors make the contemporary context a new one. The first of these is the development of efficient contraceptive methods at a time when perinatal mortality has been greatly reduced and Malthusian ideas have gained popular support. Contraception in other words is now respectable, and conception is now either (a) responsibily chosen, or (b) a rare accident for which the man and woman involved are not primarily responsible, or (c) a result of ignorance or of emotional immaturity or distress. As a consequence, many of the inhibitions on sexual intercourse previously associated with the possibility of conception are no longer operative. This does not of course mean that most conceptions are now responsibly chosen, but a general trend in this direction is now discernible, and neither the small element of technical risk nor the large element of emotional immaturity or distress seem at present likely to reverse this trend.

Given this trend it is possible to see this new factor not as a Promethean development but as a development in man's creaturely responsibility before God for the consequences of his own actions. In this light it can be suggested that if the purpose of social control of sexual behaviour in the past was to protect children and families, the same end can now be served by preventing not sexual intercourse but conceptions which are not responsibly chosen. It can indeed, even be suggested, that social control of this kind is already being exercised, partly through the official and semi-official promotion
of contraceptive education, and partly through the discouragement, by the peers of those most at risk, of conceptions not responsibly chosen.

The second new factor is the part now played by the ideal of emotional integrity in social and marital relationships. Like contraception this ideal is not new. It has however become more popular as leisure and expectations of the quality of life have grown. The development in Western society of a less fatalistic attitude to life in general has led many people to expect more from their sexual and marital relationships, and these relationships have come to be judged more in terms of the motives and intentions of the persons involved and less in terms of rules of sexual behaviour which hold irrespective of motives and intention. On this basis pre-marital sexual intercourse can be legitimated by sincere and deep affection, and divorce by the argument that it is preferable to an 'empty shell' marriage. Since the ideal encompasses a wider range of social relationships and since it is frequently associated with the ideal of social responsibility however, neither pre-marital intercourse nor divorce are readily legitimated without taking into account the welfare of possible or actual children. Here again of course we are talking about a trend rather than describing an ideal universally acknowledged, let alone followed. But it is not unrealistic to suggest that an ideal of this kind is operative in the contemporary

1. An especially influential expression of the ideas involved appeared in 1936 in John MacMurray's essay on 'The Virtue of Chastity' in his Reason and Emotion. Its antecedents were of course much older — vide the comments in Part 2, 1.3.2, above about Robert Owen. And the ideal also owes something to the church's insistence upon the consensual basis of marriage.
cultural context.

3.5.2. What the Church Might Affirm and Why.

If the ideal of responsible conception and the ideal of emotional integrity then are characteristics of a new morality, the church, in endorsing this, would endorse a morality which differs from the old in accepting pre-marital intercourse where this is an honest expression of deeply-felt emotions, and in discouraging conception outside and inside marriage unless it is voluntarily and responsibly chosen. Insofar as such morality is effective there seems no reason to suppose that it would threaten the existence of the social institution of marriage, since this provides as good a context as society is likely to find for long-term and child-rearing relationships (at least as far as the majority of people are concerned). Nor does it seem likely that substantially fewer persons than at present would wish to mark the initiation of such a long-term relationship with some religious act which expressed its spiritual significance. Here again the essence if not necessarily the exact form of current conventions express something with which practitioners of this new morality are not in many cases in conflict. An effective new morality of this kind might however raise the average age of marriage somewhat by lending social legitimacy to premarital relationships (in which those involved might or might not live together as if they were married). But then it is difficult to see how episodes of this kind would differ greatly, save in not being legal marriage, from many early marriages under the existing system which break up (perhaps leaving children) as a result of the partners' emotional immaturity.
Why might the church affirm a new morality of this kind? Two reasons may be suggested, the first of which concerns the church's teaching. The church's decision about such matters, it was suggested above, could be determined by seeking guidance from Scripture, especially the Moral Law and the Commandments, and from conscience and common-sense. Bearing this in mind it does not seem that the Moral Law of Jesus, concerning love for God and the neighbour is in conflict with this new morality. It seems in fact that by laying stress upon integrity and responsibility in relationships this morality is closer to that of Jesus than the legalistic prohibition of all sexual intercourse outside marriage. Nor does it seem likely that conformity to this legalistic prohibition, because it is believed by a process of deduction to be God's will, is more conducive to growing love for God than the exercise of loving and responsible care for his creatures.

But what of the Seventh Commandment? On what grounds could nonconformity with the Pauline and Calvinistic deduction from it be justified? An answer to this is provided by Calvin's own method of asking what is the corresponding duty to the evil prohibited. In Calvin's case the opposition was expressed in terms of purity and uncleanness; and while it cannot be denied that these very ancient metaphors still carry emotional weight as signals of social and conceptual disorder, it can be suggested that in the contemporary context adultery is more adequately described in terms of the metaphor of emotional dishonesty: the adulterous man or woman is the man or woman who has failed to be emotionally honest with themselves and with their partner. The corresponding duty to this is, therefore, the emotional honesty or integrity demanded by the new morality. This

emotional honesty or integrity can of course also be described as purity or singleness of heart, to which lust can be contrasted (as in the Sermon on the Mount, Matthew, 5, 27-29) as a form of egoistic self-deception, an emotionally dishonest fantasy, entertained by those who shrink from the self-disclosure of intimate human intercourse. On this understanding an interpretation of the Seventh Commandment in terms of the new morality would not only be permissible but would almost be prescribed. In these terms the new morality does seem to be an attempt to establish a higher morality analogous to that of the Apostle and of the Reformer.

A second reason why the church might affirm a new morality of this kind concerns the contemporary cultural context. Ecclesiastical criticism of the kind expressed in the 1970 report goes part of the way to admitting that a new morality may be emergent and then draws back because it sees 'the irresponsible' and 'those weak in standards' being given 'the opportunity to deviate, acting socially in ways which if generally accepted would prove disastrous'. Up to a point this criticism is valid, since it would be naive to think that irresponsible people at any rate would not take advantage of a new morality in a socially destructive way. Where the criticism breaks down however is in confusing this possibility with the new morality as such. For the existence in contemporary society of those who might exploit a new morality does not establish that there are not as many or more people who might be just as moral in the new terms as were practitioners of the old morality in theirs. The report in other words creates a

false polarity between the old morality and social and sexual anarchy; and this false polarity confuses the issue.

A more realistic description of contemporary culture would have to take into account a wider range of options, and some distinction between the new morality on the one hand and, on the other, the old Adam of sexual naturalism and the old Ba''al of orgastic mysticism. Neither sexual naturalism - the notion that all inhibitions on the immediate desire for sexual intercourse are to be set aside on the ground that they are artificial - nor orgastic mysticism - the notion that sexual intercourse, irrespective of its personal context, is an essentially religious, revelatory or even healing experience - is compatible with the fundamental christian understanding that men and women are moral agents capable of spiritual discrimination and of learning through suffering and sacrifice as well as through enjoyment and satisfaction. But this christian understanding does not seem to conflict with what has been described here as the new morality. And over against the alternatives of sexual naturalism and orgastic mysticism the new morality's twin goals of responsible conception and emotional integrity require the sort of legitimation which could be given by some acknowledgement from the church of the affinity between the new morality and its traditional teaching. If the church refused such assistance to the new morality there would be a real possibility of it becoming confused with these other options and of the attempt to establish it becoming seriously weakened.

Such a failure on the new morality's part, it can be argued, has not yet taken place, although there are dangers that it might. Had it already taken place the church might be more justified in re-affirming Pauline sexual morality. But as things stand, and given the breakdown of consensus in this area among the middle
classes, the church, if it re-affirms Pauline morality at this point, is likely to alienate many of its own members who perceive, however dimly, that their Calvinist inheritance is correct in assuming that contemporary common-sense, however fallen and bound to the spirit of its age, is an essential component of the Christian decision-making process. It is indeed so essential that when a sectarian body consciously rejects it (and this is the danger of what the 1970 report advocates), its place is taken by the common-sense of an earlier or other culture, preserved for the most part primarily by that body's need or desire to maintain characteristics which distinguish it from the rest of the community. The new morality then can be legitimated and even advocated in terms of the Moral Law and the Seventh Commandment. But to succeed it requires the reinforcement of social legitimation which the church could provide. What prevents the church from providing this?

3.5.3. Why the Church Hesitates.

Three factors can be suggested in explanation of the church's ambivalent attitude to the new morality. The first of these is the fear that in affirming this morality the church would be unfaithful to its fundamental principles. In general, fears of this kind are products of the defensive and embattled mentality of that form of post-Enlightenment Christianity which regards any change in the church's teaching as a concession to the world rather than as a development of Christian understanding. To this mentality the new morality appears threatening, and its affirmation by the church as a form of ecclesiastical capitulation. This impression has been reinforced by the re-iteration of concession and capitulation arguments by earlier conservative opponents of change in the church's teaching.
The new morality however, as we have suggested, does not in fact threaten fundamental Christian presuppositions. In particular it does not threaten the belief that man is responsible before God for ordering his social and sexual behaviour in accordance with the Moral Law and his own conscience. The question it raises, rather, is that of the way in which this ordering is to take place. In confusing the new morality with social and sexual anarchism therefore, the church has perhaps had too little faith, both in the deeply-rooted desire for order in man, and in the Catholic character of the operation of the Holy Spirit.

The second factor in the church's hesitancy, like the first, is related to its nineteenth century inheritance. Throughout this study we have seen how the church's teaching on sexuality was influenced in one way or another by its institutional preoccupations. Here too this factor is involved, and although it is difficult to assess its significance it can be suggested that the church's ambivalence to the new morality is to some extent aroused by the ambivalence of many practitioners of the new morality towards church-oriented religion. The ambivalence of the latter shows itself in an attitude towards religious institutions consistent with their attitude towards moral laws: this attitude often acknowledges what it regards as the essential validity of Christian faith, but is detached from what it regards as the churches' more formal and peripheral characteristics. There are, in short, among the new moralists more potential good Christians than more potential good churchmen, and this understandably does not commend their ideas to the makers of church pronouncements. On the other hand, the church, so long as it does not sell its soul to sectarianism, may find ways of overcoming this difficulty, since the notion of good churchmanship implied here embodies eighteenth- and
nineteenth-century denominational and organisational presuppositions about the church which may well have outlived their usefulness.

The third factor in the church's hesitancy, again one which played its part in the nineteenth century, is its desire to protect adolescents, and perhaps also females. It is not difficult to understand hesitancy on this ground, at least in the case of adolescents. For the new morality demands emotional maturity from its practitioners, and this is precisely what adolescents, because they are in the process of emotional maturing, may not be able to provide. The new morality's additional requirement, that conception should always be the result of a responsible decision, might also be difficult for adolescents to fulfill. For however widely available and widely publicised effective methods of contraception may be, there are no copper-bottomed guarantee against ignorance in the case of individual adolescents. The possibility of emotional damage or irresponsible conception is thus avoided by the legitimation of the new morality.

Up to a point this is a valid criticism of the new morality. It is not however a valid argument against the church affirming it, because it overlooks the complex cultural context in which the church desires to protect adolescents. In particular it overlooks the possibility that contemporary culture might itself by undergoing a process of emotional maturing analogous to that of the individual adolescent. It is of course open to the church to reject this interpretation in favour of one of cultural degeneration, the implications of which have already been discussed. But if christians hope not only for individual salvation and for the preservation of the empirical church, but also to find meaning in human history, this possibility cannot be ignored, and has important implications for the
question under discussion here.

The suggestion that Western culture might be undergoing a process of emotional maturing is related of course to Bonhoeffer's notion of a world come of age, and also to the nineteenth-century idea of progress, both of which possibilities have at least been entertained by the church at one time or another. But if emphasis is laid upon the element of maturing rather than that of maturity in contemporary culture, many objections to these ideas, grounded in the perception of contemporary human immaturity, become less weighty. The early twentieth-century rejection of the idea of progress, and the current rejection of sober mid-twentieth-century affirmations of the secular in favour of esoteric political and religious alternatives, suggest on this analogy, not the absence of human progress and maturity, but the erratic and experimental process of human maturing. On the same analogy, much of the post-Enlightenment church's apologetic difficulty can be seen to arise out of the adolescent culture's desire to make its own discoveries - a desire which leads it first to reject, often very vehemently, many of those things which having been taught by an external authority it has not fully assimilated, and must learn again in its own way.

On this analogy then the new morality may represent an attempt by an emotionally maturing culture to work out for itself where it stands on the question of sexual and marital behaviour. Such an attempt, as might be expected, provides a solution which is not totally different from that of the past and which owes a good deal to ideals which it has been taught but has not fully assimilated. It is however a solution which needs a new formulation, and which has to be tested in experience over against more extreme views such as sexual naturalism and orgastic mysticism, which in an emotionally maturing
culture have their temporary attractions.

If this analogy has any validity then, it suggests that the best way to protect emotionally maturing individuals in an emotionally maturing culture is by encouraging their own attempts to order their social and sexual behaviour. The alternative for the church - to reinforce the claims of an external authority - is unlikely to be heeded except by its own committed membership and adherents, and in the end perhaps not even by them. For the church itself is part of the emotionally maturing culture and can at best only delay the time when it comes to terms with this.

3.6. Another Alternative.

The third alternative open to the church, like the second, is related to the suggestion that contemporary culture may be undergoing a process of emotional maturing. In advancing this alternative it can again be emphasised that for the church to resolve the problem it has inherited from the nineteenth century it will be helpful if it can clarify its mind on whether it believes that contemporary culture is degenerating or maturing. This clarification, it may be added, is ultimately a matter of theological choice: it is not a question which can be settled by objective sociological examination, since on this scale sociological examination, in its choice of relevant questions and evaluative criteria, is patently much more persuasive than objective. The question is thus one which forces the church

1. Cf. P. Rieff, The Triumph of the Therapeutic, 1966, p.25: "Sociological writing is ineluctably part of the psycho-historical process, engaged as it is in persuasive redefinitions of action that alter that action."
to answer with a description which represents ultimately a declaration of intent. On a fundamental theological level the church's answer depends to some extent upon its preference between the model of God as Legislator and that of God as Educator. These models are not of course mutually exclusive (indeed in view of their national educational system Scottish churchmen may find it difficult to tell them apart), and each has its origins in Scripture. But emphasis on the one rather than the other has important implications for the church's view of culture and of its own place within culture. And it may well be that in unduly emphasising obedience to the lordship of Christ, the church has obscured the fact that Christ's incarnate form was that of a teacher in parables; and that parabolic teaching leaves men to draw their own conclusions.

Given the possibility that contemporary culture may be undergoing a process of emotional maturing, and given the example of Jesus' parabolic teaching, the third alternative then may be briefly stated. It is that pre-marital sexual intercourse is not a suitable subject for ecclesiastical pronouncement.

Among the considerations which tend to this conclusion, and relevant to what has been learnt in this study, is the observation of just how uncritical the churches have been of contemporary culture. In an all-too-Pavlovian fashion the nineteenth and twentieth-century churches have picked up the gauntlet thrown down by newspapers and other organs of public opinion which create alarm and despondency about such perennial problems as illegitimacy and sexual morality. They have seemed to assume almost without question that by saying something about such matters they could influence them, and have
as a result reinforced an ecclesiastical Canute complex in whose toils the church castigates itself and is castigated for failing to live up to inappropriate expectations. The habitual pronouncements of the churches, ecclesiastical responses to cultural panics, thus seem to have become compulsive - as if they provided the Assembly with some sort of compensation for its loss of formal authority. As a consequence the churches, by emphasising the sinfulness of sexuality, have made it seem a much more significant part of human existence than it necessarily is. In an adolescent culture, where it is perhaps inevitable that sex seems to promise more than it can ever deliver, it is however probably more appropriate for the church to say much less on this subject than it does, and to concentrate rather upon opening up the possibilities of other equally and perhaps more significant and satisfying areas of human intercourse.

To say this is not to suggest that there are not subjects of the kind discussed in this study which the Assembly should, if it judges it wise, make pronouncements about. Both the Contagious Diseases Acts and the MDWS Bills were subjects upon which it was legitimate to make pronouncements and to send petitions, whatever may be thought of the reasoning employed in these. Changes in the law come about after all as a result of political pressure groups falling, as James Begg put it, into the stream of public discussion. Whether the Assembly itself should take the plunge depends to a certain extent upon the issues involved, and upon the question of whether more is not achieved by the leaven of informed christians in the several secular political lumps. But as long as the Assembly is clear that its political judgement is derivative from and not equivalent to its essential message, political activity of this kind is not illegitimate. Yet many of the pronouncements which we
have considered did not fall into this category. Nor, since they are not primarily concerned with changes in the law, do those relating to the new morality.

If the church then is concerned that contemporary attitudes to sexual morality should conform with the Moral Law, Assembly pronouncements on sexual morality are an inappropriate, and in the light of what we have seen about those of the nineteenth century, an ineffective way of showing this concern. It is enough in this context for the Assembly to be a body which superintends the efficient deployment of the church's material resources, and sees to it that the people have adequate opportunity to educate one another socially and spiritually. Contemporary culture is much more likely to be influenced by Christian insights when their critical relevance is perceived in the course of open and everyday discussion, than when their critical edge is blunted by predictable pronouncements which result from the attempt to find an authoritative Archimedean point above that discussion.

The third alternative then is for the Assembly to break the habit of making pronouncements on sexual morality and to concentrate instead upon ensuring as far as it is able that Christians and non-Christians are given every opportunity and encouragement to take part in formal and informal and particularly familial processes of mutual social and spiritual education. If within these processes a more open dialogue can take place between the prejudices of age and the prejudices of youth, between ignorance and information, fantasy and reality, and between theological presuppositions and contemporary culture, the compulsion to make pronouncements of the kind we have been discussing, which seem on the whole only to have prevented this educational process from beginning, will probably lose something of its intensity.
In the end of course all of this depends upon the church recovering from that loss of nerve which had already begun to affect it and its pronouncements in the nineteenth century. And this recovery depends in turn on the church’s rediscovery of Calvin’s conviction that ‘there is within the human mind, and indeed by natural instinct, an awareness of divinity’.\(^1\) If the church concentrates upon helping this ‘seed of religion’\(^2\) to grow, and does not abuse it for failing to take the same form in its growth as did the older tree of Christendom, and if at the same time the church is not afraid to criticise its own theological presuppositions as much as those of contemporary culture, then it is possible that our emotionally maturing culture will develop, in accordance with the fundamental human desire for order, forms of the social control of sexual behaviour which do not prevent and perhaps even help their practitioners toward the greater glorification and enjoyment of God.

2. Ibid.
APPENDIX.

1. Page 132.
The commercial crisis referred to (F.C.G.A. P.& D., 1858, p.262) was that of 1857, which brought about the dramatic failure of the Western Bank, whose policy had been more adventurous than that of the longer established and more conservative Edinburgh banks. (Vide R.H. Campbell: op.cit., pp.442-147) The Western was a very large institution and many influential men in Glasgow and the West of Scotland were among its backers and customers. The Church's criticism, expressed in the Pastoral Address issued by the Commission of Assembly in October 1858, did not mention by name either the Western Bank or the four firms whose failure had precipitated its collapse, nor apparently could the Bank itself be charged with fraud—which was one of the major criticisms made, in the address, of what were termed 'the conventional immoralities of worldly business'. (Acts of the General Assembly of the Free Church, 1858-1863, p.181.) The hub of the church's criticism, insofar as it can be disentangled from the address's thundering rhetoric, was an attack on 'the determination to be rich, to be speedily rich, - and if that may not be, to have the name and appearance of wealth, and live in splendour and luxury', (ibid.) and it looks as if this was a reflection of the view of the Edinburgh bankers, that stability was more important than the commercial and industrial progress which might have come from the more (although probably too) liberal policy of the Western. It was not of course the case that the Free Church was opposed to making money as such (its own prosperity was not after all founded entirely upon widow's mites) and it believed that there was 'something truly valuable in real, solid prosperity, honestly reached, with God's blessing thereon' (ibid.). But it did object to 'those great and gross frauds, such as have of late come to light' (ibid.) and also to the 'great variety of little dishonesties (pardon the expression) in the form of adulterations and untruths' (ibid.) which were examples of the same evil on a smaller scale. The Church was particularly distressed that some of these had been 'practised by men professing godliness' (ibid.), who ought, it believed, to have known better. 'Reverses and losses' it wrote, 'may overtake a man in business, but he never need be fraudulent or dishonest... And when all is correct and honest, even if adversity should befall, God's blessing may still be there, and the heart be calm and happy' (ibid.).

The Free Church then criticised any departure from conservative and correct commercial practice, and condemned anyone who took too great risks in the pursuit of prosperity. It was not altogether a contradiction of the parable of the talents, more a commendation of the man who gained an extra two. It was also however an attack on 'the spirit of worldliness and selfishness in the eager race for riches which men are running' (ibid.) and a warning to those involved, Free Churchmen included, of the danger to their souls: 'What a rebuke the late commercial distresses gave to this eager engrossing spirit of worldliness! To how many hundreds have worldly losses and difficulties and anxieties shewn the unsatisfactoriness and uncertainty of merely worldly possessions and pursuits! Will you who have thus felt and suffered learn the lesson, and henceforth make it your chief business to lay up for yourselves treasure in heaven?' (ibid.) Statements of this kind no doubt pleased the solid Edinburgh bankers (who perhaps did not see the contradiction between what was said and the Free Church's own earthly treasures), and no doubt the 'little dishonesties' were fairly extensive, but the Free Church's criticism did not go much
beyond the conventional commercial pieties of the period, and can hardly be regarded as in any sense a form of social criticism which might have contributed to the general prosperity and well-being of the community. But in the jumpy financial atmosphere of the time there was perhaps little which the church could say that might help; and it may have been that some unfortunate members of the middle classes who had lost money, found, in such talk, a way of orientating themselves to their reduced circumstances.

James Begg, incidentally, was behind this episode also. It was on his motion that the Presbytery of Edinburgh overruled the General Assembly for this Pastoral. The aspects of commercial immorality which he chose to single out included Sunday trading, and the punishment of small time swindlers while 'great culprits, gigantic culprits who swindled on an immense scale' (Begg is the grand argument against those who claim that the English language is being devalued by the late twentieth century addiction to superlatives) 'were to a large extent allowed to pass with impunity'. (T. Smith: *op.cit.*, vol.ii, p.245.) Part of the reason for this, according to Robert Wallace, writing fifteen years later, was that the churches were afraid to tackle openly the speculative activities of those who, while they remained within the law, were in moral terms just as guilty. Speculation, he claimed, was 'in no respect a productive industry': it was 'simply gambling'. If the church were to say this however, 'a good many of the Church's best subscribers might be offended'. (Wallace: *Life and Last Leaves*, pp.203-204.) Wallace's contention that success was the yardstick by which commercial morality was measured helps to explain why the Pastoral made no direct condemnation of speculation as such. The Protestant churches' attitude to usury was of course a much older and more tangled story.

2. Page 165.

There were a number of prominent laymen and ministers during this period who came from lowly homes. Hugh Miller was a favourite example used by Blaikie. Blaikie was also the biographer of David Livingstone. Duncan McLaren, the Edinburgh M.P., was another very prominent Scot who rose from a humble home. But men of this kind were, unlike William Logan, the author of *The Great Social Evil*, very rarely born into the rootless urban proletariat. Very often they came from families which on closer examination turn out to have been marginal cases. John Cairns, the U.P. leader, is a good example of the type.

Cairns was born in 1818 in rural Berwickshire, not far from where Alexander Somerville was brought up. His father and grandfather were farm servants. Both parents were able to read, and his father had taught himself to write as well as learning arithmetic at evening classes. Their religious background was in the Burgher sect, and although this was not the strictest version of Presbyterianism, the children attended church from about the age of seven. This involved a walk of about two miles each way from home. On Sundays the children also attended the Sabbath-school (during which the pupils had to relate 'the dimensions and illustrations' of the sermon). In addition to these religious exercises in church, family worship was held earlier on the Sunday morning and again in the evening, preceded by repetition of the Shorter Catechism. Evening but not morning family worship took place on week days. John Cairns' formal education at the local school included English, arithmetic and repetition of the Bible, the Shorter Catechism and the metrical Psalms and Paraphrases. To this, later, were added Latin, Greek, Euclid and Algebra. This had to be paid
for (the fees were 3/- or 4/- a quarter, rising to 7/6 when Latin was added) by Cairns' father. Since his wages were small, and paid for the most part in kind, this could be done only by very careful management (especially on the part of his thrifty mother). Cairns' education, after the age of twelve, had to be continued in evening classes, and by day in intervals of his work as a shepherd. With what he earned he borrowed books from the subscription library, reading history and theology, as well as the Waverley Novels. (His parents, although they enjoyed reading, were suspicious of novels: Cairns' father had a small library of his own, which included a variety of religious works such as Boston's Fourfold State and Jonathan Edwards' History of Redemption, as well as The Pilgrim's Progress, a 'fragmentary' (presumably exaggerated) Burns and even The Wealth of Nations.) Newspapers were read by the family, being bought by a consortium of eight men including Cairns' father, and passed round from house to house. Out of this background Cairns progressed to Edinburgh University at the age of sixteen, and became a famous minister. This was surely a vindication of the humble home theory.

But some other features may be marked: 1) Cairns' father, although a farm servant and the son of one, was descended from farmers; and of Cairns maternal uncles, two were large farmers and two were self-employed carriers. When he went to Edinburgh University Cairns was able to board with an uncle and aunt in the town. These better-off relations may not have given his parents financial assistance, but the family was socially mobile, and the possibility of upward mobility was visibly present.

2) Besides the interest in his education shown by his parents, Cairns benefitted from the interest taken in him and in his education by the local minister and schoolteacher. The latter offered to waive the extra 3/6 for Latin, although Cairns' independent parents declined his offer.

3) Cairns' father was a shepherd, in relatively stable employment. Within limits he would have been reasonably free to organise his own time. So too could the young Cairns, able to continue his education sitting in the ruins of an old church within sight of his flock - a practice which perhaps laid him less open to the charge of misusing his employer's time (against which we saw the Free Church warning domestics) than, for example, that of David Livingstone, reading at his loom. 4) Cairns' formal education was, and not without much parental heart-searching, purchased at the expense of that of most of his siblings. (His brothers became a shepherd, a tailor, a mason (who later became a schoolteacher), and another minister: one of his sisters went into domestic service, another married a minister, a third lived with Cairns' family as housekeeper.) 5) The family had strong ties with a dissenting religious body and were part of a religious rural community in the early nineteenth century.

None of these features are recorded in order to detract in any way from the achievements of Cairns' and his parents, which, even allowing for them, were considerable. But without them, how much would have been possible? (Vide A.R. MacKinnon: Life and Letters of John Cairns, 1898, chs. I - IV, passim.)

On the specific subject of family worship what has been said about the Cairns and Somerville families may be compared with what Robert Wallace recorded about his own family in the eighteen-thirties and forties. Wallace's father, the Life gardener, (he was something between a head-gardener and a market-gardener, perhaps both) was accustomed 'to pronounce a very long grace at all meals, Sundays and other days as well' (Life and Lost Leaves, p.59), only longer on Sundays. This, according to Wallace, 'was the traditional way of keeping up family worship among people whose work did not allow time for separate reading, singing and prayer' (ibid.).
Wallace clearly associated family religion chiefly with the lower classes, since he wrote that it was not just 'the poorer class of the people that was specially distinguished for loyalty to the Puritan tradition in this matter. The middle class had it in much the same proportion as regards quantity, though, perhaps, somewhat diluted in point of intensity. It was when you came to the aristocracy that the heart of the devout Puritan failed within him - or her' (ibid., p.46). The aristocracy were 'nearly all' Episcopalians, were regarded as 'semi-Papists', and attended church only once on Sundays.


Life and Work was still full of good advice on the subject however. During the 'seventies it had included articles such as the series 'Occasional Homely Papers for the Working Classes', with titles like 'The True "Gentleman" and the True "Lady"' (Life and Work, (June) 1879, p.82); and the series 'Short Papers on Family Life' by the Revd. George Wilson of Cremond (ibid, (February) 1880, p.19, and (February) 1881, p.25) instilled the virtues of loving patriarchalism into its readers, in terms similar to those used by the Free Church Pastorals of the 'sixties. Articles dispensing advice to sections of the working classes also often appeared under such pseudonyms as 'an old Collier', and 'an old Farm Servant'. The latter was the Revd. Alexander Gray of Auchterless who was highly thought of by his peers. A recent Church of Scotland publication (i.E. L. Cameron: The Challenge of Need, 1971, p.15) still considers him 'one of the ablest spokesmen to farm servants'. Gray had certainly been a farm servant in his time, but his advice does not seem to be very different from or more distinguished than that of other ministers - although admittedly he managed to avoid commenting at the outset of his piece on 'Courtship and Marriage' (ibid., (May) 1881, pp.70ff.) that the subject was 'difficult and delicate': he called it 'ticklish' instead. Gray warned farm servants in that article against being deceived by the outward appearance of courtship partners, advising them to think what it would be like to be married to them. He also warned against marrying too soon, and told the farm servants that their courtship should be 'rational' and 'godly'. But, he wrote, (ibid., p.71.) 'as a general rule your courtship and marriage are not of this rational, pure and godly sort. How do I know? I see it in our Birth Registers - in the deplorable amount of illegitimate children recorded. What are these Records? They are little else but sad and sickening revelations of courtships and marriages defiled and darkened by sensuality. I know also, from having been for years among you as one of yourselves, seeing and hearing how you feel, think, speak and behave, as lads and lasses. Oh, right well do I know, and the knowledge grieves me to the heart, and makes me very earnestly pray and strive to get your courtship and marriage, and all your intercourse as men and women elevated, purified, lifted up out of the pollution in which it is degraded, into the chaste, pure, bright and blessed thing that God who made you male and female desires and intends it to be.'

In advising farm servants not to marry until the proper time, Gray (Life and Work, (June) 1881, pp.89ff.) carefully detailed how much they could spend, out of their wages, on clothing, pocket money (he even allowed them £1 per annum for tobacco, although he considered this a waste of money), and donations to charity. This, after they had also paid £2 p.a. for insurance (returning as £100 at age 55) came to £12, or half of their wages, which Gray estimated as £24 p.a. (ie. for 'a good servant', which, wrote Gray, 'you ought to be' (ibid., p.90). £12 could thus be put in the bank each year. At this rate a young man aged 28 could have saved £130 in ten years. A young woman aged 22 could have saved £30, at the
current rate of wages. When they each had this amount, they could marry. But, wrote Gray, 'Is this usually your time and way of marrying? I am sorry to say it is not ... You marry at haste and repent at leisure' (ibid.). He warned them therefore again against delusions of love and against wasting money by not taking care of their clothes, by 'buying, selling and exchanging watches', by buying whisky and 'fanciful harness and ornaments for your master's horses'. Such 'foolish and sinful waste' led to sickness, an early grave and a widow thrown on the Parochial Board. 'There was', he wrote, 'no Poor Law or Parochial Board in my farm-servant days. And I, for one, think it a great pity that such a law should ever have been made. I believe it has done a great deal to degrade our peasantry ... God's own poor - those who were poor through no fault of theirs - were and would be better off without this law. They were and would be more satisfactorily supplied in God's own way - viz. from the love and charity which He hath put into the hearts of His own rich and well-to-do. The devil's poor - those who are poor from their own carelessness and thriftlessness and sin - would not be so well off without this law. It has done a great deal to make them comfortable and to encourage them in their sin' (ibid., pp. 90-91). (These articles were the seventh and eighth in a series of which six appeared in 1879 - ibid., 1879, pp. 19ff, 35ff, 59ff, 77ff, 92ff; and 187ff. - these dealt with aspects of rural living conditions similar to those which Assembly reports were concerned with. Further advice, on happy homes and on an old age and death appeared in 1882 - ibid., 1882, pp. 36ff, and 86ff.)

If Gray then was one of the Church's ablest spokesmen to farm servants, what were the less able like? The Church's good name however was to some degree rescued for posterity by another pseudonymous writer, an Aberdeen minister who wrote in Life and Work subsequently, on 'Farm Servants and how to help them' (ibid., 1882, pp. 166ff. and 1883, pp. 167ff). This writer, himself a farmer's son from the North-East, took up cudgels in defence of agricultural labourers. 'I would protest as strongly as I can', he wrote, 'against the sweeping charges brought, sometimes in Church Courts even, against farm servants as a class. They have been called drunken; they are no such thing, they are as temperate a class as we have in the community. They have been called immoral and, alas, for that charge there is but too much ground; but if some of their accusers had been placed in their circumstances, they might not have had the right to cast a stone. They have been stigmatised as heathens who never go to Church, and there is too much non-Church-going among them; but on the other hand I have found the great majority of them my most regular attenders' (ibid., (November) 1882, p. 167). This minister stressed the importance of tactful ministerial visitation of farm servants, announced in advance, and conducted in their own quarters where they might feel at ease. A further article in his series (ibid., (February) 1884, p. 29) dealt with Bible Classes, Recreation and Farm Servants' Accommodation, the last of which the writer believed to have recently improved.


The book was often the Assembly's own book, if the minister had publicised it, but more often its 1841 volume, or that of Dr. Dewar or of Fletcher. The last of these was presumably the Guide for Family Devotions compiled by the Revd. Alexander Fletcher of the Finsbury Chapel in London in 1835. This large volume of 762 pages was certainly bulky enough to be classified as furniture. It comprised a Discourse on Prayer, Advice on Family Worship and morning and evening services for every day of the year. The latter
each comprised a hymn, 20-30 verses of Scripture and a prayer. (A few sentences of 'reflections' on the Scripture readings were added: these were mostly those of John Brown of Haddington.) In his introductory Discourse Fletcher pointed out that petition was the most important part of prayer (i.e., more important than adoration, confession and thanksgiving, although these were important in their own way); but the petition must only be for things which were agreeable to God's will, through Christ, and in the assurance of the Spirit. Among the things to be prayed for (Fletcher stressed that his work was 'not sectarian') were the unity of the church and the destruction of 'all foolish distinctions' (ibid., p.iii). He distinguished four kinds of prayer: Secret, ejaculatory, private and public' (ibid., p.vii). Family Prayer (together with 'social prayer' - i.e., prayer in religious groups short of the congregation) was a form of private prayer, and was made up of the parts provided in his book: praise Scripture reading and prayer. Fletcher drew arguments in support of Family Worship from Natural Religion (since man depends on God, God deserves man's homage; since God continues his blessings he is to be thanked; even the 'enlightened heathens' (ibid., p.xi), such as Cicero and Hesiod understood man's spiritual needs: Hesiod (a great favourite of Fletcher's) 'earnestly enforced the propriety of the morning and evening sacrifice') and Revealed Religion. He also pointed out that God was the Founder of Families. ('The relation of husband and wife is God's invention and appointment: Genesis ii, 24. On this divine appointment depends all the comfort of social life and civilized society. Without this, the world would exhibit a picture too frightful to be described, or even conceived!' (ibid., p.xi.).) God was also the Owner, Governor, and Benefactor of Families: his aim in establishing them was 'that he might be known, loved, served and adored'. Among the benefits of family worship, Fletcher wrote, was that 'it restrains from vice, and maintains order and decency, which are of the greatest use' (ibid., p.xiii). His argument for daily worship was that God's mercies came daily, as did sins, wants, employments, temptations, dangers and afflictions. Hesiod was again quoted in support of this argument. Advice on the manner of observing family worship included counsel to avoid indifference, unintelligibility of language and tedium: 'neither should we be so personal as intentionally to wound the feelings of any individual present' (ibid., p.xv).

Among the objections which might be offered to the practice of family prayer neither the claim that it was uncommon, nor that it was difficult, were seen by Fletcher as insuperable obstacles. 'There is', he wrote, 'sufficient time for the objects of the present life and for the life which is to come. Pious heads of well regulated families, who have the management of extensive and important business, find time to serve God and to call their families around the domestic altar... 0 follow the example of these holy characters... "Prayer and provender hinder no man" (ibid., p.xxvii). He also made much of the dangers of neglecting family worship and then regretting it when a member of the family died without its benefits. The 'nation's interest' was something else which family prayer benefitted. Where there was none 'the land becomes a moral desert, exhibiting a spectacle too dreadful to be conceived' (ibid., p.xix). Like the sources mentioned above (Ch.5:2 & 3) Fletcher cited the quotation from Jeremiah about God pouring out his fury on families which did not call on his name. And to this he added the cautionary tale: 'This threatening (by the mouth of an inspired prophet) is the curse of God: and who can tell what that curse is? In the year 1584 an earthquake destroyed a town consisting of ninety houses; all were destroyed except the half of one house, and in that half a praying family resided' (ibid.).
An Appendix to Fletcher's daily prayers included prayers for special occasions and particular purposes (ibid., pp. 733ff.). These included Christmas, Good Friday, Easter, Pentecost, the Fast-Day and the Thanksgiving Day; Spring, Summer, Harvest and Winter; Before and After the Lord's Supper; For the King and Royal Family; for the British Churches, for Bible, Missionary and other Sacred Institutions, for the Jews, for a friend or member of the family in affliction, and for after his recovery, for after the death of a parent, for an afflicted infant and for after its recovery or for after its death, for before and after the interment of a friend, for an afflicted minister and for after his recovery, for after the death and interment of a useful minister, an orphan's prayer, a widow's prayer ('...I confess, 0 my God, that my sins deserve this heavy cala¬mity!... Say unto my afflicted soul, I will betroth thee unto me for ever...'); prayer for a mother and new born babe, for a son leaving home with a view of going into business ('...Grant him grace readily and meekly to submit to the restraints connected with the acquirement of that know¬ledge in business which is necessary for his future support, usefulness and happiness. Make him dutiful, obedient and kind to his employers. Give him grace to manage his temper, and most wisely to govern and regulate his speech... Make him a praying youth...'); for a rebellious son who has left his father's house ('...in this most distressing family calamity... We acknowledge that it is a just punishment for any carelessness or neglect we, as parents, are chargeable with, in the tuition of our son... Stop him, 0 Lord, in his career of sin, and let him not plunge headlong into the lake of woe!...'); for before and after a journey; for rain and thanksgiving for rain; for fair weather in a time of threatening rain, and thanksgiving for fair weather; in a thunder storm ('...We now hear the thunder which is thy voice. Who can thunder with a voice like thine?... The help of men is vain; even the rocks of the mountains could afford us no defence... We lay ourselves at thy feet and cry, 0 Lord save us, or we perish...'), and for after a thunder storm ('We adore thee, 0 Lord, in all the suffering, or injury, sustained by the late tempest of lightning and thunder; and we praise thee that we are not numbered with the dead...'); thanks for an abundant harvest, in time of pestilence or of an infectious disease, and thanks for the removal of pestilence, or an infectious disease; in time of war and for its destruction ('...We would mourn, 0 Lord, over the pride, and haughtiness, and envy, and revenge, which agitate the bosoms of earthly rulers, and make them rush into unnecessary wars, and thus sport with the property, the comfort, the blood and the lives of the children of men. In thy righteousness, 0 Lord, remove from the thrones of kingdoms such scourges of mankind...'), thanksgiving for peace; for during a storm at sea and thanksgiving after a storm at sea; for setting out on a voyage, or outward bound, for on reaching a foreign port (any foreign port, apparently: '...While we remain in this foreign port, suffer us not to be corrupted by the sinful manners of those around us. May we mourn over prevailing depravity, and long for the day when all nations shall be sprinkled with the blood of Jesus... Preserve us from every sin and every excess, which may bring a reproach on our country or the religion of Christ...'); for homeward bound, and for on reaching home.

The Assembly's own books of prayers, beginning with the 1841 edition mentioned here, were revised and recast on a number of occasions during the second half of the century (including the occasion on which the 1859 edition, mentioned above (Ch.5:1 & 2) was produced). An edition of 1889 (Prayers for Social and Family Worship for the use of soldiers, sailors, colonists, sojourners in India, and other persons, at home or abroad, who
are deprived of the ordinary services of a Christian ministry) came nearest to rivalling the comprehensiveness of Fletcher's eye for a crisis. (Travellers in a foreign country were to pray: 'Preserve us from all sinful conformity to manners and customs opposed to Thy holy will.'). But in time of war the people were to be more submissive: "Endue our statesmen and councillors, we beseech Thee, with wisdom to devise, and energy to execute, such measures as are most expedient at this time".) It will, however, take us too far from the present purpose if we pursue this farther.

Reasons for this were not very forthcoming at the time, other than that ministers were pre-occupied with congregational work at the expense of their parishes. This, however, could hardly have applied to country ministers to any extent comparable with their colleagues in the towns. A clue to the problem was given in the Commission's discussion of the latter, and in particular in relation to inner-city parishes when it remarked that many of the lapsed masses 'regard ministers with aversion'. This view, it believed, was 'grievously mistaken'. But it admitted that 'ministers have not always the knack of speaking to their heart, of getting beneath the shell of the life that is lived by the submerged tens', and that the 'younger men, fresh from the Universities, want the kind of experience that establishes a complete report' (C. of S.G.A.R., 1896, p.831). Psychological factors of this kind may well have accounted for some country ministers' unwillingness to visit bothy men. A. Herbert Gray, writing (in About People, 1934, Ch.XVI) a generation or so later, indicated three points which may be relevant: 1) the minister's professional status, he believed, was 'a very serious hindrance' to his availability: 'We are supposed to be constantly disapproving of so many things that ordinary people do', he wrote, (ibid, p.147). 2) Ministers, he thought, took themselves too seriously, and partly because of the licence given to them in the pulpit 'we come to expect that anything we say shall be listened to with respect' (ibid, p.148). (A minister's wife had told him that the ministers of her acquaintance all considered themselves 'the great I am' — ibid.) 3) Very many ministers, he believed, were shy and 'feel awkward in the society of ordinary men, and still more so in the society of ordinary women' (ibid., p.150). No doubt all of these factors (and awareness of some of them) played a part even in the earlier generation with which we are concerned here. Even though the minister's role in society was then rather more clearly defined than when Gray wrote, their anxiety about the lapsed masses and their awareness that society, and their place in it, was changing, must have reinforced a tendency to take refuge in congregationalism, and to avoid situations where their authority might be challenged.

6. Page 300.
The 1906 Report of the Church Life and Work committee included an appendix (U.R.G.C.A., 1906, Report XVIII, pp.9ff.) dealing with housing and other social problems in the four Scottish cities. This appendix included the following relevant observations:
1) In Glasgow, according to the report of this city's Housing Commission of 1904, in the old city 15.89% of the population lived in 1-roomed houses, 49.95% in 2-roomed, 20.49% in 3-roomed and 13.67% only in houses with more than 3 rooms. Some of these 1-roomed houses, in the view of the Life and Work committee, were found to be 'ample and suitable' by 'single women, aged couples, young couples entering on married life, or two young women.
keeping house together' (ibid.). But of the 19,919 'ticketed' houses in Glasgow (ie. houses of no more than 2,000 cubic feet, each of which had a metal ticket on the door stating the permitted number of inhabitants), the Glasgow sanitary inspectors, after visiting 3970 of them, found that while 64% of the inhabitants were 'respectable' (the criterion of respectability being self-support and the payment of rent), 24% were 'addicted to drink', and 12% were 'vicious and criminal' (ibid.). House-farming involved the sub-letting of insanitary slum property, subdivided into single rooms, scantily furnished, and badly ventilated and lighted, at an average rent of 4/6d. per week. The house-farmers were in many cases making enormous profits: in one of the worst cases, a farmer was receiving an income of £2 a week for property which cost him only 5/- a month to rent. Those who lived in these houses must have been desperately in need of accommodation however, since great efforts were made by them to avoid detection of overcrowding by the sanitary inspectors. 'In one case seven persons were found skulking on an adjoining roof and in several cases persons were found hidden between the boards and mattress of the bed' (ibid.). While the Housing Commission was disposed to blame overcrowding for such social evils as 'the superabounding drinking and immorality', the usual confusion between cause and effect was evident. Some of their informants blamed drink for the bad accommodation, and 99% of those who lived in farmed-out houses themselves blamed their bad accommodation on their addiction to drink. (Perhaps this, in turn, was an example of their addiction to the dictates of the collective Calvinist conscience.) Inhabitants of the model lodging houses (7 of which were run by the Corporation and 60 of which were privately run) were described in similar terms, although the Commission spoke in generally favourable terms about conditions in the lodging houses themselves. In view of the part played by drink, the Commission recommended that the number of licences in working-class districts of the city should be reduced. But it also pointed out, the drink question aside, that although wages in general had improved and although tradesmen could afford to live in good accommodation, common labourers, often paid under 20/- a week, and women workers, often paid between 4/- and 15/- a week, could not afford good accommodation and often had to resort to bad.

2. Information about Edinburgh was provided for the Church Life and Work committee by one of its members. This information was not comprehensive, but many examples of house-farming were produced, including houses as bad as any in Glasgow, and condemned by the sanitary authorities. According to this source an Edinburgh house-farmer would pay the proprietor about 2/- per week for each room and rent each out to tenants at 5s., 6s. and in some cases even 7s. a week. If the tenant could not pay weekly, he was often charged 1s.1d. nightly, and, the writer noted, 'inability to pay in advance means summary ejectment' (ibid., p.10). Farmers of large blocks often made profits of from 200 to 300 per cent. In the farmed houses the condition of family life varied considerably, even on the same stair. But there was a very great deal of poverty, and 'a considerable number are rented by young girls who live by prostitution' (ibid.), the writer commented, adding that 'In one room visited there were two young women, between 20 and 25 years of age. A man lived there also. There was but one bed.' He suggested that some landlords encouraged prostitution by preferring to let at the higher nightly rate to single girls than at the weekly rate to married women or widows. And indeed 'to pay the rent and get drink' (ibid.) he claimed, many married women living in such accommodation also resorted to prostitution. The same reporter also visited a large lodging-house for women. Beds here cost 4d. per night before 11 p.m. and 6d. thereafter,
but the majority chose the latter. Few of the younger girls in the lodging-house had work. When they were 'in luck, as they say' (ibid., p. 11) they took to furnished rooms and prostitution. The older women were mostly hawkers.

Leith, where an official register of farmed-out houses was kept and where there were 'numerous day and midnight inspections', had 130 farmed-out houses. None of these was permitted to be of less than 400 cubic feet in size for each adult inhabitant; and the same sleeping apartment was not allowed to contain persons of the different sexes over 10 years of age, except husbands and wives. Rents varied, the average being 4s. 7½d. per room per week, or 9d. per night. Leith house-farmers were making not less than 100%, but at least they did not rigidly enforce ejection for non-payment - a mixed blessing, since arrears could be high. The majority of these houses were occupied by married couples among whom were a good number of dock labourers. Of these, the committee remarked, 'generally speaking, the tenants may be described as drinking where there is work, and living on charitable organisations when there is none' (ibid.). There were 9 lodging-houses in Leith accommodating a total of 957 persons.

3. Information about Dundee was provided by a report compiled by the Social Union in 1904 with the co-operation of the Medical Officer of Health. In concentrated on 'four specially selected blocks' in the poorer parts of the city. (Most of the 'merchants and professional men', it noted, lived outside the city.) In the areas selected, 49.9% of the houses were of less than 5 rooms with more than 2 persons in each room. This compared adversely with the other cities: Edinburgh: 32.7%; Aberdeen: 37.7% and Glasgow 47.8%. The only compensation perhaps was that Dundee rents seem to have been lower.

Dundee, however, had other problems than housing (cf. Ch. 6:4.3., above). Because of the peculiar nature of the jute industry there were, according to this report, of all persons aged between 20 and 45, 3 women for every 2 men in employment. Among those employed in the jute industry, 73% were women, 11% were males under 20 years of age and only 16% were adult males. These men had, in addition, little hope of promotion. Of the females in employment, a large proportion were married, and were often the only wage-earners in their families. Dundee had the highest rate of infant mortality in Scotland (17.4% compared with 13% in Edinburgh): 59% of the children of a sample of working mothers in Dundee died in infancy compared with 42% of those whose mothers had ceased working). The average male wage in Dundee was between 15s and 20s., the average female wage between 12s. and 18s.

Investigations conducted in Dundee schools found that the children were 'under the standard' (what constituted the standard was not stated) 'in respect to height and weight' (ibid., p. 12): 'No fewer than 17.5% were classified as bad in respect of cleanliness of clothing, and 16.7% in respect of bodily cleanliness, as against 3.17 and 8.5 for Edinburgh and 1.8 and 2.5 for Aberdeen respectively' (ibid.). There was a licence for every 376 of Dundee's population, 1.2% of the total having been arrested for drunkenness in 1902; and the death-rate on account of alcoholism was much above the average.

4. The Synod of Aberdeen's special report of 1903, also quoted in this Appendix, did not present a very clear comparative picture of housing in that city. It did state, however, that in one district 60% of the population lived in 1-roomed houses with 3 to 6 persons per room; and that rents, without closets, varied from £1.10s. to £2.10s. per annum. With a closet they were £2.4s., and about half of the houses had them. Rents quoted for other districts of the city in which the poorer working classes
lived were comparable. (By comparison with the other cities rents seem to have been high: but some wages also seem to have been higher: dock labourers were reported to earn up to 30s. per week.) As in the case of the other cities the condition of family life was reported to vary considerably in these districts: there were some prostitutes and a good deal of drinking in the houses visited. The inhabitants regarded the church (for the most part only a few attended) in a way which was 'essentially superstitious'. They looked upon it 'as an institution which lives in a higher social scale, and many of them believe that even if they were to come to church they would not be welcome' (ibid., p.13). Some who still had a connection but had lapsed from church-going defended themselves 'on the ground that the minister and office-bearers did not attend to them' (ibid.).

7. **BURNS AND SCOTTISH CHURCHMEN.** Page 313, Chapter 10.

Without a separate study of the part played by Burns in the consciousness of Scottish Churchmen of the nineteenth century it is not possible to evaluate the influence of his life and writings on church pronouncements with any degree of accuracy. But on the evidence of what some of their leaders wrote and said, the signs are that they were important in the formation of a number of their attitudes and presuppositions.

It was, after all, difficult to avoid Burns in mid-nineteenth century Scotland. By 1888 lives of Burns and articles about him had been written by Lockhart, J.S. Blackie, Carlyle, Robert Chambers, Jeffrey, Andrew Lang, George Gilfillan, Charles Rogers, Christopher North and many other less well-known authors, including a number of clergymen. (Vide J.S. Blackie: *Life of Robert Burns, 1888, Bibliography V.*) Much of what was written lauded the poet, but attacks on Burns-idolatry had been launched by the Free Churchman Hugh Miller in 1844, (Hugh Miller: Essays, 1869, pp.132ff. — a reprint of an article in The Witness, 24/8/1844.) Miller, although critical, in a phrenological note compared the head of Burns with that of Robert the Bruce. Even more complimentary to both was his remark that the heads of both men were 'of about the same bulk as the head of Dr. Chalmers' (ibid.,) and by the U.P. minister Fergus Ferguson in the 'sixties (Vide J.R. Fleming: op.cit., vol.1, p.225). Such attacks were usually keenly contested by admirers of the poet. R.S. Wallace, in an address to the Leeds Caledonian Society in 1899 (Vide Wallace: Life and Last Leaves, pp.610ff.), was highly critical of R.L. Stevenson for having suggested, about ten years earlier, that Burns had feet of clay. (Wallace held a low opinion of Stevenson in any case, and described him (ibid., p.486) as a 'middle-class prig'. He also attacked Stevenson, on this occasion as 'the Samoan Scotsman', for telling the Thistle Club of Honolulu that Scotland's history was 'a long brawl'. Perhaps this was too near the bone.) Wallace went on to deliver a vitriolic attack upon a London journalist who had dared to enlarge upon the now deceased Stevenson's criticism. The journalist had called admirers of the poet 'Common Burnsites'. Wallace was proud to be one. Even in his earlier Edinburgh days Wallace had been a devotee and perhaps conveyed something of his enthusiasm to Dr. Stanley, the Dean of Westminster, who had preached for him in Greyfriars before delivering his controversial lectures on Scottish Church History in January 1872 (Vide P.C. Simpson: Life of Principal Rainy, vol.i, p.222). Stanley's lectures provoked an immediate response from Robert Rainy, the Free Church leader, who took particular exception to his description of Burns as 'a wise religious teacher'. Rainy complained bitterly of the 'crowds of rhetorical men' who went about 'in never ending floods of eloquence to
prove his life a great moral victory', and asked if Burns could ever conceivably have foreseen 'that every after-dinner orator who wished to show what a flexible thing advanced Christianity can be, would harp upon the passages that saddened his own thoughtful hours, as proofs of what may comport with high moral and Christian excellency' (ibid., p.239). Rainy's attack thus demonstrated the other side of the coin - that it could be as controversial to overpraise as to overcriticise the national poet. The subject was clearly a highly emotional one, on which public figures, especially ministers, had to tread warily.

This was particularly true of the middle of the century. At an earlier stage it may have been easier for ministers to criticise, or at least to avoid joining publicly in the hero-worship. Norman Macleod, for example, had refused to take the chair at a Burns festival in 1839 because, despite his admiration of the poems, he could not 'as a Christian minister ... but in the strongest manner disapprove of any dinner to his memory' (D. Macleod: Memoir of N. Macleod, 1877, p.102). Twenty years later, Macleod's attitude had changed. 1859 was the year of Burns' centenary and, according to Macleod's brother (ibid., pp.279ff.), 'the signal for the outbreak of bitter war between the pulpit and the press. There were fanatics on both sides. Admirers of the poet would not brook exception being taken to their hero-worship; this provoked, on the other side, unmeasured abuse of his character and influence. The sacred name of religion was so constantly invoked in the quarrel that no clergyman could take part in the festival without risk to his reputation'. This was not strictly true, for A.H. Charteris certainly took part in an Ayrshire Burns Dinner this year, and, replying to the toast of 'The Clergy', praised Burns as a man who had purified the sentiments of those songs which the peasantry of Scotland hear on the harvest field, in the rustic merry-making and by their own fire-side'. But, he added, 'if along with this there be errors of careless life and thoughtless word we do not soil our admiration of genius with approval of the erring man' (A. Gordon: Life of A.H. Charteris, 1912, p.63).

Like Charteris, then, Norman Macleod, who was an honest man, and by this time a well-known parish minister in Glasgow, risked his reputation and accepted an invitation to speak at the Glasgow Burns Centenary celebration. He was the only minister on the platform. In his speech he praised the poet for 'his noble protest for the independence and dignity of humanity', and was greeted with loud cheering; he praised the poet again for making 'our Doric for ever poetical' and welding 'the hearts of Scotchmen throughout the world', and was loudly applauded; he then stopped praising Burns, and said that he wished some of his poems 'were never written, never printed and never read', and was greeted with a 'storm of hissing, mingled with cheers' (Macleod: ibid.). Macleod's address concluded with an appeal for the centenary to be marked by a new edition of the poems 'from which everything would be excluded which a Christian father could not read aloud in his family circle, or the Christian cottar on his "Saturday night" to his sons and daughters' (ibid.). This appeal was applauded by Dr. Duncan, the Hebrew Grammarian, in a letter to Macleod. It seems likely that it was the implied approval of extramarital sex in some of Burns' poems (not, it is likely, in the more explicit ones, whose circulation was limited) rather than the poet's criticism of holy willies to which Macleod took exception.

Many of Macleod's middle-class contemporaries shared his views on Burns. They could not perhaps carry the political implications of his ideas as far as radicals and socialists did, (Both Alexander Somerville and Keir Hardie claimed to have been inspired by Burns.) But neither could they resist the Burns cult, which had something for everybody. Yet like Macleod they
could not embrace the cult totally. Robert Chambers, the Edinburgh publisher, who was not a particularly prudish man, remarked that it was 'to the lasting grief of all the friends of our Poet' that his collection of Bawdy folksongs - 'these facetiae' - had ever been printed. (Vide The Merry Muses of Caledonia, 1966 ed., p.14.) Burns' life as well as his art was also criticised by J.S. Blackie, the patriotic Professor of Greek, who tempered his praise with an appropriately classical remark to the effect that the great mistake of the poet's life was that, scorning 'the safety which nature and Aristotle have combined to indicate as the golden mean', he 'did not know where to stop' (Blackie: op.cit., p.163). And, equally in character, Thomas Guthrie remarked that 'if he had had the happiness at a certain point of his career to meet with an evangelist of the right sort ... he would not have started off the rails of moral rectitude so grossly as he sometimes did' (ibid., p.169).

Nineteenth century Scottish attitudes to Burns, and particularly those of clergymen, thus seem to have been formed out of an inability to refrain either from praising him or criticising him. Churchmen's attitudes to Burns were thus rather like the advice to hate the sin and love the sinner, only, as it were, put in reverse: to criticise the poet, and, with some exceptions, to praise the poems. Above all it was advice to praise one poem in particular.

The Cotter's Saturday Night', declared the Reverend James Robertson of Whittingha, writing in Life and Work in 1880 (Life and Work, Vol.II, (December 1880) p.137), made you feel proud to be descended from Scottish peasants. But here was the rub. The poem also made you humble. As Mr. Robertson wrote (Life and Work, Vol.II (April 1881), p.60), 'It is, I fear, the fact that family worship in cottage homes, like this described in the poem, once was general and now is rare ... It is common ... to hear people of middle age tell with pride how constant family worship was in their parents' house. But what if the children of the next generation will be unable to bear this witness of us? ... Is that form of life passing away ... which gave to the world men of letters like Burns and Carlyle; men of science like Hugh Miller; missionaries like Duff and Moffat; and last, not least, the heroic Livingstone, who counted it one of the privileges of his life that he was born of "poor and pious parents"?'

A footnote to this, although it does not directly concern the Cotter, may be added. In October 1866, Norman Macleod, writing to his wife from Balmoral to explain a longer-than-expected stay there ('the Queen is pleased to command me to remain here till Tuesday'), told her: 'After dinner, the Queen invited me to her room, where I found the Princess Helena and the Marchioness of Ely. The Queen sat down to spin, at a nice Scotch wheel, while I read Robert Burns to her: "Tam o' Shanter" and "A man's a man for a' that", her favourite.' (D. Macleod: op.cit., pp.377ff.)


Dr. Huntly's report was commended by the U.P. Synod in 1892 (U.P.S. P., 1892, p.143) and again quoted by the Free Church committee in 1893 (F.C. G.A.P. & D., 1893, Report XXXIII, p.3.), the latter adding 'Yes! and England's songs too, and Scotland's and Ireland's are being ruined, and working men's homes are known of, where there is mourning over the soldier-boy that has gone out to India to be corrupted'. The same report (ibid., p.4) included a further letter from Dr. Huntly, which helped to explain his passionate attack. There had been three hospitals in Nusseerabad, one beside the native infantry's quarters, Huntly's mission hospital and a government hospital directly opposite Huntly's. The first of these dealt
with the native soldiers, with cases of assault in the bazaar involving legal action and with sanitary notification and cases of cholera and smallpox. The Mission Hospital dealt with sick natives from the bazaar and the surrounding villages. The third hospital was visited every Friday by the surgeon of the British regiment, and at this time Huntly saw 'a number of women who were well known to be prostitutes' (ibid.) going in and coming out again. They told Huntly that they went for examination and the natives referred to the place as the Lock Hospital. It had never more than one or two in-patients and these were prostitutes being treated for venereal disease. Huntly's complaints about this were known in Nusseerabad, and the surgeon who visited the Lock hospital had 'chaffed' him for his views. By November 1892, when Huntly was writing to Dymock again, he had left Nusseerabad, but had returned to check up on the Lock Hospital. Things were going on as before, only the surgeon of the British regiment now visited the Lock Hospital on a Thursday. The only way to deal with this was to stop the special allowance given to the surgeon and to close the Lock Hospital. The women's attendance only appeared to be voluntary, because (as Huntly had been told) on very high authority, but unnamed, because he was told in private) although no direct pressure was put on the women, their only alternative if found diseased was to leave the Cantonment directly. Huntly had also watched the soldiers regularly visiting the quarters of prostitutes, which were well known. Other Nusseerabad missionaries and 'many natives' (ibid.) would substantiate all this, he wrote.


ibid., pp.65ff. The paper began with the customary reference to the difficulty and urgency of the problem. ('While we are clearing our throats and casting about for language of sufficient delicacy and reserve the cradle and the grave are being flooded with corruption' - ibid., p.66.) It then discussed historical aspects of impurity. (Although the reformers and their successors had some successes, 'the baptismal and session records of the Church down to the present day show how lax and depressing a view our people have taken of the sacred duty of sexual purity' - ibid.) It turned to self-abuse (i.e. masturbation, citing Mark: vii:21 and Matthew vi:28 and declaring that the church had to 'persuade our youth to honour their own bodily members, and remember that even these are not their own to do with as they please' - ibid, p.68); and to the idea that continence was harmful to health. ('To science it is absurd. To religion it is blasphemous. To innocent youth it brings a shameful temptation. To the sexually guilty it supplies a moral anaesthetic. And from married life it withdraws restraint and chivalry, defrauding it even of that secondary motive and sanction ... 'It is better to marry than to burn' (1 Cor. vii:9)' - The Church had to 'denounce and discredit' the sinister plausibility of this idea' - ibid.) The paper then dealt with Impurity and Marriage ('Health and happiness' could 'be wrecked by excess, by parental evasion, by recourse to unnatural methods of preventing conception and by abortion however early induced' - ibid., p.69), Impurity and Pre-Nuptial Relations (the latter, although in some districts 'the survival of an ancient rural instinct to make sure of fertility before entering marriage' could no longer be explained so charitably - ibid., p.70); Impurity and Divorce or Separation (records of divorce and separation showed that adultery was 'only too evident' - ibid. - and 'the publicity given by the press to the sordid evidence adduced, and the shameless illustrations of adultery and free love which form the stock-in-trade of
"problem" novelists and playwrights, deserve the sternest condemnation' - ibid., p.71); and Impurity and illegitimacy (where a falling illegitimacy rate at last cheered Professor Curtis up, but only momentarily - in view of the tendency of illegitimacy 'to perpetuate itself' it was a 'wonder ... that a percentage so serious in each generation does not increase' - ibid., p.75). The paper then dealt with Impurity and Prostitution and Impurity and Disease. These were followed by Impurity and its Crimes (a set of statistics showing statistics of proceedings against and convictions for various crimes from Rape to Bigamy from 1898 to 1915); Impurity and Economic Losses (the cost of hospital and other services, mainly in connection with V.D.); Impurity and Alcohol ('Wine or beer may, indeed, be more dangerous than spirits as a stimulus to this form of sin, for it preserves longer the illusion of self-control, and gives longer opportunity for the cumulative influence of sensual temptation' - ibid., p.86. This presumably was why the Scots were not even worse than they were.); Impurity and Housing (mainly overcrowding, shared beds, etc.); and Impurity and the Church's Duty (to 'look at the facts, and listen to their appeal, and let her voice be heard' - ibid., p.89).

Some comments recorded in The Army and Religion (op. cit., pp.143ff.) support this impression and suggest that military behaviour had not changed very much since Tait had condemned it nearly a century earlier. An 'officer in an east of Scotland regiment': "Impurity ... is the rule in the Army; purity the exception. The opinion of Society on these matters, judging from my experience in the Army, I should say is frankly pagan, and not Christian at all" (ibid., p.144). A 'minister, a hut worker at a base in France': "It is to be regretted that in so many cases there is a distinct laxity in this connection among the higher authorities, due to the notion that immorality is natural and inevitable, and the only thing to do is to try to minimise the ill effects on the military efficiency of the men" (ibid., p.145). A 'chaplain of wide experience': some of his colleagues "were very distressed by the callous matter of coarseness of public opinion among the officers as to pre-marital continence"; this view was "accompanied, I think, increasingly by the opinion that a state licensed system is the best practical and public solution of the problem". This chaplain added that "There is very little knowledge of the cruelty of the prostitution system. Men who would not seduce a girl will accept the fact of prostitutes being there for their use" (ibid., p.153). Sexual Life During the World War (op. cit., pp.345ff) records the view of the British General Crozier: 'My job was to provide food for cannon and good food at that. Far better to eradicate the cause - war itself - than to build up false hopes that it can be waged in any other way than by brute force and brutal means. I go so far as to say that free love in discretion for many of the celibates of both sexes, engaged in war work between 1914 and 1918, was as inevitable as the rising and setting of the sun'. Following the Armistice Crozier addressed his colonels: 'The men have evidently gone woman-mad... The venereal sick rate is mounting. Many women must be diseased. I hear the Germans let the diseased women out of prison the day we arrived. It was an offence for a French woman to give a German venereal, for which she was locked up, for the protection of the soldiers, of course! As the army is now returning to England by degrees it is essential that, so far as is possible, we protect the women at home by returning the men clean. You must lecture your men on the subject and provide every convenient and reliable means of protection and sterilisation. I will see the mayor about the detention of the women and their treatment and segregation' (ibid.).
In January 1842 the Reverend James Macbeth was translated from a parish in Arbroath to the new Church Extension district of Laurieston in Glasgow. The church had been completed only a year earlier, and Mr. Macbeth was its first minister. At thirty-two, he was a popular and able Evangelical preacher who soon attracted a large congregation, a high proportion of whose members were serious-minded and enthusiastic young men. Together, Macbeth and his congregation vigorously evangelised the neighbourhood, and for a time Laurieston seemed to be a highly successful example of Chalmersian ideals. Although the minister and most of the congregation were led, again at Chalmers' inspiration, to 'come out at the Disruption', their exodus was purely metaphorical, for their building, which had been erected by the Glasgow Church Building Society, remained in their possession. Mr. Macbeth even seemed to be launching into a literary, or at least a pamphleteering, career - for by 1846 he had published tracts in defence of Free Church Principles and against Morisonianism and slavery in America.

In 1848 the congregation's progress and their minister's career were rudely interrupted. On the 8th of November the Presbytery of Glasgow charged Macbeth with having attempted to have sexual intercourse with one of his domestic servants and with having behaved immodestly to two others. From the beginning of December to the end of the following March evidence was heard and witnesses examined and cross-examined by the Presbytery and Mr. Macbeth. During this period between twelve and thirty ministers and six and a dozen elders met most weekdays, often twice daily and sometimes late into the night to hear all the horrible details. In the midst of this, in February 1849, the House of Lords awarded all the buildings erected by the Glasgow Church Building Society to the Church of Scotland, and Macbeth's congregation had to move into a store-room above a railway goods-station.

Much of the evidence brought against Mr. Macbeth was hearsay, some of it malicious: the neighbour's servant who had provided members of the Presbytery with grounds for their first change against him - that he had behaved immodestly toward her - confessed at the trial that her story was a fabrication of what had been an innocent incident: she had persisted in it largely at the encouragement of her mistress, who seemed ready to believe any tale about the sexual activities of the minister upstairs. Even the Presbytery could not make this charge stick, and found it not proven. The second charge was simply that Macbeth had remained alone for a few moments in a bedroom on the morning of his wife's confinement while another maid had made up the bed. Macbeth and the maid both claimed that he had simply gone on reading a book during this period. The Presbytery however, despite this and other evidence to the contrary, claimed that the mere fact of being alone in a bedroom with a maid 'without any ostensible cause therefor' was - in the case of a Free Church minister - an offence 'of a scandalous and heinous nature', probably committed 'for some lewd and improper purpose' (F.C.G.A. Papers: 1849: Case of the Rev James Macbeth: pp 1,2.) On this second charge the Presbytery found Macbeth guilty.
The third charge however was more serious, since it was the only one which the servant involved persisted in before the court. Other servants to whom she had previously retailed the story suggested to the court that she had several not very consistent versions of it. In one, she had claimed that Macbeth 'gied me as good a toosling as ever I got' (ibid: p.87), but in others, including that told to the Presbytery, she had repelled his advances. These, she claimed, included night visits, on one of which she spoke to her in 'filthy obscene language that I could not come over in public' (ibid: p.66). Her husband, however, a clerk whom she had married sometime after leaving Macbeth and his wife's service and before the trial, had written it down at her dictation, and it was 'shewn to every member of the Court present before being recorded', although they all refused to read it. Couched in the rudimentary sexual slang of the nineteenth-century lower classes, it offered, besides intercourse, the promise to 'take care of' the possibility of her falling 'in the family way' (ibid).

Macbeth attempted to counter this servant's evidence by citing several witnesses, who told the court that she had denied the whole story to Mrs Macbeth and a friend who had gone to see her, and that she had signed a paper to that effect at the request of Macbeth's beadle and one of his elders. Further, one of the two young men who lodged in the Macbeth's house - which never seems to have been empty except at the time of the first unproven charge - informed the court, under pressure, that the servant (he had overheard this) had told Mrs Macbeth that she was afraid of being left alone in the house with the young male lodgers overnight. This could have damaged the servant's case, but on any occasion when Macbeth's questions were in danger of doing so, they were ruled out of order by the Presbytery. Macbeth's own case was further damaged by the fact that the signed confession by the servant (which the elder and beadle asserted they had taken) had been burned by Mr. Macbeth, and by the fact that she had received an anonymous letter during the trial warning her to give up her story or she would be exposed as a liar: this letter, the Presbytery charged, was in Macbeth's disguised hand. It produced handwriting experts to prove this. But Macbeth produced another who denied it.

After hearing all this and much more, but not very incriminating, evidence, the Presbytery, by thirty votes to one, found Macbeth guilty on the third charge. Mr. Macbeth immediately appealed to the Synod of Glasgow and Ayr, protesting about the way the trial had been conducted, and especially about his being prevented from questioning the credibility of the third servant. The Synod, meeting in April, sustained most of Mr. Macbeth's appeals, found him not guilty on the first and second charges, and found that the third was not proven. Both Mr. Macbeth and the Presbytery then appealed to the Free Assembly, the former to have himself completely cleared (as 'not guilty') on the third charge, the latter to have its own judgment on this and the second point sustained. The Assembly, meeting soon after, sustained the Synod's judgement, but only after a day-long hearing and by a narrow (109 to 103) majority.
Although Mr. Macbeth had not persuaded the Assembly to find him not guilty, he had perhaps won his point, and was received back by his congregation with open arms. Throughout the trial most of them had taken his part – so much so indeed that when the Presbytery reproved his Session for holding a congregational meeting which gave him a vote of confidence, eight out of ten of them had offered their resignation. Macbeth and his congregation immediately set about finding a site for a new church to replace the building awarded to the Church of Scotland. By December of the same year (1849) they had found one, and, on April the 22nd following, Mr. Macbeth was presiding with great aplomb at the foundation-stone-laying ceremony. The minister, office-bearers and other men connected with the congregation then adjourned to the Eagle Tavern where, over supper, 'their meeting was very happily constituted, and the greatest harmony and cordial feeling prevailed' (B. Elder: Union Free Church: 1849: p.58).

Within the month Mr. Macbeth had again 'been accused of certain acts of immorality, which were investigated by two of the office-bearers of his congregation and reported to him. He neither admitted or denied the accusation, but on 29th May he sent a letter to the Presbytery demitting his charge and his status as a minister of the Free Church, and subsequently left for America' (F.C.G.A.P. & D.: 1850: p.254). For technical reasons the Presbytery could not accept Mr. Macbeth's resignation and had to refer it to the Assembly, which gave it permission to hold a further examination and bring the results to the next Commission of Assembly for approval, and in case of appeal.

The Presbytery, meeting on June 12 and 24, July 1st and August 6th and 7th, conducted an investigation, whose findings were then forwarded to the Commission, which on August 14 found him guilty of fornication, deposed him and declared the charge of Laurieston vacant. (Vide: Acts of the General Assembly of the Free Church of Scotland: 1848-1852: p.354). Mr. Macbeth did not re-appear or appeal at any point.

This further blow was hard for the congregation to take. They had the greatest difficulty in finding a new minister, and in the end the candidate they settled on – like Mr. Macbeth in different circumstances – refused either to accept or to decline. He would, he said, abide by his own Presbytery's (Fordoun) ruling. It told him not to go and in the end the Presbytery of Glasgow had to bring the matter to the Assembly of 1851 – which told him he must. To make matters easier the congregation, who apart from anything else were disturbed by the notoriety Laurieston Church now suffered from, had in the meantime changed its name to Union Free Church.
During Mr. Macbeth's suspension, Rainy, at that time a probationer, had occupied the Laurieston pulpit. He later remembered (Elder: *op. cit.* p. 60) 'how strongly the most of the office-bearers and congregation adhered to the minister, being persuaded that the accusations could not possibly be true'; and added that when 'after his acquittal, new evidence which was conclusive came to light, there was no hesitation at all in taking the proper course; and the congregation at once set itself to face its new duties in the best spirit'. The chronicler of Laurieston/Union Church, although (ibid: p. 10) he had consulted the Presbytery records, decided to leave it at that. Others were less convinced of Macbeth's guilt. One member of Macbeth's congregation was the father of Robert Flint, the Church of Scotland theologian. Flint's father 'always maintained that Macbeth was innocent' and that the Rev. Dr. Gibson, minister of the neighbouring Kingston Free Church and Presbytery Clerk of Glasgow had 'been a bitter persecutor of Mr. Macbeth' (D. MacMillan: *Life of Robert Flint*: 1914: p. 67). The Flint family's hostility to Gibson was one of the factors which made Flint decide in 1856 not to go to the Free Church College in Glasgow, where Gibson, now a Free Church Professor, was soon to get up a heresy hunt - fortunately for the Free Church it was unsuccessful - against his own students, including Robert Howie who later was to become the Free Church's statistician. (Flint, who was treated unsympathetically by Candlish when making enquiries about the Edinburgh Free Church College, eventually entered the Church of Scotland and its Divinity Hall, whence he was thereafter able to make a more creative contribution to theology than would have been possible had he remained in the Free Church.

Gibson's part as Presbytery Clerk in the trials of Mr. Macbeth is also mentioned by the Laurieston chronicler, who while not judging the merits of the case observes the large part Gibson played in it, and notes that when Macbeth returned after his first acquittal by the Assembly 'a large number of Mr. Gibson's congregation were present' on the first Sunday Macbeth preached, 'out of curiosity to see the man, as one old lady put it "that our minister has such ill-will at". The reason for Gibson's ill-will may be left to conjecture, for at this distance it is difficult to say how much Gibson, by his own confession a far from popular preacher (vide: J. Wylie *Disruption Worthies*: 1881: p. 264), was motivated by jealousy of his highly successful neighbour.
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