



# **SIN, SANCTITY AND THE SISTER-IN-LAW**

**MARRIAGE WITH A DECEASED WIFE'S SISTER IN  
THE NINETEENTH CENTURY**

David G. Barrie



# Sin, Sanctity and the Sister-in-Law

This is the first book specifically devoted to exploring one of the longest-running controversies in nineteenth-century Britain – the sixty-five-year campaign to legalise marriage between a man and his deceased wife's sister. The issue captured the political, religious and literary imagination of the United Kingdom. It provoked huge parliamentary and religious debate and aroused national, ecclesiastical and sexual passions. The campaign to legalise such unions, and the widespread opposition it provoked, spoke to issues not just of incest, sex and the family, but also to national identity and political and religious governance.

**David G. Barrie** is Associate Professor of History at The University of Western Australia. He is series editor of *Palgrave Histories of Policing, Punishment and Justice*. His recent publications include (with Susan Broomhall) *Police Courts in Nineteenth-Century Scotland*, in two volumes (Farnham, 2014).



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Marriage with a Deceased Wife's  
Sister in the Nineteenth Century

David G. Barrie

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To Jo and Hadley, with love, always



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# Abbreviations

B.P.P.	British Parliamentary Papers
G.C.A.	Glasgow City Archives
H.C. Deb.	House of Commons Debates
H.L.S.	House of Lords Sitting
MDWS	Marriage with a Deceased Wife's Sister
N.L.S.	National Library of Scotland
N.C.A.	New College Archives (Edinburgh University)

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My first acknowledgement goes to the people who brought the subject of the book to my attention. Whilst reading judicial records in the National Library of Scotland I stumbled across a police court trial for breach of the peace in an Edinburgh Music Hall in 1850. The trial was far from typical. It was the longest of its kind in the Edinburgh police court's history and it received extensive media coverage – not the usual short paragraph in the local press. Judicial proceedings did not involve the urban poor who were invariably the recipients of summary justice, but rather a young London lawyer, a respectable local merchant and Edinburgh's civic, religious and legal elites. Why such 'well-heeled' and educated gentlemen should have been involved in a public disturbance intrigued me. That the tumult was over a topic about which I had never heard – whether a widower should be allowed to marry his deceased wife's sister – was even more intriguing. After searching the library's catalogue it became apparent that marriage with a deceased wife's sister had stimulated much passion, anger and discord. It was the inspiration for hundreds of published nineteenth-century tracts, endless political debate and several recent scholarly articles. Surprisingly, though, no historical monograph had charted its history. It was time, I thought, to rectify this and to reconstruct the narrative.

This was a strange decision for someone whose research background lies in policing, crime and justice rather than marriage and the family. At times, I was concerned that I had bitten off more than I could chew. That I chose to take on this project, and persevere with it, is testament to the work and kindness of others. I owe a great intellectual debt to the scholars who have pioneered research in this area. Their work introduced me to new genres, disciplinary approaches and theoretical traditions. It made me want to learn more. I solicited the advice of many people and I am extremely grateful to all who responded. Among those who have been especially helpful are Mary Jean Corbett, Charlotte Frew, Katie Barclay, Aileen Black, Rebecca Rey, Penny Fielding, Bob White, Elizabeth Ewan, Lisa O'Connell, Raewyn Dalziel, Peter Bush, Brian Stanley, Esther Breitenbach, Kieran Dolan, Joan Richardson, Andrew Nash, Duc Dau, Jill Felicity Durey, Graham Tulloch, Liam McIlvanney, John Harrison, Gerard Carruthers, Ian Campbell, Ian Duncan, Andrew Lynch, Donna Maguire and Lesley Orr MacDonald.

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# Introduction

The horror with which the English have been accustomed to regard marriage with a deceased wife's sister has always been a puzzle to Americans. For many a long year, it has seemed the one social question in England which fate has determined should for ever remain unsettled. It was written about in newspapers, talked about on the hustings, preached about in the churches, voted on in Parliament; and yet it remained unlawful for a British subject to marry his deceased wife's sister.

(‘Summary of Events’, *The American Law Review*, volume 6, 1871, 186–7.)

No one who has directed serious attention to this subject, and is capable of taking a comprehensive view of its bearings, can have failed to perceive that it is at once very grave in its character, and far-reaching in its extent. It raises questions of fundamental importance to the existence of the Church, of social order, and of religion itself. It reaches deep into the principles on which must rest the integrity of the Scripture Canon, the Rule of Faith, and even the obligation on Christians of the moral law itself as revealed in the Ten Commandments, as an authoritative rule of life.

(Reverend James Gibson, Free Kingston Church, Glasgow, *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* (Edinburgh, 1854), 155.)

Whether a widower should be permitted to marry his deceased wife's sister was one of the most protracted controversies of the nineteenth century. Such unions had been illegal both in ecclesiastical and criminal law in Scotland for centuries, but they were permitted in England as long as they were not challenged in a church court. In 1835, however, ‘Lord Lyndhurst's Act’ banned all future marriages of this nature in England. His statute, though, was far from popular. Over a sixty-five-year period, numerous attempts were made to reform the law throughout Britain in what seemed like a never-ending annual conversation.<sup>1</sup> All failed in the face of trenchant opposition from Anglican and Presbyterian clergy who believed that the Bible proscribed marriage with a deceased wife's sister (MDWS). The prohibition was not lifted until 1907 – many decades later than in most Western countries.

Described by the nineteenth-century composers Gilbert and Sullivan as the ‘annual blister’, MDWS captured the political, religious and literary imagination

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of Victorian Britain.<sup>2</sup> Love triangles involving widowers and their sisters-in-law featured prominently in Victorian novels and were satirised in popular visual culture.<sup>3</sup> The issue stimulated parliamentary and religious debate and aroused national, ecclesiastical and sexual passions. Ernest Sackville Turner claimed 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'.<sup>4</sup> The campaign for reform, and the widespread opposition it provoked, pitched church against state, sister against sister and English marital laws and customs against Scottish ones. MDWS spoke not just to incest, sex and the Victorian family, but also to national identity and political and religious governance.<sup>5</sup> It struck at the heart of Victorian culture, morality and authority and, as such, its story needs to be told.

The issue mattered deeply to, and directly affected, tens of thousands of people. Relationships between widowers and their sisters-in-law were common, as mothers often died in childbirth, leaving their sisters to assume responsibility for the day-to-day care of their children. Letters and personal correspondence paint a picture of human misery, despair and desperation.<sup>6</sup> Some eldest daughters, burdened with raising siblings, committed suicide.<sup>7</sup> Public opinion and popular customs were brought into conflict with marriage law in what turned out to be one of Britain's longest-running crusades for legal reform. Many couples married in secret in defiance of the law or cohabited as man and wife, but others were constrained by religious faith, the stigma of illegitimacy and the laws of inheritance. Some travelled overseas to marry, but found themselves ostracised within their communities on their return. Others were left stranded in colonial outposts. Many suffered at home with broken promises and unrealised dreams. What united the aggrieved was an unbreakable desire to determine their own choice of marriage partner regardless of ecclesiastical doctrine, common law and community censure.

A series of articles has examined how the conflict played out in England and in the British colonies.<sup>8</sup> These, however, have focused on specific aspects of the story, most notably its representation in Victorian literature or religious discourse. This book represents the first comprehensive, interdisciplinary study to explore the issue's wider history. It examines the social, cultural, political, legal and religious contexts, how these interconnected and informed one another and how cross-border laws, customs and traditions shaped the narrative. The origins of the movement to legalise MDWS emanated in England: English influence and experience therefore permeate each chapter and two of the seven main chapters are largely devoted to the political situation in London (and how this was shaped by the wider British colonial context). The main focus of the book, though, falls on Scotland.<sup>9</sup> Studies on Victorian marriage in Scotland have, with the odd brief exception, focused primarily on marital law, the growth of irregular or clandestine marriage, the family, divorce, wife abuse and marital property rights rather than MDWS.<sup>10</sup> As this book explores, Scotland adds a hitherto unrecognised and important dimension to the way in which the MDWS campaign unfolded in Victorian Britain. Scotland's distinctive Calvinist heritage and separate marriage and criminal laws offer new religious and legal contexts on, and new insights into, the 'annual blister'. The impetus for reform was primarily concerned with addressing what was perceived as

an English problem, but Scottish laws, customs and ‘irregular marriage’ practices formed an ever-present undercurrent to parliamentary discourse. The Scottish experience informed this dispute, not least due to the concern that her laws provoked in England over the potential inheritance implications of cross-border marriages. Permeating the book is, first, English angst about ‘the misery of Scotch law’ and the cross-border political and religious tensions this provoked; and, second, Scottish anger at attempts to ‘Anglicise’ Scottish marital and legal practices.

MDWS was especially emotive and sensitive in Scotland given the country’s long-standing legal and ecclesiastical opposition to it. Such unions had, since at least the sixteenth century, been regarded as incest in Scots criminal law. Those who engaged in them were, unlike in England, liable to criminal prosecution (although this rarely materialised). Attempts to reform marriage law – and impose what was perceived as English marital customs onto Scotland – initially provoked a furious backlash among the Scottish Presbyterian clergy, Scottish MPs and large sections of the Scottish populace. The campaign to legalise MDWS was viewed as an attack on Scottish identity, the Scottish way of life and the teaching and sovereignty of the Church of Scotland. MDWS was for many Scots the burning social issue of the day, one which threatened the very fabric of Scottish society.<sup>11</sup> Attitudes changed, though, as the century progressed. Increasingly, the church’s opposition to MDWS came to be viewed as yet another example of an out-of-touch, repressive clergy prioritising religious doctrine over the will and the needs of the Scottish people.

Given that the independence of the Church of Scotland was – in theory, if not always in practice – preserved by the 1707 Act of Union, the Scottish case study speaks to a range of historiographical issues concerning church–state relations, Scottish national identity and the independence of Scots law. It sheds new light on Presbyterian attitudes towards women, the family and sex and it exposes tensions and intersections between ecclesiastical and criminal law. Furthermore, given that Presbyterian churches in the British colonies (along with their Anglican counterparts) pioneered marriage reform long before the churches back home in Britain, the book offers telling insights into the role of transnational cultural exchange in shaping wider debates. Above all, the book provides the first account of the ways in which legal, social, political and cultural developments – including pressures from above, below and overseas – helped to change the course of British parliamentary and legal history from resistance to reform.

## Contexts, themes and debates

### *Conceptualising the family, purity and the nation*

The archetypal family, and the middle-class family in particular, was intensively mythologised in the Victorian era.<sup>12</sup> The rhetoric of the home as a ‘haven in a heartless world’ became a symbol of bourgeois moral values.<sup>13</sup> Although the reality was often different, the ideal, in the words of Stana Nenadic, ‘provided fertile ground for the widespread anxiety’ that underpinned a pervasive preoccupation

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with the purity of the domestic sphere and women's place within it.<sup>14</sup> What constituted the Victorian family, though, was far from clear cut and by no means uncontested. The concept was defined broadly and was not necessarily rooted in biological relation.<sup>15</sup> As Leonore Davidoff has argued, 'the notion of a distinct "blood relative" ... seems to have been fully developed only at about the turn of the twentieth century'.<sup>16</sup> Instead, nineteenth-century families were 'born and made': that is, they expanded and were reshaped by the incorporation of new members, including the relatives of husbands and wives.<sup>17</sup> They were, according to Mary Jean Corbett, 'produced by proximity, association, and habits of language and thought, issuing in a far less narrow sense of "family" than our contemporary usage denominates'.<sup>18</sup>

For those who defended the existing prohibition against MDWS, the Victorian sibling encompassed both consanguine (blood) and affinal (through marriage) relations. The notion of the ideal family narrowed in the second half of the century, but those who opposed marriage reform perceived no difference between sibling relations through blood and marriage. A wife's relation, in other words, became that of her husband on the same terms. Those who held such an opinion drew inspiration from the law, in which sexual relations, in some instances, were forbidden on social and moral rather than biological grounds. Marriage with blood relatives such as cousins, for instance, was legal, but not marriage between in-laws.<sup>19</sup> Affection towards a relative-in-law was considered pure, safe and untainted by sexual lust.<sup>20</sup> Those who sought to legalise MDWS, however, challenged this notion, resulting in the scrutiny of ideals which had shaped perceptions of sibling relations and the family for centuries.<sup>21</sup> As Corbett has pointed out, the distinctions between real siblings (blood) and not so real (affinal) would form a cornerstone of the ensuing campaign and help to expose ambiguity in the boundaries of 'the family'.<sup>22</sup>

The MDWS issue was especially contentious as siblings occupied a special place within Victorian families. Victorian domestic ideology attached particular importance to sibling relations, especially the relationship between sisters, which was represented as being one of the closest within the Victorian family.<sup>23</sup> Such sibling partnerships were intensely idealised, not least because a high proportion of middle-class women remained unmarried throughout their lives.<sup>24</sup> The middle-class home was a sphere numerically dominated by women and it was especially common for sisters to live together.<sup>25</sup> Sisters and sisters-in-law were the largest category of wider kin living in non-nuclear families, accounting for between 45 per cent and 48 per cent of all non-nuclear kin families in Eleanor Gordon and Gwyneth Nair's investigation of a middle-class area of Glasgow between 1851 and 1891.<sup>26</sup> Moreover, poverty, overcrowding and economic uncertainty forced many working-class sisters to reside together.<sup>27</sup> Most inhabitants of Glasgow's squalid tenement houses lived in one or two rooms, which added to contemporary concerns about the prevalence of incest.<sup>28</sup>

Nancy F. Anderson situated the marriage affinity conflict in Victorian England within the context of concerns with incest and the defence of family harmony.<sup>29</sup> The 1650 Adultery Act made incest a criminal offence in England, but it was

repealed a decade later as the newly restored monarchy swept away all statutes passed by puritans in Parliament in the mid-seventeenth-century revolutionary era. As Penny Morris has argued, ‘incest [in England] was analogous with adultery and fornication and was therefore a social crime rather than a sexual one.’<sup>30</sup> With no criminal law in England penalising incest before 1908 – with incestuous relationships before then being dealt with in ecclesiastical courts – Anglican leaders argued that legalising MDWS would threaten the morality of the family unit. MDWS forced Victorians to confront incest at a time when the family was being reconceptualised and sibling relationships mythologised, which consequently aroused a greater level of anxiety over such unions than had been evident in previous centuries. Legalising MDWS would, it was argued, introduce repressed incestuous feelings and disrupt family life by making it increasingly difficult for sisters to live together. It would open the floodgates for the removal of restrictions on other prohibited degrees – the laws governing marriage – which, in turn, would inflame incestuous desires. MDWS exposed the potential for ‘triangle desire’ between one man and two sisters and raised uncomfortable questions about cultural perceptions of idealised and imagined relationships.<sup>31</sup> The conflict resonated because it stimulated discourse on the ‘idealised bond’ that existed between two sisters and the powerful hold it had in the Victorian imagination.<sup>32</sup> It also dovetailed with the masculine fantasy of ‘having’ both sisters and positioned the sister-in-law as a symbol of displaced incestuous desire.<sup>33</sup> Given that MDWS had been illegal in Scotland for centuries, the discord that unfolded forced Scots to reconsider long-held beliefs about the family and whether it included relations of both consanguinity and affinity.<sup>34</sup> Much discourse on the ‘purity’ of the family centred on how best to protect the sanctity of the private sphere, but it also assumed a subtle, nationalistic undercurrent. As T.C. Smout and others have argued, the notion of ‘family’ played an important part in constructing Scottish identity,<sup>35</sup> as indeed did the country’s distinctive marital and kinship practices.<sup>36</sup> The welfare of the ‘family’ came to be viewed as being intimately interconnected with the welfare of the nation.<sup>37</sup> Although never recruited in the service of explicit nationalism,<sup>38</sup> the notion of the ‘other’ permeated debates, as the perceived purity and identity of the Scottish family were exploited and mobilised for political gain.

Love played an increasingly important role in determining choice of marriage partner from the mid-eighteenth century onwards.<sup>39</sup> The purpose of marriage changed, it has been argued, from the consolidation of family networks to the establishment of affectionate conjugal unions. However, far from revealing the emergence of romantic love as the presiding factor determining marriage, the debates on MDWS show how notions of obligation and obedience continued to overshadow those of love and affection. References to romantic love were rare and, typically, implicit. They usually referred to the broad love of the family rather than romantic love.<sup>40</sup> As in the premodern era, love was usually conceptualised as the fulfilment of duty and remained consistent with the ideal of the Victorian family. It is likely that this characterisation constituted a deliberate attempt by those seeking to legalise MDWS to de-sexualise such unions and allay concerns about the perceived damaging impact they might have on family life.<sup>41</sup> Only in

the latter stages of the agitation did this view begin to change. Throughout, attitudes were shaped by perceptions of a woman's capacity for displaying love – a capacity which was subject to considerable social, moral and cultural variation.

### ***Marriage law, practice and cohabitation***

Marriage practices in nineteenth-century Scotland were more flexible and informal than in much of mainland Europe.<sup>42</sup> As Eleanor Gordon has argued, 'in the formal legal sense Scotland had stood virtually alone amongst Western European countries in enshrining simple exchange of consent as sufficient basis for marriage'.<sup>43</sup> Other countries sought to standardise practice so that legal marriages had to be conducted in a specific, restricted manner in the presence of a minister, priest or qualified celebrant; in Scotland, however, concurrence alone was sufficient to legally constitute marriage until 1939.<sup>44</sup> Regular marriages required the proclamation of banns in the local church on three successive Sundays before the ceremony – a practice designed to identify any impediments. They also required a religious ceremony conducted by a celebrant.<sup>45</sup> Irregular marriages, which were barred in England by Lord Hardwicke's 1753 Marriage Act,<sup>46</sup> were based solely on consent and did not require official prior announcement. They often took place behind closed doors, away from the prying eyes of church elders, and were very difficult to police.<sup>47</sup> They were strongly discouraged by the Church of Scotland.<sup>48</sup>

Self-marrying was a frequent occurrence.<sup>49</sup> This appears to have set Scotland apart from England where, as Rebecca Probert's groundbreaking study has shown, informal and common law marriages were rarer and less socially acceptable than was once thought even before the 1753 Marriage Act.<sup>50</sup> To be legally recognised in Scots law, irregular marriages had to be ratified by the kirk session (church court), commissary court or local magistrates, but not everyone who married irregularly bothered to do this.<sup>51</sup> Many Scots did not require official approval to regard themselves as being married.<sup>52</sup> The religious and legal authorities took a narrow view of what was required to legally constitute an irregular marriage, but 'there was no neat correspondence between legal codes and social practice with ordinary people adopting a more flexible definition of marriage than the official one'.<sup>53</sup> Deficiencies in record keeping make it impossible to quantify accurately, but an estimated one-third of all marriages over the course of the eighteenth century were irregular.<sup>54</sup> These declined in popularity in the first half of the nineteenth century, but became more common in the late nineteenth century.<sup>55</sup> They were fashionable because they were cheap, afforded Scots much discretion and reflected a robust 'popular culture' that remained aloof from the restrictive controlling practices of the state and the church.<sup>56</sup>

Scotland's distinctive marriage laws were widely perceived as providing an environment in which secrecy and illegal marriage could flourish. A survey by the Glasgow presbytery in 1805 found that irregular marriages had given rise to 'illegal and criminal connections'.<sup>57</sup> Unfortunately, uncovering first-hand evidence of the prevalence of relationships with sisters-in-law, and of how those who participated in them were received in their communities, is far from easy. Such relationships

were, understandably, often difficult to detect given their illegal status,<sup>58</sup> the social stigma that accompanied them and the reluctance of the courts to prosecute alleged offenders.<sup>59</sup> The statutory registration of births, marriages and deaths in Scotland was not introduced until 1855 (eighteen years after England) and even then only legal marriages are likely to have been recorded.<sup>60</sup> Much evidence uncovered in this study reveals what religious leaders, editors, landed elites and MPs thought were the views of ordinary Scots; testimony was rarely recorded first-hand. The battle to legalise MDWS nonetheless provides a window into Scottish marriage mores, culture and traditions. As Elizabeth Ewan and Janay Nugent have pointed out, a lot can be learned about the family, and attitudes towards it, by seeing how ordinary people reacted to state interference in its inner workings.<sup>61</sup> Despite being illegal, anecdotal evidence suggests that widowers engaged in clandestine common-law marriages with their deceased wife's sisters, or chose to live together in sin.<sup>62</sup> Indeed, concubinage with sisters-in-law is likely to have been a vital survival strategy for those in poorer working-class communities.<sup>63</sup> As with marriage practice, Scots interpreted and defined marriage law flexibly and on their own terms, which challenged conventional notions of marriage and the family and the church and state's role in policing them.<sup>64</sup>

### *Sex, sinners and godly discipline: gendering religious discourse*

Along with marriage, the regulation of sex and morality had traditionally been viewed as falling within the domain of the Church of Scotland. The church, through its elaborate network of church courts, played an integral role in policing day-to-day sexual behaviour, imposing a system of parish discipline and a greater level of control over local communities than the Anglican Church in England was able to exert.<sup>65</sup> Much of the kirk sessions' attention was directed towards women. The close interrogation of unmarried mothers might have, as Leah Leneman and Rosalind Mitchison have pointed out, been designed to protect the family structure by ensuring that fathers take responsibility for their actions,<sup>66</sup> but the close policing of female sexuality spoke to how church leaders had traditionally viewed women: they were the inherently disruptive and dangerous sex.<sup>67</sup> Unmarried women were regarded as posing the biggest threat to the morality of the community. The extent to which the church and its courts subjugated women has been the subject of much historical debate,<sup>68</sup> but it has been widely acknowledged that its Calvinist teachings helped to provide a theological basis for the regulation of female bodies and sexual conduct.<sup>69</sup>

From the late eighteenth century onwards, the gendered nature of religious discourse changed.<sup>70</sup> Women continued to be the object of special religious attention for sexual offences,<sup>71</sup> but men came to be represented as weak, disruptive and susceptible to immoral behaviour, especially as the nineteenth century progressed.<sup>72</sup> Femininity, on the other hand, came to be portrayed as the essence of Christian piety and the moral heart of the home.<sup>73</sup> The archetypal image of the 'Angel in the House' was fashioned largely from religious discourses that 'vaunted female authority as redemptive and decreed that woman

by nature was supremely suited to the role of moral guardian to the nation.<sup>74</sup> Indeed, the gendered nature of Scottish Presbyterianism emerged in this era as an important part of Scottish identity.<sup>75</sup> Lesley Orr MacDonald has argued that there was 'a significant feminisation of patriarchal Scottish Presbyterianism'.<sup>76</sup> Although by no means uncontested, scholars have pointed to the emergence of moderatism within the church which helped to make church leaders more liberal and relaxed in their attitudes towards sex.<sup>77</sup> This book is sympathetic to the view that religious leaders viewed women as the religious heart of the household and men as the disruptive and dangerous sex – a view which did much to justify in their own eyes the notion that MDWS had to be resisted to protect women from male sexual desire.<sup>78</sup> It also shows, though, that such opinions were by no means universally held,<sup>79</sup> as religious discourse on femininity was inflected by the marital status of the woman and the fears and, in all possibility, fantasies of men. When looked at through the lens of the sister-in-law, many premodern Calvinist perceptions of women as potentially evil and in need of controlling lingered on in the Victorian era.<sup>80</sup> Presbyterian opposition to MDWS was often based upon assumptions about feminine purity and was subject to significant social, cultural and religious variations conditioned by long-held views and prejudices.

The notion of 'domesticity' was integral to the formation of masculine identity.<sup>81</sup> Regardless of his public role or social status, a man's qualification for manhood and citizenship was incomplete without marriage and household leadership.<sup>82</sup> Home and family life formed the basis of a man's reputation and character and was an essential component of Victorian middle-class culture.<sup>83</sup> The domestic ideal – which portrayed household harmony as being dependent upon male domestic authority – was especially important in structuring marital relations.<sup>84</sup> MDWS therefore raised concerns about how it might affect patriarchal authority. It also spoke to how religious and governing men viewed themselves, their communities and the men and women in them. There were competing conceptions of masculinity in operation,<sup>85</sup> but governing masculinity was the dominant model for male elites and was an important means through which honour and masculine identity were constructed.<sup>86</sup> Parliament, in particular, was dominated by a set of gender norms associated with gentlemanliness and domestic responsibility.<sup>87</sup> Men in positions of leadership, which extended to household authority, were expected to control their sexual urges.<sup>88</sup> To show sexual restraint was represented as being a symbol of both manhood and higher civilisation.<sup>89</sup> Yet, political and religious leaders' growing anxiety about husbands lusting after their sisters-in-law suggested that the aspirational ideals of governing masculinity concerning male sexuality were not mirrored in practice. At a time when the church's role in regulating individual morality was challenged in the face of secularisation, the MDWS agitation helped churchmen re-establish, in their own eyes, their moral leadership and justify their intervention in the domestic sphere.<sup>90</sup> It also, though, raised questions not just about what role church leaders should play in regulating sexuality and behaviour within the family, but also whether they should play one at all.

### **Church–state–parliamentary relations**

One of the reasons why the MDWS debate was so protracted was the implications it had for church–state relations.<sup>91</sup> Marriage law was not the sole responsibility of the Anglican and Presbyterian churches, but church leaders regarded themselves as the country’s moral compass on related matters. A strong Anglican presence in the House of Lords consistently opposed attempts to legalise MDWS on the basis that it would infringe upon Anglican law. Significantly, this occurred in an era of diminishing church influence over state policy. As Charlotte Frew has argued, the ‘churches had become diverse voices among many to be listened to by political leaders’ with a reduced ability to be ‘able to directly influence the actions of the state on issues they believed important to the spiritual and moral health of society.’<sup>92</sup> The attempt to relax England’s marriage laws was viewed in religious circles as yet another encroachment into the domain of the church and an attempt to impose state law over religious law.<sup>93</sup> The laws and popular notions of marriage – relating to divorce, married women’s property rights, child custody and domestic violence – were reformed in this era.<sup>94</sup> This makes the success of those opposing the legalisation of MDWS all the more remarkable – and speaks to the need to better understand why they were successful for a considerable period of time.

Under the influence of more liberal thought, Parliament sought to exert more authority over issues which traditionally had fallen under the Church of England’s domain, including marriage.<sup>95</sup> As Anderson points out, the discourse over MDWS was closely aligned with wider debates about the right of both the church and state to exercise moral authority over the individual in what many viewed as ‘a private matter of conscience’.<sup>96</sup> MDWS forced Christian men to reconcile private conscience with public duty and religious beliefs. Individual moral conscience, it is shown, assumed less and less significance in political discourse as the internal dynamics of family life combined with wider economic, social and intellectual developments brought public opinion and political expediency to the fore (ironically, at a time when personal conscience became increasingly important in religious circles as more and more clergy questioned their church’s teachings). MDWS exacerbated tension between the elected House of Commons – which passed countless MDWS bills during the course of the nineteenth century – and the unelected House of Lords, which nearly always rejected them. By the late nineteenth century, MDWS was represented in media circles as just as much a battle over the governance of the United Kingdom as over marriage per se.

MDWS was equally as important for church–state relations in Scotland. These relations were tense following the 1843 Disruption – i.e. a schism within the Church of Scotland over whether the wealthy landowners or local congregations should have the power to appoint and dismiss ministers. With MDWS being both an ecclesiastical and criminal offence in nineteenth-century Scotland, the campaign to legalise it also reveals much about the changing relationship between the law, religion and the state.<sup>97</sup> As Brian Levack has pointed out, Scottish advocates in the eighteenth century became increasingly reluctant ‘to appeal to biblical authority in criminal prosecutions’ and the criminal courts ‘became less willing

to become involved in cases of sexual morality'.<sup>98</sup> As shown in this book, the MDWS issue provides further evidence of the declining influence of religion over the practice of the criminal law. While religious leaders frequently pointed to the sovereignty of the Church of Scotland, the legal profession was remarkably silent on the implications of legalising MDWS for the practice of Scots criminal law relating to incest. For the most part, the Scottish legal system had long since lost interest in incestuous activity between a widower and his sister-in-law – a situation, it is contended, that was indicative not just of whether the law should be used to regulate the private morality of consenting adults, but also its perceived capacity to do so.

### ***Property, patriarchy and pastoral care***

Marriage in the eighteenth and nineteenth centuries was of central importance to the unequal distribution of property and to social and cultural reproduction.<sup>99</sup> It was the central means through which wealth and privilege were contained within narrow social and cultural bounds.<sup>100</sup> Cousin marriage was especially common in aristocratic circles because it helped to ensure that property and status would not be dispersed or diluted.<sup>101</sup> Marriage between siblings-in-law also fulfilled a similar function. Much of the discourse on MDWS was underpinned by a wider recognition of the social and economic benefits of marrying within one's own kinship networks. MDWS was, for this reason, an issue that captured the interests of many in aristocratic circles who provided the driving force behind the struggle. Until 1868, the law of primogeniture decreed that land in Scotland could not be bequeathed in a will: heritable property was to pass to the eldest male child. The Titles to Land Consolidation (Scotland) Act 1868 permitted landowners to bequeath land to whoever they wished, but in the event of intestate cases, the law of primogeniture continued to apply, which continued to leave women often dependent upon handouts from male relatives.<sup>102</sup> Similar laws governed inheritance procedures in England. Moreover, until 1881, husbands assumed legal possession and control over any moveable property that their wives might have owned prior to marriage and any income she might acquire during marriage legally belonged to him.<sup>103</sup> The unattached sister-in-law, therefore, assumed particular significance as she enjoyed greater legal protection – and, in some instances, greater fiscal autonomy and control over her property – than her sister. It gave her, as Anne Wallace has pointed out, distinctive attributes and separate civil identity, which added another dimension to how she was viewed.<sup>104</sup>

In *The Origin of the Family, Private Property and the State* (1884), Friedrich Engels stressed that the emergence of the modern nuclear family was linked to capitalist working practices and the unequal distribution of private property.<sup>105</sup> Family and kin were central to the functioning of business systems and to economic relationships by providing support for capital and labour.<sup>106</sup> The obedient wife, in particular, was integral to the bourgeois world and the construction of middle-class notions of domesticity, culture and identity. She allowed men to be providers, fathers and husbands.<sup>107</sup> In working-class households, there was a