"In all gudly haste":

The Formation of Marriage in Scotland, c. 1350-1600

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ABSTRACT

"IN ALL GUDLY HASTE": THE FORMATION OF MARRIAGE IN SCOTLAND, C. 1350-1600

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This dissertation examines the formation of marriage in Scotland between the mid-fourteenth century and the late sixteenth century. In particular, it focuses on betrothals, marriage negotiations, ritual, and the place that these held in late medieval Scottish society. This study extends to the generation following the Reformation to examine the extent to which the Reformation influenced the marriage planning of wealthy Scots. It concludes that much of the social impact of the Reformation was not reflected in family life until at least a generation after reform. Scottish society and culture was influenced both by contemporary literature, which discussed the role of marriage formation, and by concurrent events involving high-profile marriages. These helped to define the context of marriage for society as a whole.

This work relies heavily on the pre-nuptial contracts of lairds (the Scottish gentry) and nobles, which reflected certain aspects of their marriage patterns and strategies. The context and clauses of an extensive group of 272 Scottish marriage contracts from published and archival collections illuminate aspects of the formation of Scottish marriage, such as the land and money that changed hands, the extent to which brides and

grooms were influenced by their kin, and the timelines for betrothals. This study is the only comprehensive work that has been done concerning the formation of marriage in medieval Scotland. The Campbells of Glenorchy and the Carnegie family both provide excellent case studies in which to examine the process of the choice of marriage partners, negotiation of marital arrangements, and the solemnizing of the unions. They also demonstrate the extent to which families were upwardly mobile through marriage. Although, until now, there has been a focus on the political potential of arranged marriage in Scotland, it is clear that there were social and financial advantages to kin groups that carried out careful marriage planning.

Acknowledgments

This research project did not emerge in a vacuum but was inextricably linked to work both in my undergraduate and masters' studies. I owe a large debt of gratitude to Cynthia Neville, who taught me how to glean social history from legal sources, and Steve Boardman, who understood the impact of marriage contracts on the histories of the lairds and nobility.

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Introduction

On 16 April 1409, the pope issued a mandate to the bishop of Glasgow to dispense the impediment to the marriage of John Patrick and Elizabeth de Vache.[1] The couple were related to each other through two different bloodlines, and their kinship, in the second degree, was well within the papal limits for incest. They had already "carnally known each other" and, indeed, they already had a child together.[2] Nevertheless, the dispensation was granted to "prevent dissensions and strife among the families" caused by their relationship, a stretch of the Church's policy to accommodate illegitimate marriages that could help to end wars and disputes. Their relationship had been an unsolemnised, secular marriage – their families did not support their union – and they used the system of papal dispensations to protect the validity of the marriage and the legitimacy of their child.

A dichotomy existed in attitudes toward marriage in late medieval Scotland. While marriage traditions continued to rest on mixed customs from the lowland, highland, Irish, Norse, English, and French worlds, Scottish lairdly and noble families were increasingly expected to conform to Church decrees and canon law in their treatment of marriage and divorce. As ecclesiastical and secular courts increased their foothold in many areas of Scotland, these worlds collided. The Church was increasingly able to exert its power across Christendom, and this was true for Scotland, as well. At the same time, contract law was evolving and Scots

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[1] Francis McGurk, ed. *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, Scottish History Society. 4th Series (Edinburgh: T. and A. Constable, 1976), 199.
[2] This mandate has been translated into English by McGurk in Ibid., 199.

began to use contracts to protect land and money exchanges created as part of the formation of a marriage. These marriage contracts were controlled by certain rules that dictated how they were used and the extent of their authority. There were, however, other customs of landholding and marriage that these contracts were able to contravene in order to provide rules for an individual marriage that were mutually agreed upon by the parties involved.

Further analysis of these contracts also reveals more subtle aspects of the process of the formation of marriage. A close examination of marriage contracts can reveal details about the extent of parental control of marriage, and the age of brides and grooms when they married. These conclusions can be set in the context of the history of the society that produced these contracts. Struggles for power between men and women, young and old, kin and the individual were tensions that existed in the late medieval world. Additionally, more can be understood about the patterns and motivations for marriages within particular families, and about strategies that families may have employed to maintain and increase their status, at least partly through marriage. Landowning families, in particular, have left rich collections of documents. This study examines marriage predominantly through lairdly and noble families between the mid-fourteenth century and 1600.

The Scottish Reformation and the accompanying shift from the late medieval era to the early modern period brought with them certain changes in marriage law and practice. For instance, the development of legal systems in Scotland and, indeed, throughout Europe in the fourteenth and fifteenth centuries led to an increased use of written contracts as a tool during the negotiation of marriages. The increased use

of these documents shows subtle shifts in marriage practice throughout the late middle ages. There were other social changes that accompanied this institutional shift. When the ecclesiastical courts that handled marriage cases were no longer used after 1560, the reformers had to find new juridical solutions to problematic marriages in parliament, in existing secular courts, and in new Church courts. These changes were palpable, but the overarching social pattern of marriages among the lairds and nobility did not show signs of major change throughout this period. Instead, the dominant theme was one of continuity. This is particularly evident in the ways that families arranged marriages, and in the methods used for forming unions.

This study of continuity and change also forms a key part of the European context of marriage. Scotland is typically portrayed as different from the rest of Europe. In many aspects of marriage and family, it did have unique influences, but the trajectory of its laws, the struggle between regional customs and comprehensive legal hierarchies, and its peripherality were experiences Scotland shared with other areas in Europe. To understand medieval marriage practices as a whole, it is essential to understand this regionality, which has traditionally received less attention, in order to build a complete picture of marital culture.

These historical issues have not yet been thoroughly addressed. Until the publication of *Finding the Family in Medieval and Early Modern Scotland* no single volume examined questions of family structures and interactions in pre-modern

Scotland.[3] The lack of scholarship on the family is in some ways easily explained: Scottish historians have been slow to embrace the theories governing women's history, gender history, the history of sexuality, and social history that have been widely applied to the rest of Europe during the past four decades. Because they were engaged in addressing political problems, many historians ignored and underused a variety of sources that were ideal for an examination of the family.

A perceived dearth of sources perhaps inhibited the study in the past, as did the slow development of social history in Scotland. Most studies of Scottish marriage have been situated firmly within traditional historiographies of kings, queens, and international politics and serve to set up discussions of alliances or dynastic shifts. Topics such as family roles, gender, and sex have only become areas of interest during the most recent generations of research, and the questions asked by these researchers, well-versed in socio-cultural approaches to history, demand more complex answers than have traditionally been provided to questions of marriage.

There are also certain methodologies that have not yet been applied to traditional Scottish history to build a sharper image of family life. The dominance of political history, sometimes to the exclusion of new historical theories, owes much to a search for modern Scottish identity through an examination of its past. The irony, however, is that of all the realms of Europe, Scotland's historiography has been the most influenced by discussion of families through the history and mythology of the Scottish clan. This attention to family structure has contributed

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[3] Elizabeth Ewan and Janay Nugent, *Finding the Family in Medieval and Early Modern Scotland*, Women and Gender in the Early Modern World (Aldershot: Ashgate, 2008).

very little to the development of the historical understanding of marriage and of the inner working of families.

Sources

The core of this study relies on an overview of legal sources from Scotland between the mid-fourteenth century and 1600. Marriage contracts varied enormously in length, style, and purpose, and covered a wide range of time, space, and status. These legal documents, on their own, can reveal an enormous amount about late medieval Scotland with thorough study and statistical analysis. A more in-depth overview of these sources is provided in Chapter 4 and discusses the prevalence and usefulness of marriage contracts among middling and noble families. Marriage contracts provide the historian with a wealth of information about the formation of marriage in particular, and highlight the particular needs and anxieties of those who were involved in drafting them. In Scotland, late medieval marriage contracts have not yet been investigated as a single collection of documents.

Antenuptial contracts were used in Scotland beginning in the fourteenth century, and they form the backbone of this study. They became increasingly common in the royal family and eventually became popular among the aristocracy and eventually the lairds. The spread of sources is very uneven across this period; there are fewer than 30 contracts in the years before 1500, but in the century following there are upwards of 250 documents preserved. There is evidence that cottars (peasant farmers) had their own marriage contracts, too, although none

have survived.[4] The bulk of the extant contracts are those of middling and upper-class families because they were able to preserve the documents in their charter chests for centuries. Evidence of prenuptial contracts in the lower strata of society emerged when notaries and burghs began to preserve records for some of these unions in the fifteenth and sixteenth centuries. The geographical spread of these contracts is generally in keeping with the population distribution, although the partial preservation of sources left major gaps.

Most of the contracts from family collections have now been deposited with National Records of Scotland in Edinburgh, although some collections, such as the Carnegie records are still held by the families in question, and are available, instead, through the National Register for Archives in Scotland. Others are recorded in secondary sources and are no longer available for consultation. Depending on the extent and reliability of the information, these transcribed contracts have also been included in this study.

A major hurdle exists, however, to understanding the full breadth of marriage contracts across society because of the poor preservation of these documents. For most of Scotland, the only extant records are those preserved by wealthy families throughout the centuries. For this reason, much of this discussion is focused on the landed strata of society. Urban collections of contracts do exist in the form of notaries' protocol books, which shed light on marriage practices among a wider range of economic classes. A few dozen books remain for the fifteenth and sixteenth centuries, providing crucial information about marriages in the burghs,

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[4] Margaret H. B. Sanderson, "Lives of the Scottish Cottars, 1585-1620: The Evidence of Their Testaments," *Review of Scottish Culture* 20 (2008): 21.

and these records are supplemented by collections such as the Books of Council and Session, which provide insight concerning the practices in post-Reformation Scotland.[5] These urban marriage contracts were fairly similar to others throughout the realm. They contained dowries sometimes of local burgh lands and sometimes farther afield; they contained other clauses dealing with possible children or the death of family members; and they were drafted and redrafted until they were ready to sign.[6]

The statistical analysis of contracts included 272 documents, including all of the marriage contracts that are catalogued in the National Records of Scotland, available contracts from the National Register of Archives for Scotland, and a selection of other published or calendared marriage contracts, such as those from protocol books. There are five documents from the fourteenth century, twenty-nine from the fifteenth century and two hundred and thirty eight from the seventeenth century. Royal unions were not included in the statistics, but provide interesting anecdotes to frame noble and lairdly marriage. A close analysis of the text of marriage contracts yields a tremendous amount of information about how people were conducting marriage negotiations and how they arranged their lands to maximise their profits. To provide context, this study also included records of banns, court records, burgh records, papal supplications and letters, and dispensations.

The insight of medieval writers is also essential to provide context for the legal sources. The commentaries of chroniclers Walter Bower and John Mair are more valuable to this study than their historical narratives and can be used to

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[5] NRS, B22/8/1.
[6] For example, see NRS, GD122/2/880, GD122/2/881, GD122/2/882A.

construct a theoretical framework for the investigation of notaries' books and lawyers' records from late medieval Scotland.[7] James Balfour wrote his *Practicks* beginning in 1566 and later in the late 1570s, after he decided to compile books recording current legal practice. This included statute law, books of law, and judicial decisions.[8] Books such as James Balfour's *Practicks* are the most systematic reflections of actual medieval legal practice and the struggles faced by husbands, wives, parents, and lawyers in forming marriages; court appearances and literary accounts help to measure the extent to which theory reflected practice.[9] These documents show the legal perspective on marriage and how people dealt with marital contracts.

The outward appearance of these marriage contracts changed over time. The early contracts of the nobility are brief and follow the format of land charters, with a few lines of text on a single sheet and a wax seal attached by a parchment tag. They are written on parchment by a notary and are in Latin. The waxen seals imply the presence and consent of the men and women involved in the transactions, but there is evidence of magnates giving their seals to others to use in their stead. For instance, Patrick, master of Dunbar, sent his notary with his seal, accompanied by two of his kin to approve a land transfer. The combination of his notary and

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[7] D. E. R. Watt, ed. *Scotichronicon* (Aberdeen: Aberdeen University Press, 1996).; and John Major, *A History of Greater Britain: As Well England as Scotland*, trans. Archibald Davis A.E. Constable, J. G. Mackay, and Thomas Graves Law, Scottish History Society (Edinburgh: T. and A. Constable, 1892).

[8] David M. Walker, *A Legal History of Scotland: The Sixteenth Century*, 1st ed., vol. 3 (Edinburgh: W. Green, 1995), 11.

[9] James Balfour, *Practicks: Or, a System of the More Ancient Law of Scotland. Compiled by Sir James Balfour of Pettindreich, ... Carefully Published from Several Manuscripts* (Edinburgh: Thomas and Walter Ruddimans, for A. Kincaid and A. Donaldson, 1754), 97-105.

kinsmen, and an accompanying letter were to be considered the equivalent of Patrick's personal attendance.[10]

The later marriage contracts, from the late sixteenth century, are typically written by a notary, in the vernacular, Scots, even in areas that were predominantly Gaelic speaking. Although there are still some contracts that are quite brief, generally among the middling classes and in marriages that were less complex, these documents tend to be much longer than their predecessors. Some are on a large piece of parchment or on multiple pieces of paper, sometimes affixed together to make a longer roll.

The marriage contracts were written in Latin initially; however, as notaries composed land charters in Latin throughout this period, marriage contracts diverged in language and form and began to be written in Scots. Latin antenuptial contracts were very rare in the later period. Documents in Latin made use of Scots personal and place names, which were Latinised to varying degrees. Throughout this study, names have been standardised. In the case of names with customary modern spellings, these are used. Names without a modern spelling are represented as they appear in the medieval documents.

A notary or secretary of one of the parties involved drew up the contracts themselves. Many of these noblemen and lairds had personal secretaries. Notaries served a number of different families by composing agreements and keeping records of the documents they drafted. If the second party was not present, the secretary occasionally sent the documents to the other family involved in the

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[10] Cynthia J. Neville, *Land, Law and People in Medieval Scotland* (Edinburgh: Edinburgh University Press, 2010), 72.

marriage. At that time, the second party would sign, seal, or edit the contract, until a settlement had been reached.

The scribe followed a standard form fairly closely. The style and contents of marriage contracts conformed to others that were written contemporaneously. No contract, however, was identical to any other. It is clear that the scribes took some licence in modifying documents to meet the needs of the parties involved. Marriage contracts were part formula and part the voice of the signatories.

In the sixteenth century, it was quite common for families to register their contracts with the Lords of Council, who could provide unbiased information about the arrangements, if they were ever disputed. For instance, in 1568, the families of Alexander Strachan of Carmyle and Margaret Carnegie agreed to register their contract in the *Buik of Counsell*.[11] Some of the records of late medieval marriages now survive only as copies of the registration, rather than as the original documents.

The documents were prepared for landowners to accompany a formal transformation in the relationship between the bride and groom. The contract itself is not proof that the marriage took place, but it is a good indicator that there was a marriage between the two parties. The contract was used in parallel to a transfer of lands and goods. Nobles and lairds also used contracts to defend their rights to property both in and out of court.[12] Although, ultimately, these contracts were used

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[11] NRAS792/5/1, no. 137 (3 October 1568).
[12] Dauvit Broun, "The Presence of Witnesses and the Writing of Charters," in *The Reality Behind Charter Diplomatic in Anglo-Norma Britain*, ed. Dauvit Broun (E-Book: http://www.poms.ac.uk/ebook/hardcopies.html, 2011), 235.

as proof of ownership in courts, writing one was a method of avoiding judicial disputes.

A large number of people participated in drawing up a contract. Whoever had agreed to donate land as terce, tocher, and jointure would be involved in the negotiations. Fathers were most typically the predominant members of the negotiating team, in over three quarters of the contracts. When fathers did not participate in negotiations, it was usually because they were deceased. In 61% of contracts, the mother of the bride was named as part of the bride's party in negotiations. At other times, grandparents, uncles, and brothers also participated in the process. Grooms were more likely to negotiate on their own behalf than brides, because they were more likely to be landowners in their own right.

Most of the time, the couple is named in the contract itself, but usually they do not appear as signatories. The bride, or more commonly the groom, were only signatories when they were adults or held their own property, and therefore, held a stake in the marriage arrangements, or when they were minors who had already inherited their fathers' lands.

Marriage contracts had their origins in the land charters of the previous two centuries. Charters replaced an oral culture of "speech acts" of land transfers, which included statements, and gesture to represent legally binding arrangements.[13] Marital negotiations involving land transfers were first represented in the charters governing those lands. Marriage contracts slowly diverged from land charters; as they lengthened, the language changed to Scots, and more types of clauses were

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[13] Neville, *Land, Law and People in Medieval Scotland*, 27.

included. In many cases, these charters and contracts were written records of an oral agreement between families. [14] They gradually evolved to become the agreement itself. By the thirteenth century, landowners might send trusted kinsmen to complete the arrangements in proxy.[15] By the late sixteenth century, it is clear that the contracts themselves sometimes travelled between signatories, rather than representing a physical meeting of the parties involved.[16]

The content of marriage contracts changed over time, but at all times, contracts appeared to follow a similar formula. The early contracts began with a clause providing the date and location, then named the parties involved in the transfer of land or money – not always the couple getting married. They then listed the land and money involved, other terms of a marriage and finished with a witness list. These witness lists are invaluable in reconstructing networks. They can show which families participated in each other's marriage negotiations and arrangements. They are also problematic.

Witness lists have, in the past, been used to re-create social networks, under the assumption that if all of the witnesses on a given charter spent time together, that would have constituted their network.[17] It is now clear that witnesses were not always present at the signing and sealing of charters. Rather, they were chosen because of the authority in relation to the people and lands recorded in the charter.[18] If there was a legal challenge, the support of witnesses was invaluable

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[14] Ibid., 28-9.
[15] Ibid., 72.
[16] William Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 2 vols. (Edinburgh: T. and A. Constable, 1867), 1:50.
[17] Broun, "The Presence of Witnesses and the Writing of Charters," 235-90.
[18] Ibid.

because they were linked with the family and lands in the contract, to make sure everyone understood which lands were being granted to whom. Because this was so important, it appears that the parties involved in drawing up contracts would sometimes sign for a person who was not present – presumably on their orders – in order to supply the same legal backing in case of a challenge.

Methodology

In his book *Love and Marriage in the Middle Ages* Georges Duby set a problem for historians of medieval marriage. He wrote that the dominance of legal documents among sources for medieval marriage posed a danger to historians because the reasoning behind a certain act could be concealed.[19] He suggested that if historians looked at legal documents of marriage alone, then they risked missing the true meaning of their sources. To remedy this, Duby argued that historians of periods beyond A.D. 1000 should look to literary sources to balance their interpretations. This study addresses Duby's concerns by looking at a wide range of sources – both legal and literary – to provide balance between the portrayals of marital practices.

Marriage contracts have many pitfalls as sources for social history. The authorship of the documents is so removed from the thoughts of the couple themselves that it is impossible to know how brides and grooms felt about their impending nuptials from these records alone. It is also difficult to understand the conversations that occurred behind the scenes, and it is, therefore, rare to see brides or grooms disagreeing with their parents or kin. The judicial, literary and epistolary

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[19] Georges Duby, *Love and Marriage in the Middle Ages*, trans. Jane Dunnett (Cambridge: Polity Press, 1994), 6.

sources help to mitigate these issues and lend a personal and emotional understanding to the formation of marriage.

Further background information comes from works such as the lectures of William Hay, an Aberdeen theologian of the sixteenth century.[20] Hay's lectures show the canon law of marriage in practice as it related to the formation and dissolution of a marriage. He wrote specifically about how marriage contracts should be used by couples and families. Hay was a clergyman, but his focus was on how the law applied to lay people. The clerical and legal records of theologians, lawyers and judges can be used to demonstrate both the creation and use of marriage contracts. What these men did not discuss were the complex interactions of family and friends to settle upon certain clauses. Unlike the chroniclers, they were unconcerned with the social and political implications of most contracts.

It is essential to contextualise the legal documents through the use of letters, traveller's reports, poetry, chronicles, literature, notaries' protocol books, Kirk Session records, and court records. In Scotland, literary sources did not appear until the later middle ages. The poems of William Dunbar (c.1465-c.1530), Robert Henryson (late fifteenth century), and others are crucial to research concerning marriage and inform the legal foundation of this study. Poetry like the *Buke of Howlat* can provide insight into everyday life.[21] By including an investigation of the literary portrayals of marriage, this study is able to provide a narrative for the legal documents that arose from marriage.

[20] John C. Barry, ed. *William Hay's Lectures on Marriage*, Stair Society (Edinburgh: 1967).
[21] Richard Holland, *The Buke of Howlat* (Edinburgh: Publications of the Bannatyne Club, 1823).

Marriage contracts have other limitations as sources. They reveal much about how marriages were couched in terms that presented them as arranged, controlled by kin, and obsessed with land and money. They obscure the real motivations behind these marriages, but they do show how people wanted their unions and those of their kin to be seen by the courts – as carefully arranged, and as legally protected. These extant contracts are also limited to a particular segment of Scottish society. The poor and middling classes are only represented in urban records, like those of the fifteenth- and sixteenth-century notaries. It is for this reason that this study is confined to marriages of the gentry and nobility. Comparative material from other groups of people is included where possible, but does not play a major role in the interpretation of evidence.

A few key pieces of data are the focus of this study, although there was no single item that appeared in every contract. In particular, tocher, terce, jointure, names of the parties, families involved, conditions for the marriage, and money changing hands all appeared in a large number of contracts. The date of the wedding in relation to the contract, the age at marriage, and the conditions for the wedding occasionally appeared but in a small minority of documents.

Because these documents dealt with lairdly, noble and urban marriages, there was often other information available about the lives of the participants that can corroborate details found in the sources. In some cases, the marriages recorded do not appear in any other sources, and so there is no background information about the specific parties involved in the union. In other cases – indeed, in the bulk

of the sources – there are other places in which the dealings of these families have been recorded.

Historians have, in the past, fallen into the trap of naive interpretations of the stories that have been recorded in legal trials. Thomas Kuehn criticised this in Gene Brucker's *Giovanni and Lusanna* when he wrote that the motivations of the parties at court were not as transparent as Brucker implied.[22] Kuehn argued that Lusanna's claims to love Giovanni did not reflect the truth, but rather were a way of punishing Giovanni in court and of winning her case. Brucker responded to this in the preface to his 2005 edition, writing that he should not consider "imposing interpretive limits" on sources like this, even though there are issues to contend with in their interpretation.[23] Kuehn raised major theoretical issues concerning the analysis of legal records, and his solutions incorporated the inclusion of corroborating evidence, and the use of deeper analysis. He also suggested that historians set case studies and microhistories in a wider context.[24] This study does just that. It examines both case studies and wider trends to show the limits of behaviour, both normal and abnormal.

Kuehn's criticism also raises the question of how to deal with clandestinity in examining wider patterns. Clandestine marriages were defined as those not solemnised by the Church. Although a priest could attend them, they otherwise fit into varying levels of secrecy from family and society. In some cases, it is practically

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[22] Thomas Kuehn, "Reading Microhistory: The Example of Giovanni and Lusanna," *The Journal of Modern History* 61 (1989).; and Gene A. Brucker, *Giovanni and Lusanna: Love and Marriage in Renaissance Florence* (Berkeley: University of California Press, 1986).

[23] Gene A. Brucker, *Giovanni and Lusanna: Love and Marriage in Renaissance Florence: With a New Preface*, (Berkeley: University of California Press, 2005), viii.

[24] Kuehn, "Reading Microhistory: The Example of Giovanni and Lusanna," 516.

implausible to make conclusions about marriage for which there is no record. Other types of clandestine marriages do appear in the sources, such as later applications for marital dispensations, marriage contracts of other family members, and court records.

It is important to note that marriage contracts are legal documents produced through the consensus of those parties involved, who took the time to carefully craft them. The authors used intentional legal language and clauses, but the fact that they came to consensus means that the document was the product of negotiation but not a tool used to negotiate that particular marriage. This also means that these documents are largely free from some of the pitfalls of juridical sources, where plaintiffs craft their arguments in order to win a case, rather than to communicate the truth.

Supplications to the pope for marital dispensations do encounter the same problem that juridical sources face. Some of the Scottish supplications cite war and strife as reasons for annulment – a reason that was known to be favoured in canon law. It is possible to corroborate claims in some of these supplications by looking at the families involved. Even when there is no evidence of particular, contemporary quarrels, there is sometimes evidence of long-standing feuds between the families of the bride and groom; indeed, marriages were occasionally designed to end these feuds, with varying levels of success.[25]

Other supplications citing causes for annulment list situations that are harder to corroborate. This includes kidnapping, strife, and other scenarios. While

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[25] See also, pp. 153-4.

the existence of these pleas does not demonstrate unequivocally that these particular individuals experienced their marriage in the way that they claim, it does show that they considered their claims to be believable to contemporaries, and expressing them as such was the best way to achieve their goals. That these were believable shows the concerns of their contemporaries about unlawful marriage.

When analysing a collection of documents like this, questions arise about the typicality of the events recorded. The small number of contracts from the fourteenth century shows that the contracts themselves were most certainly atypical. These documents were, however, records of marital transactions, and so there were many other marriages occurring contemporaneously that were either not recorded, or for which the records have not survived. For this reason, unusual marriage arrangements, even if they occurred only once, are noteworthy and relevant to wider conclusions about social history.

By the sixteenth century, however, it is clear that marriage contracts were very common in the upper strata of society, and indeed were found at every level. The upper classes certainly used marriage contracts as a rule, although many of their contracts are no longer extant. To hypothesise about what these missing documents might have recorded, it is possible to extrapolate from the collection of contracts in this study. Inferential statistical analysis allows for the calculation of average dowry amounts throughout the period in question, and addresses lacunae in the data available.

Unusual cases certainly did exist, and many appear in this study. They demonstrate the extent of atypical marriage. Contracts that follow a formulaic

structure do not have as much to reveal about marriages themselves as those that are unique. Unusual contracts hold an enormous amount of information about motivations for marriage, and about the extent of variation across the realm and period. There are many reasons why these atypical contracts stand out. In certain cases, unique clauses in marriage contracts provide a window into types of marital interactions that were not typically associated with a marriage contract. In this case, information from these documents can be extrapolated to the segment of the population who did not choose to use marriage contracts. It is reasonable to speculate that many of these unusual contracts would have been more representative of the general state of marriage formation.

Other contracts document events that were historically unique. For instance, the marriage troubles of Euphemia of Ross and Alexander Buchan in 1392 were so public and so embroiled in politics that it is clear that no other dispute was quite like theirs.[26] The fact that these events were atypical does not preclude the historian from examining their relevancy to people's perceptions of the institution of marriage.

While marriage contracts, supplications, literature and court records must be analysed and interpreted in different ways, they also provide the historian with insight into the social and legal worlds surrounding marriages and demonstrate the ways in which people wanted their motivations framed. Although there always must have been multiple causes for these interactions, it is of relevance how the people

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[26] For an in-depth discussion of these marital troubles, see also, pp. 84-6.
Burns, *Calendar of Papal Letters to Scotland of Clement VII of Avignon, 1378-1394*, 174.

arranging marriages wanted to be portrayed and how they wanted the marriage to be framed.

Theory

The established scholarship on medieval Scottish marriage has focused nearly entirely on its legal implications. This study is not concerned with the specific details of marital law, but rather it uses legal documents and literature, among other sources, to tease out the social history of marriage. This has implications for the interpretations and applications of previous legal research and adds contexts to the way political historians understand the marriages of the nobility and royalty.

Although social history now has an established place in the historiographies of both Scotland and Europe, as a whole, the inclusion of research on family, gender, and society in Scottish history has been a recent development. This development can be further expanded upon by interdisciplinarity. For example, Claude Lévi-Strauss argued that historians should make better use of anthropology and integrate kinship analyses into their investigations of past populations.[27] For Lévi-Strauss, marriage and the development of kin networks were inseparable. The application of these theories to Scottish legal sources has a wealth of possibilities.

A comparative approach to Scottish sources allows historians to define Scottish society and determine to what extent Scottish practice was part of the larger European picture. Local and international, poor and wealthy, pre- and post-

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[27] David Sabean, "Aspects of Kinship Behaviour and Property in Rural Western Europe before 1800," in *Family and Inheritance: Rural Society in Western Europe, 1200-1800*, eds. Jack Goody, Joan Thirsk, and E. P. Thompson (Cambridge; New York: Cambridge University Press, 1976).; and Claude Lévi-Strauss, *The Elementary Structures of Kinship*, ed. Rodney Needham, trans. James Harle Bell, John Richard von Sturmer, and Rodney Needham, Rev. ed. (Boston: Beacon Press, 1969).

Reformation marriages can all be examined comparatively to establish norms for the creation of a marriage in late medieval Scotland. The use of international material can, then, provide evidence of points of contact and contrast between medieval realms and between modern national historiographies. Methodologies designed for use in French and English studies can be adapted for use in Scotland. This situates Scotland's unique and shared histories within the context of medieval Europe and can contribute to the wider understanding of European customs in the middle ages and during the Reformation.

The role of marriage had different complex nuances for royalty than it did for the nobility or burgesses, but a cross-cultural approach is essential in the investigation of the power and authority of wives and adult children in their families and lordships. This study focuses mainly on the families of lairds and of nobles, but it also looks at examples of urban marriages and royal marriages to provide context. Royal marriages, in particular, are recorded in such detail that much more can be gleaned about the formation of marriage in Scotland in general. Urban unions provide a crucial look at different strata in a microcosm of society that was essential to the medieval worldview.

Chapter 1: The Historiography of Marriage and the Family

Scotland offers an excellent set of sources for marriage, which can allow historians to further understand the diversity of marital practices in Europe and the extent to which these influenced the structures of society. There is a rich European historiography of marriage to draw on for such research. Scottish history, in particular, is very strong in certain areas, and notably weak in others. It has a robust set of histories of politics and kings, which have examined in detail the interweaving motives for kings and nobles to operate as they did. There are also a large number of histories, whether academic, romantic, or popular, of the actions of specific families and clans. There are very few historians, however, who have looked at the social history of marriage and the family. This study intends to fill that gap and to provide European historians with more insight into the relative differences across the continent.

Marriage & the Family in Europe

Intermarriage among the nobility of Scotland and Europe resulted in the inevitable mixture of marriage customs among various realms in Christendom. It would thus be impossible to thoroughly examine the social aspects of Scottish marriage without a firm grounding in the international context. This can be achieved through the investigation of European medieval marriage in a broad sense, and through the use of local studies of marriage contracts in other countries.

Georges Duby's work on marriage in medieval France addressed many of the ways that marriage evolved through the central middle ages and asked how the clerical idea of marriage intertwined with lay perceptions.[1] He looked at the marriages of nobles and royalty and put an emphasis on two parallel models of marriage, which can be accurately applied to Scotland as well as France. Duby's work did not deal significantly with late medieval material, but the work of other historians of France showed further parallels with Scotland.

For example, Julie Hardwick's examination of the marriage contracts of notaries' families in Nantes from 1560 to 1660 was an example of the detailed conclusions that can be extracted from a comprehensive collection of marriage contracts.[2] Hardwick's work examined gender constructions in notarial households and concluded that these families were especially concerned with the preservation of their social status. Hardwick used gender analysis and compared legal theory to real practice to show that patriarchy was alive in all levels of society and was not simply a top-down construction. This study was of a specific group in society, but many of the conclusions are valid in Scotland, especially among similar urban groups. Although the availability of post-1560 Scottish sources is better than that of medieval sources, such a focused history, including an investigation of marriage contracts and their outcomes, has not yet been done for Scotland. For this reason, Scottish historians can make use of the French structures identified by Hardwick, as

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[1] For example, see Georges Duby, *The Knight, the Lady, and the Priest: The Making of Modern Marriage in Medieval France*, 1st American ed. (New York: Pantheon Books, 1983).; Georges Duby, *Love and Marriage in the Middle Ages*.; and Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, trans. Elborg Forster, The Johns Hopkins Symposia in Comparative History: No. 11 (Baltimore: Johns Hopkins University Press, 1978).

[2] Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, Pa.: Pennsylvania State University Press, 1998).

well as work done on England, Florence, Venice, and Neuchatel.[3] While social histories from other realms are by no means interchangeable, they can provide starting points for researchers in other countries and other disciplines.

Not only does the French experience provide interesting methodology and answers to uninvestigated Scottish questions, but its importance can also be demonstrated through the strong French presence at the Jacobean courts. Through marriage to Scottish men, French women were able to exercise political power at the Scottish courts. Wives and widows of noblemen had active political lives and this can be seen most clearly through the careers of the queens regent.[4] Mary of Guise's struggle to maintain power was based on her conception of her status and rights as a queen and mother. Both the regent Mary and her daughter, Mary Stewart, were raised in French royal households with French values.[5] Both of them were seen as foreigners in the Scottish court. Jenny Wormald argued that Mary Stewart's greatest flaw was her lack of personal connection to Scotland.[6] Instead, Mary's childhood and culture was firmly rooted in the French courts of Henry II and Francis II.

Mary Queen of Scots' marital struggles must be set in the context of both Scottish and French understandings of the creation and value of marriage. Fiona

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[3] Conor McCarthy, *Marriage in Medieval England: Law, Literature, and Practice* (Woodbridge: Boydell Press, 2004).; David Herlihy and Christiane Klapisch-Zuber, *Tuscans and Their Families: A Study of the Florentine Catasto of 1427*, Yale Series in Economic History (New Haven: Yale University Press, 1985).; Jeffrey R. Watt, "Marriage Contract Disputes in Early Modern Neuchatel, 1547-1806," *Journal of Social History* 22 (1988): 129-47.

[4] Ruth Grant "Politicking Jacobean Women: Lady Ferniehirst, the Countess of Arran and the Countess of Huntly, c. 1580-1603" in Elizabeth Ewan and Maureen M. Meikle, eds., *Women in Scotland, c. 1100 - c. 1750* (East Linton: Tuckwell Press, 1999), 90. and Fiona Downie, *She is but a Woman: Queenship in Scotland, 1424-1463* (Edinburgh: John Donald, 2006), 1-2.

[5] Pamela E. Ritchie, *Mary of Guise in Scotland, 1548-1560: A Political Career* (East Linton, East Lothian, Scotland: Tuckwell Press, 2002), 18-9.

[6] Jenny Wormald, *Lords and Men in Scotland: Bonds of Manrent, 1442-1603* (Edinburgh: John Donald, 1985), 189.

Downie succinctly explained the importance of royal women who travelled: "James II may have believed himself to have influence on the European stage but he never set foot outside his kingdom. In contrast, his mother, six sisters and wife mingled with the royalty and nobility of European courts."[7] The Auld Alliance with France and the struggle to find suitable marital matches for the nobility both contributed to intermarriage with French nobility and royalty.

The marriages of the royal family are the best documented of Scotland's political marriages and provide ample evidence for a study of marriage; however, royal marriages were both inextricably linked to, and inherently different from, those of the nobility. Marriages that were created for political, economic, and social suitability were, however, seen at all levels of society. The marriage contracts of the nobles and lairds show a broader spectrum of Scottish society, allowing for comparative investigation of marriages within wealthier families. For a series of local marriages, such as those listed in notaries' books, local context is paramount.

Mia Korpiola's book, *Between Betrothal and Bedding: Marriage Formation in Sweden, 1200-1600* provides an excellent comparator for this study.[8] The time period covers both the dominance of the Church in Rome, and the Reformation. The distance between Rome and Sweden and Rome and Scotland also meant that the ecclesiastical hierarchy faced similar problems dealing with their peripherality. The outcome of Rome's struggle for real power in the two countries, however, was slightly different.

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[7] Downie, *She Is but a Woman*, 7.
[8] Mia Korpiola, *Between Betrothal and Bedding: Marriage Formation in Sweden 1200-1600*, Northern World; (Leiden: Brill, 2009).

The study of English marriage is also a crucial comparator to Scottish practice. A committed group of Scottish medievalists have advocated for the study of Scottish history with the British context. This has included scholars such as Geoffrey Barrow who argued that histories of Britain as a whole must be read alongside regional histories.[9] Alexander Grant's works demonstrated the usefulness of comparative British histories as he, like Jenny Wormald, repeatedly situated Scotland within its British context, often to show contrast. Grant did, however, point out that comparative British histories often have little dialogue upon which Scottish historians can rely.[10] He noted that the late medieval period in Scotland was one of more-or-less secure political independence from England and that while histories of the countries can be contrasted, there is little to compare.

Maureen Meikle's study of border society, however, implicitly refuted these ideas, when it included an overview of cross-border marriages in the eastern Borders, and demonstrated the importance of marriage in developing and maintaining a good rapport between neighbouring regions.[11] While it may be true that the identity of most Scots was not distinctly 'British', it is clear that the identity of the nobility was as 'Europeans'. This can be seen in their marriages and

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[9] G. W. S. Barrow, *Feudal Britain: The Completion of the Medieval Kingdoms, 1066-1314* (London: E. Arnold, 1971).; Robin Frame, "Overlordship and reaction, c. 1200 - c. 1450" in Alexander Grant, ed. *Independence and Nationhood: Scotland, 1306-1469*, The New History of Scotland, 3 (London: E. Arnold, 1984), 65-84.; R. R. Davies, *The British Isles, 1100-1500: Comparisons, Contrasts and Connections* (Edinburgh: J. Donald Publishers, 1988).

[10] Jenny Wormald, "Taming the Magnates," in *Essays on the Nobility of Medieval Scotland*, ed. Keith Stringer (Edinburgh: John Donald, 1985). Alexander Grant, "Scottish Foundations: Late Medieval Contributions" in Alexander Grant and K. J. Stringer, *Uniting the Kingdom?: The Making of British History* (New York: Routledge, 1995), 97.

[11] Maureen M. Meikle, *A British Frontier?: Lairds and Gentlemen in the Eastern Borders, 1540-1603* (East Linton: Tuckwell Press, 2004), 268.

presentation at court.[12] While this study uses occasional comparisons with England, a greater emphasis is placed on European comparators. This is useful to establish which parts of marriage practice were universal in Christendom, and which aspects remained uniquely Scottish.

The History of Marriage and Family in Scotland

Research on Scottish marriage has been slower to develop than in other European regions. The preoccupation of Scottish historians with questions of politics and national identity during the 1970s delayed the inclusion of social and gender history within Scottish academe. The understanding of Scottish marriage customs has at times been incredibly confused. Despite a lack of attention to the history of marriage, many historians have addressed the role of marriage in politics. Political scholarship has dominated the study of Scottish history, and political historians have always acknowledged the importance of the formation of marriage in specific events, such as in peace treaties. Historians have also discussed the marriages of members of the royal family, which were nearly universally political decisions. In the past twenty years, however, researchers have begun to delve deeper in the records to discover the complex and particular nature of marriages and their impact on the families involved.

The value of marriage contracts as economic and legal documents has been widely recognised not only by matrimonial historians but also by a wide group of political scholars. The documents themselves, however, have garnered little

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[12] Andrea Thomas, *Princlie Majestie: The Court of James V of Scotland, 1528-1542* (Edinburgh: John Donald, 2005).

attention outside of broad studies of marriage. The current generation of historians, focusing on culture and gender, are making a clear case for the crucial role of marriage in the socio-cultural lives of medieval Scots.[13] Like their predecessors, recent historians understand marriages to be pivotal events in the history of Scotland. They also, however, place a greater emphasis on the marriages of a wider portion of the medieval Scottish population. A thorough understanding of the development and use of marriage contracts can enhance marital and socio-economic histories. To put this contractual evidence into the context of social history, it is necessary to investigate contracts within the broader historiography of marriage and the family in medieval Scotland.

Early Discussions of Marriage & the Family

The earliest historians of Scotland, the chroniclers, addressed questions of marriage, especially as related to the lives of kings. Many medieval Scottish chroniclers recounted both the profitable and less-than-successful marriages of various kings, but Walter Bower, abbot of Inchcolm, took this one step further. In his fifteenth-century *Scotichronicon,* Bower included extended commentaries about good wives, bad wives, and how to choose a wife.[14] His advice was aimed at the monarch; however, his thoughts were also more widely applicable. John Mair's 1521 *Historia Majoris Britanniae* offered a similar analysis of the role of marriage in royal history, when he wrote about the union of Robert the Bruce and Marjorie, countess of

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[13] For example, ibid.; Ewan and Meikle, *Women in Scotland, c. 1100 - c. 1750.*; Yvonne Galloway Brown and Rona Ferguson, *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400* (East Linton: Tuckwell, 2002).; Margo Todd, *The Culture of Protestantism in Early Modern Scotland* (New Haven; London: Yale University Press, 2002).
[14] Watt, ed., *Scotichronicon*, 7:333-59.

Carrick.[15] Both historians directly addressed the need to choose a good wife, but their coverage of the issue was limited to royal lineage rather than social history, which precluded any discussion of the role of marriage in the family or in the realm as a whole.

The political and legal approaches of medieval chroniclers to the discussion of marriage provided valuable contemporary opinions on the importance of marriage within late medieval society. Histories from the seventeenth and eighteenth centuries proved to be less useful. Clan histories from the seventeenth century provide viable historical information, but historians have criticised the biographies in these histories for their accuracy, and these would be the most important details for analysis of the family dynamics.[16] There was very little discussion of marriage in these histories, and this caused later historians to have few accurate accounts on which they could base their conclusions about marriage and the family in the middle ages.

Certain aspects of marriage have garnered more attention from researchers. In Scotland, many works addressing marriage and kinship were, in fact, more general histories of families or of the realm. Both professional and amateur historians have paid particular attention to the question of 'handfasting', believed to have been a peculiarly Scottish phenomenon. This became one of the first aspects of the traditional historiography of marriage that was seriously questioned.

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[15] Major, *A History of Greater Britain*, 188.
[16] R. Andrew McDonald and Scott A. McLean, "Somerled of Argyll: A New Look at Old Problems," *Scottish Historical Review* 71 (1992): 4.

Misconceptions about marriage arose partly because historians in the late-eighteenth and early-nineteenth centuries turned towards romantic visions of the Scottish past. These works contain little of relevance to the modern researcher, except that they established one of the ever-present myths of medieval marriage in Scotland. Thomas Pennant's writing in 1771, although based on little concrete evidence, gained a large popular audience that continues to this day.[17] Pennant was one of the first historians to record the myth that medieval Scots, either Celts or lowlanders depending on the source, were in the habit of entering trial unions, called "handfast marriages".[18] According to Pennant, after a year and a day, the couple could choose to end their marriage. These ideas were adopted and spread by Walter Scott, who repeated Pennant's conceptualisation of handfasting in the dialogue of his novel, *The Monastery.[19]* Pennant's semi-mythical accounts were used subsequently by historians and were not seriously reassessed until 1950, when A. E. Anton demonstrated that the word 'handfasting' was synonymous with 'betrothal', and nothing more.[20]

Unlike the history of marriage, family history has dominated Scottish literature since writers in the early modern period composed clan histories to record the honourable deeds of their predecessors. Histories such as the *Book of Clanranald* recorded genealogy, politics, and family affairs.[21] Other works, such as the poetic fable *The Buke of the Howlat* were not centred entirely on the family, but

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[17] Thomas Pennant, *A Tour in Scotland, 1769* (Chester: J. Monk, 1771).
[18] Ibid., 91-2.
[19] A. E. Anton, "Handfasting in Scotland," *Scottish Historical Review* 37, no. 124 (1958): 89.
[20] Ibid.
[21] Alexander Macbain and Alexander Cameron, eds., *The Book of Clanranald* (Inverness: Northern Chronicle Office, 1893).

devoted sizeable portions to similar discussions of deeds of valour and recorded paternal lines of descendants.[22] These records have been used subsequently for everything from recreating lineages to determining motives for political actions. Historians have often trusted these sources too much, and recently modern researchers have established that many details of individual careers of the subjects of seventeenth-century clan histories are incorrect.[23] Nevertheless, by choosing to record the stories of each clan independent of one another, genealogists established a regional framework for Scottish history that relied on constructions of kinship to define the nation.

The prominence of clan histories was overshadowed by the growth of the discipline of Scottish history during the eighteenth century. Historians continued to work on disparate subjects, but the most prominent published works addressed long periods of Scottish history as a whole. William Robertson's *History of Scotland during the Reigns of Mary and James VI* was one of the most prominent examples of this type of work.[24] Robertson understood the importance of family in Scotland. His political history is shaped around the rise and fall of whole kin groups, and he understood that an individual's actions in court or on the battlefield could have direct consequences for the whole kinship network. Robertson refers to 'family' hundreds of times but never discusses the significance of these family links. This became a model for political histories of Scotland, which have continued to display

[22] Michael Brown, *The Black Douglases: War and Lordship in Late Medieval Scotland, 1300-1455* (East Linton, East Lothian, Scotland: Tuckwell Press, 1998), 10.
[23] McDonald and McLean, "Somerled of Argyll: A New Look at Old Problems," 4.
[24] William Robertson, *The History of Scotland During the Reigns of Queen Mary and of King James VI, till His Accession to the Crown of England, with a Review of Scottish History Previous to That Period: And an Appendix, Containing Original Letters* (New York: Derby and Jackson, 1856).

an ambivalent attitude towards the importance of family into the twenty-first century.

Romanticism was also increasingly incorporated into histories and historic novels. Walter Scott was particularly known for this, but he was also known for his passion for a robust study of Scottish history, which he resurrected.[25] It is the romanticism of Scott's *History of Scotland* that led him closer to a discussion of the medieval Scottish family. Although his narrative had the same political structure as other histories, his passion for telling a good story is clear in his elaborations on marriage negotiations and family discussions, giving his reader a glimpse of his understanding of the historical family. Although Scott did not adhere closely to historical fact, he did make an effort to provide what he thought was an accurate depiction of historical Scottish practices. Scott's history of the family was limited, however, to the same discussions of marriages of kings, queens, and powerful magnates that had been addressed by historians since the early chroniclers.

Scott's contemporary, Robert Douglas, was also interested in the history of Scotland, but he approached his history quite differently. By structuring it around noble lineages, he followed in the footsteps of the early clan histories. He compiled the *Peerage of Scotland* in 1764.[26] This was revised, first by John Wood, and then James Balfour Paul, Lord Lyon King of Arms, who edited it from 1890 until 1927 and reissued it as the *Scots Peerage.* Balfour Paul commented on Douglas's original: "Modern methods demand a much more thorough treatment of genealogical

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[25] Marinell Ash, *The Strange Death of Scottish History* (Edinburgh: Ramsay Head Press, 1980).
[26] James Balfour Paul and Robert Douglas, eds., *The Scots Peerage*, 9 vols. (Edinburgh: D. Douglas, 1904), 1:ix.

questions than was desired or even possible a century ago."[27] This statement could now be applied to Balfour Paul's own work. As an invaluable research tool, the *Scots Peerage* is still used by historians today, albeit somewhat cautiously due to its outdated methods.

As these romantically inspired historians were establishing themselves, the scope of discussion soon broadened dramatically with the publication of William Fraser's first family history in 1858.[28] As a solicitor, Fraser had been asked to compile documents to authenticate the genealogies and histories of several families who were involved in court cases concerning family lordships and peerage titles.[29] As his knowledge grew, Fraser was increasingly commissioned by noble families to write their histories. In all, Fraser was hired to publish twenty-four family histories in fifty volumes between 1858 and 1897.[30] The first historian to make significant progress in the investigation of medieval marriage contracts, Fraser had strengths that were antiquarian more than analytical. Books such as *The Scotts of Buccleuch* and *The Douglas Book* contain narratives of family history compiled from the family muniments and from other charter collections Fraser had come across in his research.[31] Beacuse his family histories rose out of legal cases concerning peerage titles, his books focused on the heritage of contemporary aristocrats.[32] Some of

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[27] Ibid., 1:xi.

[28] Gordon Donaldson, *Sir William Fraser: The Man and His Work* (Edinburgh: Edina Press, 1985), 33. and William Fraser, *The Stirlings of Keir, and Their Family Papers* (Edinburgh: Privately printed, 1858).

[29] Donaldson, *Sir William Fraser: The Man and His Work*, 31.

[30] Ibid., 33.

[31] William Fraser, *The Scotts of Buccleuch*, 2 vols. (Edinburgh: Edinburgh University Press, 1878).; and William Fraser, *The Douglas Book*, 4 vols. (Edinburgh: T. and A. Constable, 1885).

[32] Donaldson, *Sir William Fraser: The Man and His Work*, 31.

these histories include transcribed marriage contracts, work that was done either by Fraser, a careful and skilled palaeographer, or by his clerks.[33]

This in-depth research through family charter chests provided the source base for more detailed histories than had been previously written. Fraser's series of works devoted little time to an examination of high politics, and instead recorded the history of a single family from the first known documentation of the surname up to Fraser's own time. The detailed copies of documents allowed for easier archival work and Fraser's use of footnotes facilitated further research. Whether through vanity, historical diligence, or, more likely, a combination of the two motivations, these twenty-four families were able to preserve aspects of their stories which future historians could use.

Fraser's works certainly contained errors, some of which he quickly corrected, but his transcriptions are generally trustworthy.[34] Most of the criticism of his series of books, which originated both in the nineteenth century and also among more recent scholars, addressed his fundamental misunderstanding of the context behind the documents he studied. George Burnett, Lyon King of Arms, criticised Fraser's effort to distinguish the son of Robert II as a commoner or a peer. Instead, Burnett insisted that the distinction was anachronistic.[35] Burnett further criticised Fraser's interpretation of documents relating to marriage in *The Red Book of Menteith*. The Lyon King of Arms argued that Fraser was too willing to believe that all written marriage contracts were carried out, namely the contract of marriage

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[33] Ibid., 37.
[34] Ibid., 37.
[35] Ibid., 73.

between Janet, daughter of the Duke of Albany, and the son of Philippa Mowbray and Bartholomew de Leon. Fraser asserted that the marriage between the infants attested to in the contract must have taken place. Burnett argued that canon law precluded this.[36] Although Fraser's interpretation of the narratives of the past is, in places, questionable and out-dated, his knowledge of the range of documents, including marriage contracts, was spectacular.

A contemporary of Fraser, Alexander Maxwell, was the first historian to offer a deeper analysis of the content of marriage contracts in his *Old Dundee: Ecclesiastical, Burghal, and Social, Prior to the Reformation*, published in 1891. Maxwell devoted four pages to a discussion of marriage contracts,[37] which, although seemingly negligible, rivals the treatment of antenuptial contracts since. Maxwell's pioneering, and often forgotten, history included a chapter on "The Social Position of Women". Maxwell treated a variety of issues faced by women, mostly related to marriage. His contribution to the history of women in Scotland was unprecedented and remained one of the most comprehensive studies for three generations.

Since the publications of Maxwell's works, dramatic changes in the culture of scholarship make his bias immediately clear to the twenty-first-century historian. His attempts to assess levels of morality in "Old Dundee" are unmistakably Victorian, but his conclusions were fair: "We have no reason for concluding that the morality of the people was lower than it is now."[38] The book addressed the major

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[36] George Burnett and William Fraser, *The Red Book of Menteith Reviewed; in Reply to Charges of Literary Discourtesy Made against the Reviewer* (Edinburgh: Douglas, 1881), 11.

[37] Alexander Maxwell, *Old Dundee: Ecclesiastical, Burghal, and Social, Prior to the Reformation* (Edinburgh: D. Douglas, 1891), 282-6.

[38] Ibid., 291.

aspects of marriage and its importance in the lives of women. Maxwell's generally sound historical practice included the thorough investigation of sources and the provision of comprehensive footnotes. He also asked questions of his sources that would not be raised again for a century. Maxwell wrote that a woman's choice of husband was subject to the direction of her friends and that in the middle ages a women was "not yet recognised as the equal of man".[39]

Nevertheless, some of the issues he addressed have been radically reassessed in the last century. In his discussion of handfasting, Maxwell noted that although it appeared to be a simple betrothal or contract, it was really a lowland custom of trial marriage.[40] He cited Walter Scott's fictional description of handfasting and, showing an ignorance of canon law, noted that Scott claimed the prevalance of handfasting was due to a dearth of priests who could solemnise the marriages. Maxwell, however, was well aware that Dundee had many records of handfasting and no shortage of priests. [41] Maxwell then provided examples using the word "handfasting", but not demonstrating any context of *trial* marriage. Maxwell demonstrated a subtle scepticism about handfasting, but did not provide evidence to overtly counter the historical tradition.

In his acceptance of handfasting, however, Maxwell was in good company. The claims that handfasting was a Celtic tradition established a firm toehold in popular historical mythology. More recent histories, such as W. F. Skene's *Highlanders of Scotland* in 1902 and John Cameron's *Celtic Law* in 1937 have

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[39] Ibid., 280.
[40] Ibid., 285.
[41] Ibid.

accounted for the peculiarity of handfasting by attributing this practice to the Celts.[42] Perhaps the appearance of "unconventional" Irish marriage customs such as polygyny in the western isles caused Skene and Cameron to associate trial marriage with the same origin. Cameron made a concerted effort towards historical accuracy when he cited Pennant and Martin Martin, a seventeenth-century Scottish travel writer, as his main sources but failed to show Maxwell's acuity when he did not question Pennant's assumption about the presence of priests as Maxwell had done forty-six years earlier.[43]

Post-War Developments

The developments in the late 1800s produced histories of high quality and set the stage for Scottish historians to become leaders in the investigation of family history. During the early twentieth century, however, interest in Scottish history waned.[44] Despite the extensive collections of edited source material that had been published in the previous century, historians seemed uninterested in pursuing Scottish questions. Social history, which had already been investigated in Scotland by Alexander Maxwell, emerged some decades later in France as a new and innovative discipline.[45] Maxwell's studies did not have the theoretical bent that the emerging

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[42] Anton, "Handfasting in Scotland," 89.; William Forbes Skene and Alexander Macbain, *The Highlanders of Scotland*, 2nd ed. (Stirling: E. Mackay, 1902).; and John Cameron, *Celtic Law: The "Senchus Mor" and "the Book of Aicill" and the Traces of an Early Gaelic System of Law in Scotland* (London: W. Hodge, 1937).

[43] Maxwell, *Old Dundee: Ecclesiastical, Burghal, and Social, Prior to the Reformation*.; Pennant, *A Tour in Scotland, 1769*.; and Martin D. Martin, *A Description of the Western Islands of Scotland* (Edinburgh: J. Thin, 1976).

[44] Ash, *The Strange Death of Scottish History*.

[45] Alexander Maxwell, *The History of Old Dundee, Narrated out of the Town Council Register, with Additions from Contemporary Annals* (Edinburgh: D. Douglas, 1884).; Alexander Maxwell, *Old Dundee: Ecclesiastical, Burghal, and Social, Prior to the Reformation*.

French social historians were developing, and, instead, were detailed examinations of everyday life in Old Dundee.

In 1950, A. E. Anton successfully refuted the misattribution of meaning to handfasting and re-situated it within a conventional European context of betrothal. He identified the origins of writing about lowland and Celtic "handfasting" as a trial marriage.[46] Anton's investigation of primary sources, which included church and legal records rather than early secondary sources, led him to a far different conclusion. He discovered no evidence of handfasting as trial marriage. Anton dismissed Pennant's historical methods and his dubious oral sources. Instead, he wrote that "handfasting" was a Germanic word for a contract, marital or otherwise, in many parts of medieval Europe.[47] The marriage contract, or betrothal, was then "handfast" or bound, officially involving both parties in the agreement. Consummation of a handfast betrothal could transform it into a complete marriage under canon law, as could a public or private wedding ceremony demonstrating consent, but the betrothal itself was by no means a complete marriage. This process was no different from many other customs in medieval Christendom. Despite the fact that Anton believed both the canon law and secular customs of earlier Scots to show no clear sign of trial marriage, this story has continued to be used in scholarly history books addressing European marriage customs.[48]

While very few Scottish historians were interested in the history of marriage, interest in European marriage was growing. During the mid-twentieth century, the

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[46]Anton, "Handfasting in Scotland."

[47] Ibid., 91.

[48] Christine Peters, *Women in Early Modern Britain, 1450-1640*, Social History in Perspective (Houndmills: Palgrave Macmillan, 2004), 8.

Annales School developed new theories to reveal the links between the economies and societies of the past. This was spurred on by the ballooning post-war enrolment of lower-class students at universities throughout Europe and North America. Although historians throughout the twentieth century had been investigating society in the pre-modern world, the explosion of interest occurred in 1960s and 1970s.

Meanwhile in Scotland, political developments drew historians in a different direction. The growing prominence of Scottish nationalism raised many questions about Scotland's medieval past. This climate caused Scots to question their identity as a nation, and to devote resources to an investigation of their political history. This overshadowed the growing prominence of social history elsewhere in Europe, including groundbreaking developments centred on the history of the family. In 1960 Philippe Ariès published his *L'Enfant et la vie familiale sous l'Ancien Régime,* which concluded that parents' perceptions and treatment of their children changed drastically during the early modern period.[49] Ariès was the first historian to argue that the family had a history worth studying, and his book was well received by the general public. This reception did not last long before his work was torn apart by medievalists such as Jerome Kroll in 1977, resulting in a retraction of his medieval conclusions.[50]

The same type of historical investigation spread throughout Europe and soon after, David Herlihy and Christine Klapisch-Zuber's *Les Toscans et leurs familles* was

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[49] Philippe Ariès, *Centuries of Childhood: A Social History of Family Life* (New York: Knopf, 1962).
[50] Jerome Kroll, "The Concept of Childhood in the Middle Ages," *Journal of the History of the Behavioural Sciences* 13 (1977): 384-393.; and Philippe Ariès, "L'enfant À Travers Les Siècles," *Histoire* 86 (1980): 86-7.

published in 1976.[51] It used tax registers to investigate the fabric of the family in

renaissance Italy. By questioning the validity of their sources, the authors were able

to draw out inconsistencies in the registrars' methods.[52] These helped to showcase

prejudices of the officials collecting information and the activities within the family.

Lawrence Stone's *The Family, Sex, and Marriage in England 1500-1800* followed in

1979.[53] Stone's thesis was that the medieval English family was based on a broad

kin network with loose connections between individuals, but that the post-

Reformation family grew smaller and increasingly tight-knit. Historians have

debated the validity of Stone's arguments, but his conclusions are still used by many

historians in both England and Scotland.

As scholars of French and English marriage increasingly turned toward social

histories, investigation into Scottish marital topics continued to focus primarily on

law. Anton's research on handfasting received a belated response in the increased

study of marriage and, indeed, the growing popularity of medieval Scottish history.

Legal texts and court records were readily accessible for consultation, and Scots law,

having been studied in universities since the late middle ages, was a well-

established discipline. A. D. M. Forte, a professor in Private Law at the University of

Dundee, addressed aspects of property law in an essay published in 1984.[54] Forte

answered questions concerning the transmission of marriage law through the

Reformation and laws concerning divorce, irregular marriages, and matrimonial

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[51] Herlihy and Klapisch-Zuber, *Tuscans and Their Families: A Study of the Florentine Catasto of 1427*.
[52] Ibid., 2.
[53] Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (New York: Harper & Row, 1979).
[54] A. D. M. Forte, "Some Aspects of the Law of Marriage in Scotland: 1500-1700," in *Marriage and Property*, ed. Elizabeth M. Craik (Aberdeen: Aberdeen University Press, 1984), 104-18.

property. His emphasis was on the role of the Church in regulating the canon law of marriage. While incorporating alternative marriage arrangements, he demonstrated how the Church still maintained a certain amount of control over irregular marriages by enforcing rules on impediments and regulating the betrothal process. Forte's work was useful in determining the path of the Scots matrimonial law and took into account some of the extralegal practices of sixteenth-century Scots. [55]

Legal historian W. D. H. Sellar continued this type of work in his attempts to untangle the various threads of marriage customs, especially in medieval western Scotland.[56] Sellar identified Scots, canon, English, and Irish marriage practices and showed how these legal systems interacted with each other through the medieval period into the modern era. His focus on the western isles as a point of convergence of cultures fit with Skene's and Cameron's presentation of the Celtic regions as having unique marriage customs. Sellar's emphasis, however, is on other types of non-canonical marriage customs, such as polygamy, divorce, and secular marriage. He successfully demonstrated the various strata of marriage customs in medieval Scotland.

Sellar's work coincided with the growth in writing about Scotland's social history, and although his conclusions were based primarily on legal evidence, they had broader implications for social historians. He approached questions of irregular

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[55] Ibid., 107.

[56] W. D. H. Sellar, "Marriage, Divorce, and Concubinage in Gaelic Scotland," *Transactions of the Gaelic Society of Inverness* 51 (1978): 117-36.; W. D. H. Sellar, "Marriage by Cohabitation with Habit and Repute: Review and Requiem?," in *Comparative and Historical Essays in Scots Law: A Tribute to Professor Sir Thomas Smith, QC*, ed. David L. Carey Miller and D. W. Meyers (Edinburgh: Butterworths, 1992).; and W. D. H. Sellar, "Marriage, Divorce and the Forbidden Degrees: Canon Law and Scots Law," in *Explorations in Law and History: Irish Legal History Society Discourses*, ed. W. N. Osborough (Blackrock, Co. Dublin: Irish Academic Press, 1995), 464-93.

marriage, divorce, and polygamy from a legal perspective but concluded that certain practices were more popular and widely accepted. Polygyny was practiced occasionally, but he identified secular marriage as particularly prolific. Secular marriages were not solemnised according to the regulations of the Church, and were thus clandestine, but they were still considered valid marriages by ecclesiastical authorities. In his studies of secular matrimonial law Sellar addressed questions beyond his legal framework.[57] His identification of the prominent place of irregular marriage among medieval and early modern Scots has since led historians to question the priorities and reach of the Church.

Social History in Scotland

As Scottish historians investigated marriage and family in the legal and political contexts, theoretical works on medieval social history gained ground in Europe. The most comprehensive work on family history in Europe was the series *A History of Private Life,* first published in 1987.[58] The editors, Phillipe Ariès and Georges Duby, were both established historians of France and their work assembled much of the new scholarship in Europe and provided legitimacy to the study of the family as an up-and-coming historical discipline.

T. C. Smout brought modern approaches to social history in Scotland. Although political histories have taken centre stage in Scottish historiography, there has been significant research done on the structure of Scottish society. T. C. Smout's *A History of the Scottish People* was published during the second wave of social

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[57] Sellar, "Marriage, Divorce, and the Forbidden Degrees", 60.
[58] Georges Duby, ed. *A History of Private Life* (Cambridge: Belknap Press of Harvard University Press, 1987).

histories coming out of Europe.[59] In the 1980s, historians such as Margaret Sanderson, Rosalind Mitchison, and Rosalind Marshall began an extensive expansion of Smout's work.[60] Research on Scottish society has expanded steadily since, and most social histories have directly addressed the question of family composition.

Sanderson's work looked at medieval society through a wide lens, but she did address the question of marriage contracts specifically.[61] Sanderson tackled marriage contracts as a distinct genre of documents and identified interesting clauses from a small selection of contracts. Although she only devoted a half page to the question of the usefulness of contracts, Sanderson made clear the research potential of these documents.[62] Unfortunately, a wider study was not within the purview of her research on rural society at that time.

Over the next two decades, Sanderson's work evolved, often pioneering trends in Scottish women's history. Her book *A Kindly Place* was published in 2002 and made use of new historical techniques to address the questions unanswered in her earlier work.[63] She used marriage contracts to provide a more complete picture of feuars' rights.[64] She showed that they played an important role in the establishment of the will of a landowner. Landowners could use marriage contracts to maintain their own matrimonial rights or to safeguard their children from their

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[59] T. C. Smout, *A History of the Scottish People, 1560-1830* (London: Collins, 1970).

[60] Rosalind K. Marshall, *Virgins and Viragos: A History of Women in Scotland from 1080 to 1980* (London: Collins, 1983).; Margaret H. B. Sanderson, *Scottish Rural Society in the Sixteenth Century* (Edinburgh: J. Donald Publishers, 1982).; and Rosalind Mitchison, *Life in Scotland* (London: Batsford, 1978).

[61] Sanderson, *Scottish Rural Society in the Sixteenth Century*.

[62] Ibid., 181.

[63] Sanderson, *A Kindly Place? Living in Sixteenth-Century Scotland* (East Linton: Tuckwell Press, 2002).

[64] Ibid., 30.

siblings' and their spouses' siblings' attempts to secure land in inheritance.[65] They could also arrange for land to be inherited in conjunct fee from a spouse.[66]

Sanderson's work was one of the first comprehensive studies to use the content of marital agreements as socio-economic evidence. She analysed specific clauses to identify customary practices of inheritance. Sanderson did not examine any other facets of the institution of marriage. Instead, she provided a solid foundation for the study of marriage in one of its primary roles: the official rearranging of property titles. Sanderson's book rested on the scholarship of political historians who closely analysed the better-documented royal and noble marriages. Her conclusions, however, are of interest to a greater audience and are relevant to any study of medieval Scottish marriage.

The growth of social history set the scene for Keith Brown's *Noble Society in Scotland*, in which a chapter is dedicated to the question of marriage among the nobility. Brown devoted 68 pages of his book to an examination of the family in early modern society.[67] His method provided a model for studies of late medieval Scotland. Brown's approach was that of a committed social historian. Instead of letting politics and chronology structure his narrative, he wrote thematically about the major issues affecting the lives of nobles. He repeatedly emphasised that although certain individuals and families were in unique situations, by and large families conformed to the norms set out by the Church and their fellow peers. Brown claimed inspiration from Stone's seminal work, but moderated Stone's

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[65] Ibid., 52-5.
[66] Ibid., 117.
[67] Keith M. Brown, *Noble Society in Scotland: Wealth, Family, and Culture from the Reformation to the Revolution* (Edinburgh: Edinburgh University Press, 2000).

conclusions somewhat. He responded to the major complaints about Stone's research, which involved his treatments of chronology, kinship, and emotion.[68] In *Noble Society* he allowed for much more sentiment among family members, describing Scotland's first surviving family portrait of lord Seton with his children "in postures that suggest some degree of emotional bonding".[69]

Brown displayed some ambivalence about the place of the family in society, but this probably reflected a similar ambivalence among early modern nobles. Although he described marriage as essential to family structure, he perhaps overemphasised its role within the family simply because there was limited documentation concerning other activities in which the family engaged. Brown provided many pieces of evidence, but in his discussion of marriage strategy and the development of wealth, he failed to examine the long-term implications of these policies in any one family. He described marriage as a purely "public institution" but then wrote that "the historian of marriage is an intruder, an unwelcome and unwanted presence in the most private corner of human life".[70] Part of this contradiction originated in the contrast of very public negotiations of noble betrothals with the well-worn image of the intimate Protestant family. The concept of privacy was limited, however, because the inner workings of the post-Reformation family were publicly discussed at the administrative meetings of the local Kirk Session, and there is detailed information about these events.

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[68] Alan MacFarlane, "Review: The Family, Sex and Marriage in England 1500-1800 by Lawrence Stone," *History and Theory* 18, no. 1 (1979): 103-126.
[69] Brown, *Noble Society,* plate 22.
[70] Ibid., 113 and 37.

Brown's conclusions focused on the nobility, which included peers as well as lairds who held any form of jurisdiction, and their motivations to marry. The two goals of these families were procreation to carry on the lineage and the maintenance and development of property. Brown's work was invaluable in understanding the role of marriage in the early modern family, and his research shed light on the period immediately following the research undertaken in this dissertation. More broadly, the work of Sanderson, Marshall, and Brown set the stage for political and economic historians to integrate a more comprehensive range of questions into their work, and produced more research that was a hybrid of social, political, and economic histories.

Interdisciplinarity has had an increasing role in social history. The recent inclusion of anthropological approaches in historical methods has led to a greater appreciation among all Scottish historians of the importance of kinship and marriage. *The New Penguin History of Scotland,* one of the most recent overviews of Scottish history, reflected this and devoted much more attention to the question of marriage within the context of family and kinship as well as in its political context. The focus is, however, still on the more traditional and better-studied aspects of history. The key topics it covered were political alliances, canon law, and secular law. The *Penguin History* was a synthesis of scholarship and provided a balanced picture of the major debates concerning Scottish history in general and medieval marriage in particular. It highlighted the importance of kinship and marriage in creating bonds between families as well as the roles of dowries as economic

transactions between families.[71] In particular, it addressed questions about dowries in Scotland. Dowry was presented as both necessary to a marriage and as avoidable in special circumstances.[72] Political alliances such as the marriage of David Bruce and Joan Plantagenet could eliminate the dowry altogether, as could informal but legal unions such as some clandestine marriages.[73] The authors specifically addressed the negotiation of contracts between families and wrote that the "important role of parents in marital negotiations reflects the social importance of the family".[74]

Histories of Clans and Kinship

The majority of publications concerning Scottish history continued to be primarily preoccupied with establishing good histories of Scotland's kings and, occasionally, queens; Scottish historians did not, by and large, emulate Ariès and Duby. Instead, during the late 1990s, they began to revive Scotland's own genre of clan histories. Centred on major political episodes, the families of nobles who played key roles in the administration of the realm were highlighted in books such as *The Black Douglases*, which focused on the rise and fall of the earls of Douglas during the late medieval period.[75]

Steve Boardman's *The Campbells* was very similar in tone.[76] Boardman chronicled the Campbells' rise to power in the west and, eventually, on the national

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[71] R. A. Houston and William Knox, *The New Penguin History of Scotland: From the Earliest Times to the Present Day* (London & Edinburgh: Allen Lane; National Museums of Scotland, 2001), 127-8.
[72] Ibid., 128.
[73] Ibid., 127.
[74] Ibid., 129.
[75] Brown, *The Black Douglases*.
[76] Stephen I. Boardman, *The Campbells, 1250-1513* (Edinburgh: John Donald, 2006).

stage. Both Boardman and Brown had already penned histories for The Stewart Dynasty in Scotland Series and their approach to clan histories reflected their work on kings' reigns.[77] Michael Brown's book was very similar to his history of James I and covered much of the same material from a different perspective. Likewise, Boardman recorded the same political events, but discussed them from a regional point of view. Although quite different from 'family history' in its continental incarnations, which looked at the interactions of nuclear families in general, Scotland's political family histories were so important because of the prolonged decentralisation of administration in Scotland. The increased power allocated to regional lords and their kin made Brown and Boardman's type of 'family history' essential not only to the development of political scholarship, but also for the work of historians of the family's role in society.

These books differed drastically from William Fraser's family histories. Using up-to-date analytical theory and evaluations of power structures, Brown and Boardman provided thorough modern analyses of the power of nobilities both regionally and nationally. Both books also indirectly addressed the social roles of families in late medieval Scotland. Although neither author provided any sweeping conclusions about family networks, both emphasised the vital importance of kin networks and marriage in reaching political goals. They highlighted general patterns and specific examples of the function of the kin network in varying roles. Their subjects' roles as councillors, politicians, and military reinforcements all supported

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[77] Michael Brown, *James I* (East Linton: Tuckwell Press, 1994).; and Stephen I. Boardman, *The Early Stewart Kings: Robert II and Robert III, 1371-1406*, The Stewart Dynasty in Scotland (East Linton, Scotland: Tuckwell Press, 1996).

the ambitions of their kin. Brown's work demonstrated not only how powerful the bond of kinship could be, but also how deep the divisions could be within kin groups, such as the feud between the Red and Black Douglases.

The exception to this pattern of political clan history was Jane Dawson's introduction to her collection of letters associated with the Campbells of Glenorchy in the late sixteenth century.[78] This introduction provided a thorough analysis of the role of the family within the Clan Campbell hierarchy, and the roles of individual family members. This analysis was focused on a single family, and was one of the few studies from the past twenty years to look at intra- and inter-familial dynamics.

This look at individual families differed from the approaches of other historians. In his discussions of the family structure in noble society, Keith Brown made no mention of the Scottish clan. An effort to avoid this loaded word can be understood, but an in-depth investigation of its true role in pre-modern Scotland is necessary. Historians of the highlands have addressed this issue to a certain extent. The conclusions offered, however, are often unsatisfactory. R. W. Munro discussed the problem of defining the 'clan' in his essay "The Clan System: Fact or Fiction?", concluding simply that he cannot clearly answer his titular question.[79] Other historians tried to address the role of the clans in Scotland. R. A. Dodgshon described 'chiefly culture' in the clan in his explanation of the clearances in *From Chiefs to Landlords*. Dodgshon made an effort to explain the inner workings of kindred clans, but to a certain extent missed the mark. The main argument of his

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[78] Jane E. A. Dawson, ed., *Campbell Letters 1559-1583*. Vol. 10, Scottish History Society. 5th series. (Edinburgh: Lothian Print, 1997).

[79] R.W. Munro, "The Clan System: Fact or Fiction?" in Loraine MacLean of Dochgarroch, ed. *The Middle Ages in the Highlands* (Inverness: Inverness Inverness Field Club,, 1981), 121.

book was intended to demonstrate a transition in clan structure, but he presented family in a static light. He used Jenny Wormald's remark that marriage was the weakest form of alliance to explain the kinship networks of his clan chiefs.[80] This contradicted his argument that the clan system rested solely on the creation of real and fictive bonds between kin.[81] Dodgshon's failure to present a realistic view of family life in the highlands was typical of much of the research that had been done on highland families.

Regionally focused histories also begun to integrate discussions of marriage important to the families involved. R. A. McDonald demonstrated that cross-border marriages reflected trends in alliances, as demonstrated among the nobility of the western isles.[82] These men and women increasingly looked eastward for marriage partners, rather than restricting their search to local lords who could reaffirm their links to the Irish seaboard. Conclusions such as these allow for a deeper look into the political situation of medieval Scotland. Whereas previous historians have listed marriages as straightforward events, McDonald emphasised their vital individual strategic importance, and showed that marriage patterns could illuminate drastic changes in the domestic and foreign policies of lords and kings. Not only did the late medieval Scottish court incorporate families from the western isles, but it also integrated foreign embassies and queens' entourages with increasing frequency.[83]

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[80] Wormald, *Lords and Men in Scotland: Bonds of Manrent, 1442-1603*, 79.; and R. A. Dodgshon, *From Chiefs to Landlords: Social and Economic Change in the Western Highlands and Islands, c. 1493-1820* (Edinburgh: Edinburgh University Press, 1998), 35.

[81] Dodgshon, *From Chiefs to Landlords*, 35.

[82] R. A. McDonald, "Matrimonial Politics and Core-Periphery Interactions in Twelfth- and Early Thirteenth-Century Scotland," *Journal of Medieval History* 21 (1995): 227-47.

[83] Jane E. A. Dawson, *The Politics of Religion in the Age of Mary, Queen of Scots: The Earl of Argyll and the Struggle for Britain and Ireland*, Cambridge Studies in Early Modern British History (Cambridge:

The picture of the Scottish court painted in the last decade is of an institution situated firmly within a European context in its interactions with the outside world and its cultural expressions.[84]

The problem of regional identity was addressed more thoroughly in the work of Alison Cathcart on kinship and clientage in the highlands.[85] Cathcart's work centred on a single kin group, Clan Chattan, but was structured thematically to provide conclusions about family structure in Scotland. She traced the internal and external interactions of one family and was thus able to show how marriage, manrent (social bonds of obligation between men), and fosterage worked for lairds and nobles who hoped to build their power networks in the northeast.

Much of Cathcart's work built on the concept of blood ties mixing with manufactured obligations, as demonstrated in Jenny Wormald's *Bonds of Manrent.*[86] Wormald's investigation of manrent has made major contributions to our understanding of the social strata in late medieval and early modern Scotland. Her single sentence referring to the relative weakness of marriage contracts in forming alliances has been taken up by many historians to dismiss the importance of the family and familial relationships. Such out-of-context use of Wormald's discussions of marriage has diminished the perceived status of marriage alliances among families and has not been beneficial to the further study of the family. Cathcart's

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Cambridge University Press, 2002), 64-8.; and Thomas, *Princlie Majestie: The Court of James V of Scotland, 1528-1542*, 37.

[84] Thomas, *Princlie Majestie: The Court of James V of Scotland, 1528-1542*.

[85] Alison Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609*, The Northern World (Leiden, Netherlands: Brill, 2006).

[86] Wormald, *Lords and Men in Scotland: Bonds of Manrent, 1442-1603*.

work has somewhat compensated for this attitude, but more can be done to rectify the imbalance in the emphasis of the family in society.

Cathcart challenged Wormald's assertion that marriage was a relatively weak bond in society and, instead, showed how marriage was used effectively to support new peace deals, to develop new bonds of kinship, and to fortify existing agreements. She does, however, acknowledge that the role of kinship was becoming less prominent in early modern Scotland.[87] Cathcart later noted that highland and lowland family structure were developing separately. Although marital alliance remained a powerful tool throughout Scotland, concubinage was decreasingly seen in the lowlands, where illegitimate sons were more likely to face exclusion from inheritance.[88]

Cathcart's history is crucial to the development of kinship studies, but it is remarkable that an extensive study such as this had not been completed earlier. Claude Lévi-Strauss developed new theories of kinship in the 1960s, and they were integrated into continental studies of the family within a decade of their publication.[89] Writing forty years later, Cathcart responded to this challenge of making marital and blood kinship fully integrated, providing a multi-faceted evaluation of kinship in Scotland that was supported by specific evidence. European historical theory has been poorly integrated into Scottish history in the past, and the increased emphasis on Scotland within the European world requires historians to

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[87] Alison Cathcart, "'Inressyng of Kyndnes, and Renewing Off Thair Blud': The Family, Kinship and Clan Policy in Sixteenth-Century Scottish Gaeldom," in *Finding the Family in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janay Nugent (Aldershot, England; Burlington, VT: Ashgate, 2008), 127.

[88] Ibid., 130-1.

[89] Sabean, "Aspects of Kinship Behaviour and Property in Rural Western Europe before 1800."; and Lévi-Strauss, *The Elementary Structures of Kinship.*

put their work into the context of European histories to compare and contrast developments in Scotland with its wider framework.

Lévi-Strauss's arguments are now so ingrained in anthropology that they are taken for granted, but the anthropological debates continued. In 1982, Edmund Leach published a biting critique of post-war scholars, who had argued for the universality of marriage and the family as innate to humanity.[90] Leach addressed these blatant flaws in reasoning. He also critqued Lévi-Strauss's conclusions that rules about exogamy and incest were aligned.[91] Instead he concluded that subtle differences must be understood to exist.

Rab Houston's demographic study also lends a theoretical background to studies of marriage. Houston lamented the lack of statistical evidence for the highlands and islands of Scotland prior to the eighteenth century and wrote that the nuptuality patterns in the highlands were probably more related to Ireland than the patterns in the lowlands.[92] This is also addressed briefly in Cathcart's book. Houston's demographic research has allowed for 'family reconstitution' using documents listing major events in the people's lives, and he provides examples of average ages at marriage.[93] Houston addressed the gaps in information, especially outside of England and Scotland. These questions must be investigated more closely.

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[90] Edmund Ronald Leach, *Social Anthropology* (New York: Oxford University Press, 1982), 178.
[91] Ibid., 186.
[92] R. A. Houston, *The Population History of Britain and Ireland 1500-1750*, Studies in Economic and Social History (London: Macmillan, 1992), 5.
[93] Ibid., 24.

Marriage History in Scotland

For a long time, the tradition of investigating marriage in Scotland was through law and kinship studies. The implicit involvement of sex in marriage inhibited prudish nineteenth- and twentieth-century researchers from delving any deeper into the subject matter.[94] This was, however, somewhat reversed by the revolutions in social and women's history. The increased number of women historians encouraged the growth of women's history, and gender discourse grew in prominence, enabling further study of marriage and questions entirely different from previous generations.

Sanderson's initial work during the 1980s on Scotland's social history opened new doors for historians of marriage. Rosalind Marshall's history of women in Scotland established an underpinning for Scottish women's history.[95] Marshall's work left many unanswered questions, but her book set a starting point from which researchers could pursue more specific interests. She included a single paragraph on the use of marriage contracts. Although concise, Marshall's work touched on the main components of a contract including the people involved and the financial arrangements and she supplemented this with a summary of contract and marriage law. Her writing presented these laws as practice, and this limited the extent of her conclusions. This was reflective of the paucity of relevant secondary sources available at the time. Numerous authors have since remedied these gaps in historical understanding.

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[94] Vern L. Bullough and James A. Brundage, *Handbook of Medieval Sexuality* (New York: Garland, 1996), ix.
[95] Marshall, *Virgins and Viragos*.

The emergence of the study of Scottish social history in the mainstream answered many questions about the place of marriage among medieval Scots and was enhanced by the development of gender analysis. The integration of gendered approaches to the histories of law, architecture, land use, and literature contributed to a more complete picture of the dynamics of medieval and early modern marriage. The crucial difference was in the examination of the relationships *between* men and women, rather than an examination of men or women in isolation. To date, works specifically focussing on medieval Scottish gender history are limited to compilations of chapters by various authors, although some historians have attempted to apply gender theory to work in which they were already involved.[96]

Similar issues arose with the use and integration of the family into women's history. The women's history movement both encouraged and avoided the development of questions about the history of family in Scotland. The two types of research had a shared development and each discipline lent credibility to the other. Both were inspired by the increase in social research and the enrolment of women at universities. Both styles of investigation have experienced similar phases of development, especially when historians have felt it necessary to use political history to justify a need for social research. The women's history movement has, however, taken a divergent course, which initially neglected the study of the family.

The collected essays in *Women in Scotland* did much to remedy a lack of scholarship on Scottish women.[97] Surprisingly, only a handful of the chapters

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[96] For instance, Downie, *She is but a Woman*.; and Sanderson, *A Kindly Place? Living in Sixteenth-Century Scotland*.
[97] Ewan and Meikle, *Women in Scotland*.

directly addressed questions involving the role of women in their families. This is interesting because of the enormous evidence that most women were defined primarily by the roles they took on within their families as wives, mothers, and daughters. Nearly half of the essays in the collection emphasised the roles of remarkable women in the 'outside world', but only a few discussed the implications for the women within their families.

This focus on women in the political world addressed a real gap in research by political historians. The recent increase in women's histories, including the publication of Rosalind Marshall's *Scottish Queens* and Fiona Downie's *She is but a Women,* convinced mainstream historians of the importance of high-powered women in the politics of the realm. The impact of these queens has begun to be integrated into standard histories of Scotland.[98] These works not only tried to give women their due in the public world of men, but they discussed how gender politics allowed women to operate differently. This is most evident in Downie's discussion of the assassination of James I. Although the assassins considered murdering the queen, Joan Beaufort, they instead spared her because, they thought, as a woman, she posed no threat.[99] Joan's subsequent rise to power would be the downfall of the treasonous parties.

Royal politics, too, were greatly influenced by not only a marriage itself, but also by the choice of marriage partner and formation of the marriage. In her book, Downie illustrated the role of foreign queens in the development of local and

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[98] Rosalind Kay Marshall, *Scottish Queens, 1034-1714* (East Linton, Scotland: Tuckwell Press, 2003).; Ritchie, *Mary of Guise in Scotland, 1548-1560: A Political Career*.; and Downie, *She is but a Woman*.
[99] Downie, *She is but a Woman*, 1.

national politics. She looked at the events of 1424 to 1463 from the perspective of the queens, focusing on the minorities of James II and James III and showed how Joan Beaufort and Mary of Guelders played crucial roles in political developments during the reigns of their husbands and sons. Downie's new perspective demonstrated how the marginalisation of women could occasionally empower them.[100] It was Joan who led the remaining magnates to hunt down and execute her husband's murderers.

These international marriages created new alliances, and there were many unions of Scottish kings with European women. Royal marriage had been the focus of discussion by modern historians and much of it in the sixteenth century centred on the marital tribulations of Mary, Queen of Scots. Kirsten Post Walton's gendered study of religious practice portrayed Mary's decision to marry Darnley as one of the few options available to a queen under pressure to produce an heir.[101]

Mary's royal status, her religion, her Protestant advisors, the nation's diplomatic troubles, and questions of patriarchy all limited her choices.[102] These factors, along with the politico-religious tirades of John Knox, systematically eliminated all possible marriage candidates for Mary.[103] Walton's study was part of the recent trend of interrogating old Scottish sources for new answers using new questions and methodology. She provided a more comprehensive analysis of the question of marriage in the Scottish patriarchy than has been done before. These

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[100] Ibid.

[101] Kristen Post Walton, *Catholic Queen, Protestant Patriarchy: Mary Queen of Scots, and the Politics of Gender and Religion* (New York: Palgrave MacMillan, 2007), 91.

[102] Ibid., 91, 127.

[103] Ibid., 109.

questions and techniques must be applied to a wider range of seemingly exhausted sources to develop a more comprehensive picture of medieval Scottish society.

While women's historians emphasised the role of women and wives as queens, regents, and noblewomen, they began to answer questions about the role of mothers, wives, and widows in the management of Scotland. Their conclusions were limited to the upper echelon of society, but much like the political family histories of the last decade, their work provided a base of research that could be used to investigate more general histories of the family in Scotland. Audrey-Beth Fitch bridged this gap in her article about queens as mothers and intercessors in politics.[104] She noted that the wives of kings were required to intercede with the king, much like the Virgin Mary was believed to intercede with God. She argued that this role was inherently subordinate and that these women were rarely regarded as 'queens', or equal to the king.

Studies of the Post-Reformation Family

Research on the post-Reformation family has been much more fruitful. New types of sources available for the period have enabled scholars to do studies that have not yet been attempted for the medieval era. Keith Brown's work was innovative and informative and proved vital for historians of the beginning stages of the early modern era. In his approach to marriage, he examined the overarching issues facing families in devising their marriage strategies. He emphasised the importance of

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[104] Audrey-Beth Fitch, "Maternal Mediators: Saintly Ideals and Secular Realities in Late Medieval Scotland," *The Innes Review* 57, no. 1 (2006): 1-35.

marriage as a tool in the establishment of family lineage and kinship bonds.[105] Historians such as Janay Nugent have expanded upon this kind of work.[106]

Sources such as John Knox's diatribe against queens regnant demonstrate the Protestant emphasis on a fixed family structure and the belief that the state structure should be identical in its composition.[107] The understanding that family structure was crucial to the administration of the kingdom has given ample opportunity for political historians to discuss perceptions of the family, but few have. Social histories have instead been embracing new developments in literary history and cultural theory, slowly integrating disparate fields to present a more complete picture of medieval and early modern Scotland.[108]

Other developments in the post-Reformation perceptions of the family were dealt with in Margo Todd's book on cultural changes after the Reformation. She demonstrated how the reformed Kirk took over much of the medieval Church's jurisdiction for dictating the structure of family life.[109] The public nature of marriage, however, meant that the Kirk's involvement in family affairs was largely limited to regulation of fornication and marriage. The new church placed greater emphasis on family harmony during the betrothal process.[110] The Catholic Church had always highlighted the absolute requirement for consent of the couple being betrothed, but in practice many children were coerced into following their parents'

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[105] Brown, Noble Society, 113-36.

[106] Janay Nugent, "Marriage Matters: Evidence from the Kirk Session Records of Scotland, c. 1560-1650." (Ph.D. Thesis, University of Guelph, 2004).

[107] John Knox, The First Blast of the Trumpet against the Monstrous Regiment of Women. (Geneva: J. Poullain and A. Rebul, 1558). *Early English Books Online*. Web. 20 May 2011. http://www.lib.umi.com/eebo/image/8577.

[108] For example, Brown, *Noble Society.*

[109] Todd, *The Culture of Protestantism in Early Modern Scotland*, 267.

[110] Ibid., 269.

wishes. The Kirk Session had ultimate power, however, and was permitted to order a quick wedding, if the parents refused to act in the best spiritual interests of their children.[111] The Reformation initiated major cultural changes in Scotland, but Todd's overwhelming emphasis was on short-term cultural continuity.

Groundbreaking work on sexuality and social control in Scotland between 1660 and 1780 was published by Leah Leneman and Rosalind Mitchison in 1989, with a follow-up volume in 1998.[112] These books provided a foundation for new research for early modern Scotland. Leneman and Mitcheson examined the impact of the Kirk Session on marriage, especially irregular marriage, which influenced illegitimacy, and they concluded that illegitimacy rates were low throughout rural Scotland because sex before marriage was relatively uncommon in the eighteenth century.[113] This type of work provides enormous amounts of information about daily life in urban and rural Scotland, but has not been replicated for the late medieval period because the sources available are of a markedly different sort.

Recent Developments in Family History

The publication of *Finding the Family* in 2008 prompted new discussions on family history. A third of the book was devoted to "the sources" and introduced the idea that good historical evidence can be gleaned from established sources that are perhaps less obvious in containing useful evidence concerning the family. Charters,

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[111] Ibid.

[112] Leah Leneman and Rosalind Mitchison, *Sin in the City: Sexuality and Social Control in Urban Scotland, 1160-1780* (Edinburgh: Scottish Cultural Press, 1998).; Rosalind Mitchison and Leah Leneman, *Girls in Trouble: Sexuality and Social Control in Rural Scotland, 1660-1780* (Edinburgh: Scottish Cultural Press, 1989).

[113] Mitcheson and Leneman, *Girls in Trouble: Sexuality and Social Control in Rural Scotland, 1660-1780*, 122.

ballads, music, and witchcraft trials were the four source groups introduced. Medieval Scottish historians, who so often remark on the lack of sources available, will certainly make use of even the most obscure documents in their research. It is interesting, however, that some of the most widespread and well-known sources of family history have still not been tapped for their utility in social history. A large number of historians have consulted genealogies to establish lines of descent.[114] However, they tend to see their claims as untrustworthy.

Heraldry, among the most valued sources for antiquarians, is another obvious source for concepts of family history. Coats of arms were often altered during the medieval and early modern periods. These changes can reveal new information about perceptions of kinship and public display. Cynthia Neville has raised a similar argument concerning seals. She argued that the selective adoption of seal imagery reveals much about the status of women in their marriages and families: "No one who saw Adam [de Kilconquhar]'s seal could fail to read its message: Marjorie [of Carrick] had 'made' her husband both a knight and an earl."[115]

The other major group of sources that have been overlooked are legal documents. Once again, Neville has addressed one of these collections in her chapter on charters and family history.[116] Charters are an especially useful source because large collections of medieval charters have been published in edited collections. Although land grants are useful, legal sources such as Kirk Session records and

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[114] For instance see David Sellar, "Pedigree Making and Pedigree Faking" in Dochgarroch, *The Middle Ages in the Highlands*, 103-16.

[115] Cynthia J. Neville, "Women, Charters, and Land Ownership in Scotland, 1150-1350," *Journal of Legal History* 26, no. 1 (2005): 47.

[116] Cynthia Neville, "Finding the Family in the Charters of Medieval Scotland, 1150–1350," in *Finding the Family in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janay Nugent, *Women and Gender in the Early Modern World* (Aldershot: Ashgate, 2008), 11-22.

treatises like Balfour's *Practicks* are somewhat more transparently relevant.[117]
Although major questions remain unanswered, marriage law has been examined the
most because of prominent sources discussing it.

David Sellar's series of articles on medieval Scottish marriage law have
received attention from political and social historians, as have arrangements for the
dissolution of a marriage in Elizabeth Ewan's chapter in *The Marital Economy in
Scandinavia and Britain*, which dealt briefly with methods of handling death and
inheritance in a family.[118] The increased availability of digitised wills and
testaments is partly responsible for the increased number of historians examining
death laws and inheritance customs, although legal historians have investigated
these on a more consistent basis since the medieval period.[119] Because of the direct
repercussions of historical law on modern legal practice, historians, and more often
lawyers, have been more diligent about investigating family law including the
development of marriage and inheritance customs.

The second section of *Finding the Family* advanced the understanding of
early family history further. The internal interactions of the family were discussed
in a more complex and nuanced way. The wide number of family relationships that
existed would be difficult to discuss in one work, but the book did highlight

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[117] Balfour, *Practicks.*

[118] For instance Sellar, "Marriage, Divorce, and Concubinage in Gaelic Scotland."; and Elizabeth Ewan, "To the Longer the Liver: Provisions for the Dissolution of the Marital Economy in Scotland, 1470-1550," in *The Marital Economy in Scandinavia and Britain, 1400-1900*, eds. Maria Ågren and Amy Louise Erickson (Aldershot: Ashgate, 2005).

[119] Cathryn Spence, "Women and Business in Sixteenth-Century Edinburgh: Evidence from Their Testaments," *Journal of Scottish Historical Studies* 28 (2008): 1-19.; Margaret Sanderson, "The Edinburgh Merchants in Society, 1570-1603," in *The Renaissance and Reformation in Scotland: Essays in Honour of Gordon Donaldson*, ed. Gordon Donaldson, Ian Borthwick Cowan, and Duncan Shaw (Edinburgh: Scottish Academic Press, 1983).

examples of the major types of interactions. Discussions of the roles of parents, godparents, and wives demonstrated the subtleties of various family roles in pre-modern Scotland. David Mullan's discussion of childhood tied in most closely with the European historiography on the family. Where Keith Brown had alluded to inaccuracies in Stone's portrayal of the family, Mullan frequently contradicted the conclusions of Stone and Ariès using phrases such as "tender care" to describe the relationship of early modern parents with their children.[120]

This section gave equal weight to discussions of major events during the lifetime of a family. Birth, child rearing, marriage, and death were all covered. This differed from traditional treatments of the family where marriage received more attention due to its role in political alliance. Such overemphasis was transmitted into social histories such as Keith Brown's book, because of the easy access to sources and analyses of marriage in the world of the nobility. Brown wrote about other family-related topics, but discussed the role of marriage in a wider context. New directions of research could include sibling interactions and relationships with close extended family.

The third section of the book tackled a discussion of kinship and community. This relied heavily on the established scholarship of the Scottish family that was centred on the clan. Cathcart's chapter elaborated on some of the issues addressed in her book, and emphasised that "family" and "clan" were not synonymous. These

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[120] David G. Mullan, "Parents and Children in Early Modern Scotland," in *Finding the Family in Medieval and Early Modern Scotland*, eds. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 75.

works provided a varied and incredibly nuanced picture of the inner and outer workings of the family and clan.

The publication of a collection of essays exploring the family had distinct advantages for Scottish historiography. The varied backgrounds of the contributors did much to demonstrate the sheer expanse of material relevant to the family. Although the inevitable result was disunity in their conclusions, this structure emphasised the gaps in the historiography. To fill these gaps, historians can look to European studies but should also focus much of their attention on particularly Scottish questions about marriage and family.

New social histories have provided more focus on these two topics, including the medieval volume of the *Everyday Life in Scotland* series.[121] This recent publication has demonstrated that there is now a large group of committed social historians whose interests lie in fleshing out the daily lives of their subjects. In this volume, historians address questions of environment, leisure, piety, and family life in medieval Scotland.[122] David Sellar wrote about the family and the role of marriage. He argued for competing, parallel models of marriage in Scotland: secular Celtic marriage and canonical marriage.[123] Sellar's chapter condensed much of the detailed information on marriage into a singular, accessible source for the basic methods of forming marriage and dissolving marriage.

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[121] Edward J. Cowan and Lizanne Henderson, eds., *A History of Everyday Life in Medieval Scotland* (Edinburgh: Edinburgh University Press, 2011).
[122] Ibid.
[123] David Sellar, "Family," in *Everyday Life in Medieval Scotland*, eds. Edward J. Cowan and Lizanne Henderson (Edinburgh: Edinburgh University Press, 2011), 95-99.

Conclusion

The late emergence of the history of the family and private life in Scotland was in large part due to the prominent position of a different type of family history in the development of the discipline. Some of the best work by social historians has drawn the focus away from the traditional genealogical history of the family. For example, feminist historians have tried to highlight women's non-domestic roles and social historians have sometimes downplayed the importance of the family. The very real gaps in the understanding of the family could be answered in a comprehensive work on the development and roles of the family in pre-modern Scotland.

Although the predominant place of politics in Scottish history has been somewhat responsible for the dearth of social history, historians have been discouraged in other ways from investigating family history. William Fraser's development of the modern family history did much to advance research on noble families but also encouraged (in collusion with the *Scots Peerage*) a popular genre of "clan history" that was part fact, part legend, and part invention. These histories became associated with enthusiastic amateur researchers who were easily misled in their pursuit of Scotland's past.

In addition, public interest in genealogy also grew exponentially during the twentieth century. The increased interest in discovering family heritage led many Scottish academic historians to define themselves in relation to genealogists as *not family historians.* There is room to bridge the gaps between these disciplines with academically sound research on the position of family in everyday life, and this can be done with case studies of real families. Although attitudes towards genealogy

may have hampered the development of social history in the past, Scotland's kinship structures and strong tradition of clan histories provide the impetus and the source material for Scottish historians to become leaders in the discipline, especially in the medieval and early modern eras.

Historians are now in firm agreement that more work must be done on questions relating to marriage and marriage contracts, although there is some dispute as to the direction in which to proceed. While some regional and national historians saw little benefit in comparisons with other countries, many of the fiercest advocates of the autonomy of Scotland's history within Britain demonstrated this through comparative history.[124] Marriage contracts were seen as documents of limited local interest, unless they were related to national politics. This approach, however, failed to take account of the role marriage played at the crux of social and legal interactions. Histories such as Cathcart's study of Clan Chattan and Steve Boardman's examination of Clan Campbell showed the invaluable role of marriage contracts in determining local relationships.[125]

Scottish family history is developing in two key ways. In the first, historians are following Fraser's tradition, developing his style of work with modern historical techniques. This work has begun with books on the Campbells and Black Douglases, which are primarily political histories but do emphasise the importance of the Scottish family in government and the internal structure of kinship networks. There

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[124] Wormald, "Taming the Magnates."; and Alexander Grant, "Extinction of Direct Male Lines among Scottish Nobilty in the Fourteenth and Fifteenth Centuries," in *Essays on the Nobility of Medieval Scotland*, ed. Keith Stringer (Edinburgh: John Donald, 1985).
[125] Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609*, 103-11.; and Boardman, *The Campbells, 1250-1513*, 71.

are large areas of Scotland whose history has not yet been written by academic historians using modern theoretical approaches, and further work can be accomplished here.

The second path for development of family history is in tackling questions about the Scottish family in general, rather than investigating a single family. *Finding the Family* did not try to serve as a conclusive work on the family in medieval and early modern Scotland but instead brought together historians whose work has touched on family issues in the past. It provided an array of viewpoints and guidelines for further research.[126] From this basis of knowledge, questions of life-cycle events, such as birth, baptism, marriage, and death can be further investigated. Equally, more can be learned about intrafamilial relationships and the effects these had on Scotland's broader history. This present study hopes to address some of these gaps by using both methods of analysis to determine how Scottish people went about forming marriages in the late medieval period.

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[126] Ewan and Nugent, *Finding the Family in Medieval and Early Modern Scotland*.

Chapter 2: The Legal Context of Marriage

Scottish marriage practices in the later middle ages were a product of home-grown institutions as well as a wide variety of European influences. These customs and laws developed at the nexus of the early Irish, Norse, English, Roman, Germanic, and ecclesiastical worlds. At times, Scottish marriage law closely resembled English law, but for the most part it remained quite separate. The impact of canon law in Scotland, moreover, differed slightly from its neighbours due to variety in the interpretation and application of the laws. Many aspects of marriage law that courts strictly interpreted in certain areas of Europe were barely or selectively enforced by the Scots. It is clear that the Scottish populace did not universally pay heed to Church limits on the formation of marriage. Scots' approaches to marriage were diverse but reflected split adherence to both canon law and local custom. Pragmatic concerns dominated the decisions surrounding the formation of marriage, and in some ways, Scots law was able to accommodate this. The Church claimed jurisdiction over marriage, and was able to assert this authority with variable success through the late middle ages.

The late medieval judicial system in Scotland was piecemeal but quite able to manage the caseload of marital disputes and dissolutions in conjunction with the Church courts. The adoption of trained lawyers and justices was slower in Scotland than elsewhere, but, by the sixteenth century, Scottish churches and sovereigns had established official courts with professional judges who would sit for long terms.

These developments were not drastic changes, but they did signal a shift in attitudes towards the place of law in society. The subsequent campaign of justices to record both law and legal decisions for development and study marked a tangible transformation of the legal practice in Scotland into something that could be theorised and altered as needed.

In many cases certain laws had different implications for royalty and nobility than for commoners. Most of the records of the attempts to enforce rules governing marriage before 1600 are for the royal family, the nobility, rich landowners, and burgesses. Little evidence remains of the situation of poor Scots, even though they may have temporarily kept written records of their marriage agreements.[1]

Marriage law in Scotland was also particularly reliant on canonical decrees, but the application of those laws was never consistent among the many courts that issued judgments on marital issues. As protests against the Church in Scotland increased throughout the sixteenth century, some clerics became more enthusiastic about reiterating canonical marriage laws, but the enforcement of these laws soon fell to the new, reformed Kirk. The Kirk relied on canon law to develop its treatment of matrimonial cases, and Scotland retained a canonical framework for many aspects of marriage until the Marriage Act in 1939.[2] In many ways, the judicial treatment of marriage law in Scotland remained incredibly consistent through the upheavals of the later middle ages and the Reformation, especially when considered in the context of the European reformations. In contrast, the way that couples and families applied the laws to organise their lives evolved immensely, first with the

[1] Sanderson, "Lives of the Scottish Cottars," 21.
[2] Sellar, "Marriage by Cohabitation with Habit and Repute: Review and Requiem?," 124.

development of courts in the fourteenth and fifteenth centuries and later with the emergence of the legal profession in the sixteenth century.

Scots Law in the Early Middle Ages: Land, Succession, and Marriage

Scottish law was at times interwoven with law codes elsewhere in Europe, particularly in the application of canon law. At other times, the laws and judicial systems of Scotland were independent, a quality that was repeated throughout Europe's diverse systems of *ius propria*.[3] The evolution of these systems is crucial to an understanding of how and why the law operated as it did in the fourteenth, fifteenth, and sixteenth centuries. The earliest evidence of law in Scotland is from the *Scotti* who arrived from Ireland in the sixth century, although it is evident that the older native tribes did have oral justice systems.[4] These Irish laws were similar in many ways to law codes in other areas of Europe. Many of these Irish laws followed an Indo-European cultural norm, and so the Scottish laws that derived from them show parallels in the ancient Hindu laws.[5] In the northern areas of modern Scotland, the Norse held power and so legal systems reflected Scandinavian forms. Across Europe, realms continued to practice their early laws even after the advent of Christianity, and, in Scotland, this included the ability to marry and divorce based on consent. Concubinage was regulated and culturally accepted, and fosterage was common.[6]

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[3] Manlio Bellomo, *The Common Legal Past of Europe, 1000-1800*, trans. Lydia G. Cochrane (Washington, D.C.: The Catholic University of America Press, 1995), 78.

[4] David M. Walker, *A Legal History of Scotland: The Later Middle Ages*, 1st ed. (Edinburgh: W. Green, 1988), 10.

[5] Ibid.

[6] Ibid.

The multitude of external influences on the development of family law in medieval Scotland meant that marital issues were treated differently across the realm. Political disputes between the crown and powerful magnates created political schisms, which helped to sustain regional marriage customs by preventing cultural assimilation. Nevertheless, as Scotland grew as a unified realm, the use of charters for marriage-related land grants spread. Malcolm III's reign (r. 1058-1093) marked the beginning of a new type of monarchy in Scotland that would concentrate on unification. This included his marriage to the widow of the earl of Orkney and his marriage to the Anglo-Saxon princess Margaret, who had fled the Norman Conquest. Margaret's prominent and respected role in the Scottish royal family enabled her to introduce new religious practices, marital laws, and continental court culture. Upon Malcolm's death, his brother took the throne, rather than his eldest son, but Duncan II returned with an army and succeeded his father, Malcolm, as *Rex Scottorum*.[7] This was a significant step in the unification of Scotland, but sub-kingdoms remained throughout the region, and it would take Duncan's line centuries to fully integrate these outliers.

These kings gradually consolidated power and the first recorded *Acta* are from the eleventh century, signifying the presence of a small group of monks in the entourage of the king.[8] Ecclesiastical matters in Scotland were growing closer to the continental system, and Queen Margaret was a great supporter of the Roman practice.[9] In the late eleventh century Margaret introduced canonical bans on

[7] Ibid., 23.
[8] Ibid., 26.
[9] Ibid.

consanguineous marriages to Scotland.[10] Under Margaret's influence, canonical bans were introduced and church courts held jurisdiction over matters relating to marriages, dowries, and contracts. This jurisdiction was exercised through bishops' men, designated "officials", who administered European canon law in their own local courts.[11] The papal courts were available to hear appeals, but only the most high-profile cases reached the courts in Rome.[12]

Whether there was any system in place for enforcing these prohibitions remains unclear. Margaret's efforts were part of the first set of evidence to demonstrate the royal power to enact law beyond local custom. Little other evidence exists of marriage practices at the time and the traditions must have varied throughout Scotland. As the presence of larger estates increased in the southeast of Scotland, the enforcement of law was designated to thanes and dempsters who would ensure that laws were followed, taxes were paid, and armies were levied.[13] Evidence from elsewhere in Scotland shows that similar systems may have existed there, as well.[14] These local courts were organised by the local lords and were responsible for the bulk of secular law. The kings could hear legal proceedings personally, but nearly all judicial business was taken care of at a local level.

The Development of the Canon Laws on Marriage

The Scottish legal profession was still in its infancy in the eleventh century when a major shift in the way that medieval Europeans conceived of their law codes and

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[10] Ibid.
[11] Simon Ollivant, *The Court of the Official in Pre-Reformation Scotland* (Edinburgh: Stair Society, 1982).
[12] Ibid., 125-7.
[13] Walker, *A Legal History of Scotland: The Later Middle Ages*, 33.
[14] Ibid., 34.

which allowed for more in-depth analysis of legal systems resulted in the establishment of universities devoted to the study of law. There were new opportunities to ensure that custom, Roman law, and canon law were all in accordance on a single matter, and new ways were developed to record legal transactions.

Gratian's codification of canon law in the mid-twelfth century in his *Concordia Discordantium Canonum,* also known as his *Decretum,* united sources for marital law in a single reference work and provided consistency to theologians and judges in the application of matrimonial law. The rapid development of canon law, accompanied by the increase in trade across the North Sea, allowed for the introduction of European land and marriage laws into medieval Scotland. These did not supplant existing custom, but instead added a new layer to the Scottish law. In its adaptation of customary law, the Scottish legal system more resembled the continent than England. England had established central courts quite early, and so was not as greatly affected by the legal developments spreading from Italy.[15]

Scotland's ecclesiastical courts were unique in all of Christendom. During the early middle ages, Scotland's developing observance of Roman Christianity fell under the nominal observance of the archbishop of York. After a prolonged campaign by Scottish bishops, in 1192, the Pope declared that Scotland was the special daughter of Church in Rome and Scottish dioceses were not subject to the

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[15] Ibid., 44.

archbishop of York but to Rome.[16] This was a clear recognition that the Church in Scotland was separate from the Church in England.

It is possible to trace Scotland's increased independence from England's archbishops by examining its attendance at the Lateran councils.[17] At the first council in 1123, the Scottish prelates were considered uncanonically ordained, and, in one case, absent. At the third council in 1179, the now robust Scottish Church was considered a dependency of the English archbishops. The Fourth Lateran Council in 1215 marked the shift towards independence, with the Scottish Church representing itself. One of the decisions of the council was that every provincial synod had to meet regularly, but the pope exempted Scotland from this rule, nearly one hundred years from the beginning of Scotland's dispute with York.[18]

With no archbishop, Scottish dioceses were, after 1225, instructed to call their own councils, even when there was no papal legate to preside, a necessity of Gratian's *Decretum*.[19] This was partly seen as necessary due to the distance between Scotland and Rome and the "many irregularities committed which remain unpunished."[20] This annual meeting became known as the general council and was supposed to operate as an independent ecclesiastical body but was at times controlled by the Scottish kings. In 1429, Pope Martin V criticised the council for following the instructions of James I's parliament to subordinate the Church to

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[16] David Patrick, ed., *Statutes of the Scottish Church, 1225-1559*, vol. 54, Publications of the Scottish History Society (Edinburgh: T. and A. Constable, 1907), x.

[17] Ibid., xxviii.

[18] Ibid.

[19] Ibid., xxxiii.; and Gratian et al., *The Treatise on Laws (Decretum Dd. 1-20)*, Studies in Medieval and Early Modern Canon Law. (Washington, D.C.: Catholic University of America Press, 1993), 66.

[20] Bull of Honorius about the Holding of a Provincial Council, in Patrick, *Statutes of the Scottish Church, 1225-1559*, 1.

secular authority.[21] Although the council could pass Church statutes, officials of the bishops of Glasgow and St Andrews performed the judicial functions of the Church, including regulating marriage.[22] The islands of Scotland were still under the jurisdiction of Sodor, a subsidiary of Trondheim in Norway, and so were outside of the purview of the bishops' officials until Rome transferred governance of Sodor to St Andrews in 1472, when St Andrews became an archbishopric.[23]

Statutes passed by the Scottish councils concerning marriage agreed, for the most part, with the decrees from Rome and Avignon. After the Fourth Lateran Council, the Synod of Aberdeen denounced consanguineous and clandestine marriages, insisting on public banns in church three times before a marriage could be solemnised.[24] David, bishop of St Andrews, confirmed this in 1242, and in the fourteenth century the St Andrews Synod reconfirmed it.[25] Marriages could be ended through annulment or through separation *a mensa et thoro.*[26]

The ecclesiastical courts had jurisdiction over most aspects of marriage in Scotland since Queen Margaret's introduction of adherence to canon law, and since that time the civil courts were instructed to defer to the Church courts in aspects relating to marriage. Civil courts, nevertheless, occasionally dealt with issues concerning terce lands and contract disputes. The codification of canon law provided consistency to Scottish prelates in their application of marriage law, but

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[21] Ibid., xl.
[22] Ibid., lviii.
[23] Ibid., cxii.
[24] Ibid., 39 and 44.; and John Dowden, *The Medieval Church in Scotland; Its Constitution, Organisation and Law* (Glasgow: J. Maclehose, 1910), 256.
[25] Patrick, *Statutes of the Scottish Church, 1225-1559*, 63, 71-73.
[26] Forte, "Some Aspects of the Law of Marriage in Scotland: 1500-1700," 165.

they continued to occasionally defer to the higher authority of the papal courts, especially when they involved royal supplicants.

Canonical Rules and Impediments

Ecclesiastical rules governed how clerics and lay people could conduct marriages, and they included prohibitions of a wide variety of practices involved in the formation of a marriage. It was forbidden to break these rules, but the consequences ranged from a fine to an annulment of the marriage. Excommunication was a rare outcome and only used in prolonged cases. For instance, the Church preferred that a priest be present during a wedding, since marriage was considered a sacrament, but this was not absolutely necessary for a valid union, and many clandestine marriages (those without banns) took place in the presence of family and friends or secretly between the couple. The presence of a priest alone was not enough to avoid clandestine marriage, however. After the Fourth Lateran Council, the issuing of banns at three Sundays prior to the marriage was essential, and the general council threatened priests who officiated at clandestine marriages with imprisonment on a diet of bread and water, and suspension from duties.[27]

The type of vow taken in a wedding ceremony was also crucial to the legal status of the marriage. Couples took vows *per verba de presenti*, in the present tense, or *per verba de futuro*, which was a type of betrothal. The latter type of marriage was still binding if the couple had agreed to be betrothed and had then consummated the

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[27] Patrick, *Statutes of the Scottish Church, 1225-1559*, 142 and 268.

union. This was occasionally referred to as "handfasting", which was governed by the same rules as betrothal.[28]

The most common canonical impediments to marriage were consanguinity and affinity. It is clear that couples who were worried about legitimacy for their children and succession took these impediments very seriously. For this reason, King Robert II and his wife, Elizabeth Mure, obtained dispensation years into their marriage for a series of bonds of consanguinity and affinity, of which they claimed prior ignorance, but which were fairly obvious to all the parties involved.

William Hay discussed the question of consanguinity and marriage in his sixteenth-century lectures, devoting his second of four 'questions' solely to the topic. This question was "whether consanguinity is an impediment to marriage by natural law or merely by Church regulation."[29] He concluded that the importance of distant kin varied and that these rules depended on nature, divine law, and ecclesiastical law, each barring specific degrees of relationship.[30] He further mused that "the supreme pontiff can dispense people to contract marriage in the second, third, and fourth degrees and from the whole of his own law. But the reason for the dispensation is not the increase of power, wealth, or estates, but peace, concord, the prevention of war, and the like."[31]

Many of the marriage contracts from pre-Reformation Scotland required in the negotiations that one of the parties seek a dispensation. Calculations of degrees of kinship, affinity, and spiritual affinity were useful as quantitative measures of

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[28] Anton, "Handfasting in Scotland."
[29] Barry, *William Hay's Lectures on Marriage*, 185.
[30] Ibid., 205.
[31] Ibid., 207.

family relationships. Blood ties in the first degree included the nuclear family: siblings, parents, and their children. The second degree of kinship included one's children, parents, aunts, uncles, first cousins, nephews, and nieces. Beyond that, each ring consisted of a further group of relatives who one could not marry, extending to one's third cousin. [32]

The inclusion of such a stipulation in the contract indicated that the parties involved were not making a concerted effort to avoid marrying their kin, but that they were generally concerned with following the law when possible and practical. The involved families purposely arranged marriages within the forbidden degrees, confident in a dispensation. For instance, Janet Vod and James Hamilton entered into a marriage contract on 15 October 1556 on the understanding that James would apply for dispensation as they made wedding arrangements.[33] There was no fallback plan in case the dispensation did not come through. Two years earlier, Archbishop Hamilton had written to the Pope asking for leniency for Scots under the laws of consanguinity and affinity.[34] He argued that Scots had no choice but to break these laws in order to marry someone of equal rank. In addition to that, the cost of dispensation prevented most people from obtaining them. When couples did apply for papal dispensations, the results might not arrive for two or three years, by which time the couple was already married. If they did not apply for these expensive dispensations, they could then seek annulment at any time.

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[32] Ibid., 193-201.
[33] National Records of Scotland [NRS], GD16/44/8.
[34] *Liber Officialis Sancti Andree: Curie Metropolitane Sancti Andree in Scotia Sententiarum in Causis Consistorialibus Que Extant.* (Edinburgh: Typis Edinburgi, 1845), 164.

Formal dispensations were costly to poorer Scots, between three and twelve florins, although on rare occassions the court would receive applications from 'paupers'.[35] The couple could also be ordered to pay an additional fee, such as when Pope Benedict XIII dispensed Angus Goffredi and Anna, daughter of Lachlan MacGilleon, from bonds in the third, fourth, and fourth degrees upon payment of one silver mark each to both the church of Glasgow and the monastery of Saddell in Argyll.[36] Couples could avoid these fees by never legitimating their marriages with dispensations.[37] Some couples did express their purported reasons for applying, but it is unclear to what extent supplicants lied.[38]

Consanguineous marriages were sometimes accidental. The example of James de Valence and Christine de Erskin illustrates just such a case. James and Christine married "*per verba de presenti* in the presence of friends", but never obtained a marriage dispensation. One year into their marriage, they discovered that James had "carnal relations" with a serving girl who happened to be related to Christine in the third degree.[39] It is conceivable that this coincidence was not apparent at the beginning of their relationship because the initial sexual encounter may have been a well-guarded secret.

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[35] James Cowie Brown, ed., *An Introductory Survey of the Sources and Literature of Scots Law*, vol. i (Edinburgh Stair Society, 1936-1939: 1936), 136.; Irene Furneaux, "Pre-Reformation Scottish Marriage Cases of the Papal Penitentiary," in *Late Medieval Christian Peripheries and Their Communication with the Holy See*, ed. Torstein Jorgensen and Kirsi Saloneneds Gerhard Jaritz (Budapest and New York: Central European University Press, 2005), 136.

[36] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 55.

[37] *Liber Officialis Sancti Andree: Curie Metropolitane Sancti Andree in Scotia Sententiarum in Causis Consistorialibus Que Extant*, 164.

[38] For further discussion of this, see Mairi Cowan, "Spiritual Ties of Kinship in Pre-Reformation Scotland," in *Finding the Family in Medieval and Early Modern Scotland*, eds. Elizabeth Ewan and Janay Nugent (Aldershot: Ashgate, 2008), 117.

[39] Charles Burns, ed. *Calendar of Papal Letters to Scotland of Clement VII of Avignon, 1378-1394*, Scottish History Society. 4th Series; (Edinburgh: Printed for the Scottish History Society by T. and A. Constable, 1976), 112-13.

Other cases of consanguinity are much more obvious, such as the marriage between Robert II and Elizabeth Mure, who eventually did plead for dispensation when they realised their relationship could pose a problem to the legitimacy of Robert's successors. It seems inconceivable that certain couples were not aware of their blood relationships, yet they did not pursue dispensations. Some had intended to, but never went ahead with the supplication. Others seem not to have made it a priority. Some of these couples later used the existing bonds of consanguinity as cause for annulment.

Many members of the Scottish nobility applied for marital dispensations from Rome or Avignon, and the pope occasionally provided clerics with blocks of dispensations to disperse at their will, such as on 19 July 1379, when Pope Clement VII gave John, bishop of Dunkeld "faculty to dispense ten men and as many women of his diocese from the matrimonial impediment arising from the fourth degree of consanguinity or affinity."[40] This meant that not every dispensation was present in the papal records, but even so, it is clear that many landowners married within the forbidden degrees and never bothered to dispense their marriages.

Popes limited many such blocks of dispensations to the fourth degree of consanguinity, although in a small number of instances, popes allowed for dispensations in the third degree.[41] Some included the legitimisation of children, provided the parents had been ignorant of consanguinity when they married.[42] The avoidance of blood relationships reflects a greater concern towards marriages with

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[40] Ibid., 27.
[41] For instance, ibid., 90.
[42] Ibid., 105-6.

closer links and a greater need on the part of the Church to maintain control over the granting of such dispensations. Nevertheless, there were still good reasons to allow bishops blocks of dispensations for the third degree. In a letter to the chancellor of Dunblane on 5 May 1380 Clement VII granted him faculty to dispense ten couples from bonds of consanguinity and affinity in the third and fourth degree. These couples had to be from the lands of Robert, earl of Fife and son of King Robert II, and the dispensation meant, "that by arranging marriages between contesting families an end may be put to the feuds, murders, and factions existing in those parts."[43]

There was only one record of a dispensation issued for any closer relationships of consanguinity or affinity, but these spiritual bonds were less important. Egidia Stewart, daughter of Robert II, and Robert de Benachtyn were contracted to marry, but waited for a number of years until they could be dispensed from a spiritual bond in the first degree. Egidia's father was the godfather of her affianced spouse. Not only was this request made directly to the pope by King Robert II, but the wording of the request gave the putative reasons for the necessity of the marriage: "in order to foster peace between their friends".[44] This bond was dispensed on 3 October 1387. A similar dispensation was granted to Egidia's nephew, and the son of Robert, earl of Fife, Murdoch, to marry Isabella of Lennox.[45]

The only dispensation for consanguinity in the second degree is that of John Patrick and Elizabeth Vache from Glasgow "to prevent strife among families". John

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[43] Ibid., 46.
[44] Ibid., 132.
[45] Ibid., 174.

and Elizabeth had a child out of wedlock and wanted to be married and have their child legitimised.[46] It was very unusual to allow first cousins to marry, but the reality that they already had children together would have influenced the decision.

The normal requirement for post-nuptial dispensations was that the couple had unknowingly entered into a consanguineous relationship. Couples who knew about their consanguinity, however, still did receive dispensations, such as when Hector MacLean and Mor, daughter of Colin Campbell of Lochawe, were married. They married despite knowledge of consanguinity "in order to establish peace and harmony among their family and friends, whereas until now there have only been wars, dissensions, murders and other grave scandals" and claimed to have not yet consummated the marriage.[47]

The increased use of this claim suggests that it was increasingly recognised as a strategic tool in the attempt to proceed with an unlawful marriage. In 1395, a similar situation arose when David, earl of Carrick, and son of Robert III, married Elizabeth Dunbar, daughter of the earl of March, *per verba de futuro* in full knowledge of their consanguinity in the third degree. This marriage was putatively to prevent "grave scandal and dissension".[48] The couple had married by posting their banns three times and then consummating the marriage. The banns, however, were traditionally posted to ensure no impediments existed, and so when the bishop of St Andrews heard of the consummation despite knowledge of their blood

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[46] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 199.
[47] Burns, *Calendar of Papal Letters to Scotland of Clement VII of Avignon, 1378-1394*, 188-9.
[48] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 45.

relationship, he instituted proceedings against them.[49] They appealed to the pope and received absolution, but were instructed to remain separate for a time and remarry later. They separated with apparent plans to remarry; however, the marriage had never been supported by Robert III, and by 1400 David had decided to wed Mary Douglas instead.[50] The attempt to avoid grave scandal backfired.

In the earlier records of dispensations from the reign of Pope Clement VII in Avignon, the single quality most apparent in a couple's decision to obtain a dispensation was proximity to the royal family. During later periods the popularity of papal dispensations increased and became more representative of the breadth of Scotland. Unusual requests for dispensations were often accompanied by an explanation of the chaos and violence that this marriage could prevent.

This reflects medieval marriage practices on the continent as well. It was often important that kings and noblemen had the ability to have more than one wife, sequentially, to ensure healthy male offspring, and reasons were manufactured to obtain annulments.[51] The more powerful the Church became, the less these games were possible, but this was certainly still being practiced in late medieval Scotland.

Couples who could not obtain necessary dispensations often continued to live as spouses nevertheless. "Cohabitation with habit and repute" was considered sufficient proof of marriage, if no other impediments were brought forward to a

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[49] Ibid., 70.
[50] For a discussion of the political importance of these marriages see Boardman, *The Early Stewart Kings*, 200-1, 203-4, and 226-7.
[51] Duby, *Medieval Marriage : Two Models from Twelfth-Century France*, 92.

court.[52] A couple who represented themselves as husband and wife were treated as husband and wife after death.[53] Priests did not normally engage in formal marriages, because of declarations that a priest in a marital union could be punished; however, they did regularly keep concubines.[54] Cardinal Beaton had at least eight illegitimate children, and he was by no means unique in sixteenth-century Scotland.[55]

Separation and Annulment

Church writers accepted that supplications would be made for marriages intended to end bloodshed and considered this reasonable. As sensational as statements of violence could be to encourage the issuing of a dispensation, similar wording was used in a supplication for an annulment. Euphemia of Ross and Alexander Stewart, the "Wolf of Badenoch", received a papal dispensation for the third and fourth degrees of consanguinity in 1382.[56] After seven years of arguments between the couple, Euphemia pled for an annulment *despite* having received dispensation for all impediments. On 9 June 1392, the pope issued a mandate to the bishops of St Andrews, Glasgow and Aberdeen that they should look into this marriage, since the couple lived separately for most of their marriage, which "has been the cause of wars, plundering, arson, murders, and many other damages and scandals, and it is

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[52] David Hay Fleming, ed., *Register of the Minister Elders and Deacons of the Christian Congregation of St Andrews*, vol. 1, Publications of the Scottish History Society (Edinburgh: T. and A. Constable, 1889), 289.

[53] Sellar, "Marriage by Cohabitation with Habit and Repute: Review and Requiem?."

[54] J. D. Mackie, *A History of the Scottish Reformation* (Edinburgh: Church of Scotland Youth Committee, 1960), 80.

[55] Margaret H. B. Sanderson, *Cardinal of Scotland, David Beaton, c. 1494-1546* (Edinburgh: J. Donald Publishers, 1986), 39.

[56] Burns, *Calendar of Papal Letters to Scotland of Clement VII of Avignon, 1378-1394*, 79.

likely that more will happen if they remain united in this union".[57] In this case, the plea of wars was believable.

Euphemia initiated the investigation and accused her husband of concubinage with Mairead inghean Eachann of Ross. Mairead and Alexander had children together and were living together as a married couple. Initially, the bishop of Ross ordered Euphemia and Alexander back together, but this was soon followed by a papal order reading just the opposite.[58] The pope and bishops granted her an official separation from her husband and upheld her claim to her property from the marriage.[59] This separation was aided, in part, by Robert, earl of Fife, Alexander, earl of Buchan's brother. Robert had become the first real challenge to the power amassed by his brother Alexander across the north of Scotland, and Euphemia used the presence of Robert to ease her separation from Alexander.[60]

There were certainly cases in Scotland where links of consanguinity and affinity were discovered well into a marriage and needed to be dispensed, but it is also probable that individuals kept secret and ignored their links of consanguinity and then used them to obtain an annulment when their relationship went sour.[61] This difference can be seen in the applications for dispensations as compared to the applications for annulment. Most couples who applied for marriages and children to be legitimised were successful, which raises questions about the intentions of

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[57] Ibid., 174.

[58] Cosmo Innes, *Registrum Episcopatus Moraviensis; E Pluribus Codicibus Consarcinatum Circa A.D. MCCCC., Cum Continuatione Diplomatum Recentiorum Usque Ad A.D. MDCXXIII* (Edinburgh: Bannatyne Club, 1837), 353-4.

[59] Burns, *Calendar of Papal Letters to Scotland of Clement VII of Avignon, 1378-1394*, 181.

[60] Boardman, *The Early Stewart Kings*, 168-71.

[61] *Liber Officialis Sancti Andree*, no. 152 and 55.

couples applying for annulments instead.[62] Scottish couples frequently obtained annulments for their consanguineous marriages when the marriages were no longer convenient and this worried Archbishop Hamilton because the children of the marriage would then become illegitimate.[63]

One of the biggest reasons for seeking annulment or separation was that the couple's relationship had completely broken down. The plaintiff often cited adultery as the reason for this. Adultery was an important accusation to make before the courts because it greatly affected the rights of the wife who had achieved separation after she committed adultery. A wife would forfeit her terce lands in widowhood if she separated from her husband on grounds of her adultery. [64] Tocher lands would revert to the wife's donor unless the couple had had children, and then the husband inherited them.

Couples might also seek divorce for desertion, as Alexander, Earl of Mar did in 1424. Alexander's wife, "a noblewoman of the Duchy of Brabant" had abandoned him, "led away by what spirit is unknown", and so Alexander received an annulment from the pope despite the fact that the marriage had been canonically valid.[65] This was, not, however, common. In the records of the Court of the Official of St Andrews between October 1546 and February 1548, of the 121 cases pleading for annulment,

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[62] For instance, Burns, *Calendar of Papal Letters to Scotland of Clement VII of Avignon, 1378-1394*, 22-23.

[63] Ollivant, *The Court of the Official in Pre-Reformation Scotland*, 68.; Barry, *William Hay's Lectures on Marriage*, xliii.

[64] John Skene, *Regiam Majestatem: The Auld Lawes and Constitutions of Scotland Faithfully Collected Furth of the Register... And Translated out of Latine in Scottish Language...* (Edinburgh: T. Finlason, 1609), 39.

[65] E. R. Lindsay and Annie I. Dunlop, eds., *Calendar of Scottish Supplications to Rome, 1418-1422*, vii vols., vol. xxiii, Scottish History Society. 3rd Series (Edinburgh: Printed at the University Press by T. and A. Constable for the Scottish History Society, 1934), 59-60.

none sought divorce on grounds of desertion in particular.[66] There were, however, twelve cases pleading for divorce or separation following the adultery of one party. Only one couple was allowed to remarry.[67] Men and women dealing with issues such as desertion or adultery could apply to the church courts for a divorce *a mensa et thoro,* which permitted them to live separately but not to remarry. These were more common and easier to obtain than an annulment in certain types of relationships.[68] Consistorial courts often heard these pleas as well as pleas from couples wishing to legitimise children after discovery of a marriage impediment.[69] Unmarried couples could legitimise their children by subsequent marriage and did use the Church courts to ensure their inheritance rights.[70] Letters from the pope were the best way to obtain legitimacy, but the Scottish kings also wrote letters of legitimation, often for their own family members.[71] In this way the boundaries between the secular and the sacred could become blurred.

Marriage and Property

Although land disputes were normally settled in secular courts, marital disagreements and contract disputes were supposed to be decided in the ecclesiastical courts. James Balfour, a justice who had experience in a variety of courts, wrote in his *Practicks* about many examples of marital land disputes settled in secular courts and provided rules on how to deal with a variety of circumstances.

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[66] *Liber Officialis Sancti Andree.*
[67] Ibid., no. 147.
[68] David M. Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 1st ed. (Edinburgh: W. Green, 1988), 576.
[69] Ibid., 577.
[70] Barry, *William Hay's Lectures on Marriage*, 317.
[71] Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 579.

He was insistent that the "law of God" governed marriage but also demonstrated how the sixteenth-century secular Court of Session should address such matters.[72] Many decisions came down to the agreements the parties had reached during the negotiations for the unions. The Scottish courts considered marriage contracts binding legal documents, and justices upheld the terms of the contract, including requiring marriages to proceed within certain timeframes and applying fines as penalties for marriages that never occurred, if a date had been specified.[73] In 1500, John Crichton appeared before the Lords of Council to bring an action against Thomas Kinnaird of Skelbo, whose son Andrew was supposed to marry John's sister Jonet.[74] The Lords ruled that Andrew must marry Jonet before Whitsunday "as he that was requiratit therto efter the tenor of divers instrumentis" and that the families must proceed with the agreed upon payments. Because of the attitude of the courts, specifying a date was a good way to protect the value of a contract.

Most Scottish women brought land and money into marriage as a "tocher", a dowry frequently given to the groom by the bride's father, uncle, or brother. The tocher could be composed of land or money and often both. The amount of the tocher varied greatly depending on individual circumstances, but at times resembled the bride's portion of what might have been her inheritance. Traditionally, tocher had been provided to the groom before his marriage, but increasingly the gift would be given at the time of the marriage or following.[75]

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[72] Balfour, *Practicks*, 96.
[73] Ibid., 97.
[74] George Neilson and Henry Paton, *Acts of the Lords of Council in Civil Causes - 1496-1501*, vol. 2 (1918), 2:385.
[75] Balfour, *Practicks*, 101.

Tocher cash could be put towards the purchase of lands for the couple, which would provide income. Many marriage contracts agreed on specific payment schedules, normally following the completion of the marriage. James Scott, dyer, agreed to pay his daughter's tocher to her husband Thomas Kay in instalments; one hundred merks would be paid eight days after the wedding, three hundred merks forty days later, followed finally by two payments of twenty pounds at the following two Whitsundays.[76] Tocher property was assimilated into the lands of the couple, but did not necessarily revert to the wife upon the death of her husband.

Instead, during the negotiation of a marriage many grooms specified the 'terce', or dower, that their wives were entitled to upon their husband's death. Terce was theoretically the wife's property for the rest of her life, whether she remarried or not, and confirmations of terce from 1364 reaffirm that.[77] After Alexander II's proclamation of 1244, the default legal terce became one third of the husband's lands unless he specified a smaller amount at the beginning of the marriage.[78] Balfour wrote that a husband was to provide his wife with "ane ressonabill dowrie and tierce" but was limited to giving her no more than a third of his lands that he held at the time of marriage.[79] A woman who did not receive her terce could plead to be returned to her dower land, which would, by default, consist of one third of her husband's land when they married. Widows who did not receive land in terce were allowed to pursue the matter in court but often faced legal challenges from the

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[76] NRS, GD1/47/2/4.

[77] John Maitland Thomson, ed. *Registrum Magni Sigilli Regum Scotorum. The Register of the Great Seal of Scotland, A.D. 1306-1424*, 11 vols., vol. i (Edinburgh: H.M. General Register House, 1882), no 176, 77.

[78] Walker, *A Legal History of Scotland: The Later Middle Ages*, 393. and Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 573.

[79] Balfour, *Practicks*, 105.

husband's family. In March 1503, parliament declared that widows pursuing brieves of terce were entitled to receive that land and its profits unless it could be proven that the couple had never been married.[80] This was difficult to prove, unless there was a major impediment, such as a previous existing marriage.

Families negotiating a marriage often drew up marriage contracts to provide details as to how and when money and land would change hands and to make contingency plans, in case certain elements of the arrangement did not go as planned. These contracts also allowed for money and land to be allocated in non-customary ways, allowing couples to bypass rules such as the maximum allowable terce. The most common way to do this was to put land in conjunct fee, a form of tenure that, for all practical purposes, closely resembled the terce. Women in late medieval Scotland held property in their own right and many also held land jointly with their husbands. Conjunct fee lands were the property of both husband and wife and whichever outlived the other retained the lands in liferent. Conjunct fees were still governed by set rules, as Balfour outlines, but were held equally and so were favoured by families trying to negotiate marriages that would favour the bride.[81] Brides with large inheritances or powerful families were often provided tocher with land in such arrangements.

The terms of marriage contracts led to disagreements over whether conditions had been fulfilled. Sometimes these were resolved by arbitration.[82] Church courts did become involved in these disputes and regularly made judgments

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[80] *The Records of the Parliaments of Scotland to 1707*, [*RPS*] K.M. Brown et al., eds, (St Andrews, 2007-2011), 1504/3/42. Date accessed: 30 June 2011. http://www.rps.ac.uk/trans/1504/3/42
[81] Balfour, *Practicks*, 101 and 04.
[82] Walker, *A Legal History of Scotland: The Sixteenth Century*, 3, 712.

that certain conditions must be fulfilled. Ecclesiastical courts claimed to have jurisdiction over contracts, because they involved the taking of an oath, but in 1457 James II declared that all contract disputes were to be tried by the Session, the secular royal court. Nevertheless, cases involving matrimony were sometimes sent to ecclesiastical courts to be heard.[83] Individuals could bring accusations to court by using a brieve, a Scottish writ. One such brieve covered the issuing of terce, and so it could become partly a civil matter. An unfulfilled contract was also seen to be a debt, and so the injured party could buy brieves of distress for debt.[84] As the use of brieves declined, summons to court increased.[85]

Age at Marriage

The official age at which a boy could consent to marry under canon law was fourteen. A girl could be as young as twelve and still enter into a binding agreement. Children could be betrothed as young as seven.[86] Younger children did sometimes marry, but technically the Church law allowed them to renounce the marriage upon reaching puberty, as long as they had never consummated the marriage. This sometimes worked. In August 1523, the court of the official of St Andrews revoked a marriage because a ten-year-old girl, Elizabeth Leith, who was married to Andrew Elphinston of Selmys, revoked her consent for marriage.[87] In special cases, the Church might dispense a couple to marry, despite being underage, as they did in the

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[83] Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 459.
[84] Ibid., 609.
[85] Ibid., 461.
[86] Barry, *William Hay's Lectures on Marriage*, 5-15.
[87] *Liber Officialis Sancti Andree*, no 41, p. 26-7.

case of the eleven-year-old princess Margaret and the thirteen-year-old Dauphin, Louis in 1436.[88]

On rare occasions, ages for marriage were specified in a contract. In the seven contracts that make reference to age with specific numbers, the average age for brides and grooms was fifteen. This, however, represents the lower end of ages at marriage, because it uses only those contracts that went beyond formulaic language to include specific clauses referring to age. This only happened when the couple were too young to marry in the eyes of those drawing up the agreement.

In other cases, the contracts were completed "at thair perfect age", or with similar wording.[89] The meaning of this is not entirely clear. Canon law prohibited marriage between underage couples, and so this might be interpreted as age twelve for a bride and fourteen for a groom. Other contracts, however, use similar wording in reference to other numbers, such as a "compleit age" of fifteen.[90] Marriage contracts existed between families using a variety of ages as thresholds, committing their infant children in betrothal or requiring that the couple reach full adulthood. Grizel Hay and Robert Hume were entered into a marriage contract by their parents in 1576 that specified that they should not be married until they reached the age of eighteen.[91]

The bulk of the contracts did not refer to specific ages at marriage, although they were certainly relevant to the formation of marriage. Instead, issues such as when a contract for underage brides and grooms would be undertaken were

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[88] NRS, SP7/12.
[89] NRS, GD205/18/60LX/no.1; NRS, AD1/64; and NRS, GD3/2/4/6.
[90] NRS, GD112/25/108.
[91] NRS, GD110/169.

generally dealt with separately. Multiple confirmations of contracts for some underage betrothals demonstrate that there was an understanding between the parties involved that the marriage would continue when it was appropriate.[92]

Certain laws governed the way that a contract could be drawn up and so some practices became standard, such as sealing or signing the contract and using witnesses in order to fulfil these conditions. Children were particularly vulnerable to the influence of "force and fear" during the sealing of a contract, which was specially forbidden by the Church. This was an accepted judicial defence when contesting the validity of an agreement, and so it was important that the contract remained valid. Often, however, the bride and groom were not actual parties in the contract, especially when they were young and under the control of older relatives. Instead the major landholders, most often their fathers, were signatories to the agreement.[93]

Parents frequently entered their children into marriage contracts at a very young age or sometimes even speculatively before they were born or conceived, but the majority of contracts are silent on this issue. The marriage contract of Sir William Scott of Balweiry and Christian Douglas of Lochleven stated that they should marry when Christian turned fourteen years old.[94] If either of them were to die before this time, he or she was to be replaced by any other sons or daughters, yet to be born.   These contracts omitted particular laws of consent and put the betrothed children at particular risk, since sometimes a marriage contract that had

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[92] NRS, GD112/25/45; NRS, GD112/25/31
[93] Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 611.
[94] NRS, GD150/451.

not been completed would be ordered to be carried out. This happened when in 1500 the Lords of Council ordered Andrew Kinnaird to marry Jonet Crichton before Whitsunday "til get payment of the soumes awing til him efter the tenore of thair endentouris made betuex thame".[95] It is not clear whether this could apply to couples who were not yet of age, but some contracts do specify an exact age at which the couple would be married.

The only wide-scale demographic studies on age at marriage are for the late-sixteenth century and later. Between 1560 and 1600, the average age for the first marriage of a noble man was 22.[96] Women of the nobility married slightly earlier, with an average age for first marriage of 18 between the years 1560 and 1625.[97] Noble families differed from the wider population because there were fewer financial concerns preventing the marriage (although raising a tocher could be a struggle). Rab Houstoun's comprehensive demographic work indicates that the median age for women of every class at their first marriage was 26 to 27 years of age, with a quarter of women never marrying.[98] These numbers cannot be reliably applied to earlier periods or to the lairds, but do provide a sense of the culture of marriage among the nobility after the Reformation. It is clear that it was not common for parents from noble and lairdly families to marry their children off at the youngest possible age. Indeed, two marriage contracts made it explicit that despite the desire to complete the union in a timely manner, parents valued the

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[95] Neilson and Paton, *Acts of the Lords of Council in Civil Causes - 1496-1501*, 2, 385.
[96] Brown, *Noble Society,* 115.
[97] Ibid., 116.
[98] Houston and Economic History Society., *The Population History of Britain and Ireland 1500-1750,* 25.

maturity of the couple at the time of their marriage and took steps to ensure this was the case.[99]

Gaelic Marriage

Marriage practices in certain parts of the highlands and islands differed noticeably from those in central and lowland Scotland. Historians have focused on customs of handfasting, polygyny, and divorce.[100] It is difficult to find parallels for many customs, because the types of social ties that were indicators of Irish Gaelic marriage practice were not the types of information that was written down in Gaelic areas of Scotland. For instance, Irish marriages had a brideprice paid to the bride and her father, rather than a dowry, but that began to change in the later medieval period.[101] By the time that families were recording details of marriage payments in contracts, they were generally following the more canonical European practices, or at least representing their actions in canonical form. The practice of divorce with the ability to remarry was another indicator of Gaelic marriage practices, but these divorces were increasingly presented as annulments, [102] which obscured contemporary attitudes towards the practice.

The key identifiable difference was the attitudes in Gaelic Scotland towards legitimacy. Regions such as the Lordship of the Isles allowed for succession of so-called 'illegitimate' sons of their lords, and this has led some commenters on marriage to believe that laws must have existed allowing for polygyny to allow for

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[99] For example see, NRS, GD112/25/108; and NRS, GD110/169.

[100] Sellar, "Marriage, Divorce, and Concubinage in Gaelic Scotland," 464-67.

[101] Gillian Kenny, *Anglo-Irish and Gaelic Women in Ireland, c. 1170-1540* (Dublin: Four Courts Press, 2007), 67-8.

[102] Ibid., 102.

legitimate issue from two women involved in concurrent relationships with the lord.[103] However, if one takes into account that succession laws in areas of Gaelic Scotland were, indeed, more inclusive, then the legality of the marriage itself is once again obscured. There are examples of nobles and kings who were notorious for openly keeping mistresses and favouring their issue with all but succession to the throne.

The contrast between the ecclesiastical rules and secular practice of marriage in twelfth-century France followed similar patterns. Georges Duby described "incest, bigamy, and divorce" as hallmarks of the secular model for marriage in France.[104] In this way, marriage practice across Scotland can be attributed to lay culture, rather than specifically to its Celtic roots. Indeed high rates of endogamy existed both in the Scottish highlands and in Normandy – two areas with substantial Norse influence. Differences in their treatment of marriage and its role in the kin group did exist between regions, but these went beyond simply "Irish" or "Celtic" practices to include regional differences influenced by the region's Gaelic and Norse founders.

Scots Law in the High & Later Middle Ages

Scotland still did not have a single, unified system of law but instead relied on various legal systems including ecclesiastical courts and customary or "common law", which was synonymous with "custom" until the fourteenth century. Although early marriage law in Scotland was based on Irish and Norse customs, the first

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[103] Sellar, "Marriage, Divorce, and Concubinage in Gaelic Scotland," 481.
[104] Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, 25-81.

written laws in Scotland were closely linked with English law. England's legal innovations influenced the way Scots approached their own judicial system. Nevertheless, the presence of nearly identical laws did not mean that the legal systems were identical. Scots law had developed distinctly from English law, but this was not universally recognised, even as late as the thirteenth century, when Scots were known to plead English law in Scottish courts.[105] Eventually, these two legal systems diverged.

From the eleventh to thirteenth centuries, English and Scots laws and procedures grew closer together as the two royal families established firm links with one another. During the 1291-2 proceedings of the Great Cause, the debate around who would succeed Alexander III and the Maid of Norway, it became clear that arguments were resting on Scottish law. In 1292, however, relations between the realms turned sour, and from that point onwards the laws once again developed independently.[106] The political schism and outbreak of war between England and Scotland following the conclusions of the Great Cause led Scotland to define itself even more independently than before. This continued in earnest, and the 1532 establishment of the College of Justice cemented the legal divide between the two realms.[107]

Justices also made use of the civil law, which had closer ties with Roman practices and canon law, which had increasing authority since Queen Margaret's

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[105] Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 90.
[106] Walker*, A Legal History of Scotland: The Later Middle Ages*, 13.
[107] W. D. H. Sellar, "The Common Law of Scotland and the Common Law of England," in *The British Isles 1100-1500: Comparisons, Contrasts and Connections*, ed. R. R. Davies (Edinburgh: John Donald, 1988), 95.

facilitation of papal authority over Scottish churches. The law rested in the hands of the king, and increasingly the king delegated legal authority to his lords.[108] A central royal court also gradually emerged from Parliament, which was able to tackle the growing number of cases that came to be decided.[109] The decentralised courts of the baronies and regalities still retained their importance in legal decisions.[110] Scottish legal innovations in the late middle ages depended more on internal developments, some of which would be modelled on European courts and law schools.

Legal Education

Scottish students' attendance at European universities, such as Bologna, allowed them to learn about the new legal theories developing across continental Europe and enabled them to return to Scotland with innovative perspectives on the role of law in society.[111] The University of Bourges had a very high Scottish enrolment, due partially to Scotland's struggle to establish a high-quality law faculty, and at one point Bourges even had Scottish rectors.[112] In the early and high middle ages, civil law had been seen as fixed and unalterable, and so the idea that the king had the authority to develop new laws allowed for major shifts in the Scottish legal system through the fourteenth and fifteenth centuries.[113] Not only had law been perceived

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[108] Walker, *A Legal History of Scotland: The Sixteenth Century*, 3, 294.
[109] Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 302.
[110] Ibid., 328.
[111] Ibid., 15.
[112] Marie-Claude Tucker, "Scottish Students and Masters at the Faculty of Law of the University of Bourges in the Sixteenth and Seventeenth Centuries," in *Literature, Letters and the Canonical in Early Modern Scotland*, eds. Theo van Heijnsbergen and Nicola Royan (East Linton: Tuckwell Press, 2002), 111-20.
[113] Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 16.

as a constant, but the logistical difficulties associated with the creation of new law had also prevented major changes.[114] The fourteenth century marked the first uses of the term "common law" to apply to legal customs of Scotland.[115] It also marked the beginning of new legal systems that could better deal with evolutions in culture, rather than relying solely on custom.

Land use shifted through the wars of independence toward pastoral uses rather than arable, since vast tracts of lands had been wasted during the fighting.[116] Changes in tenancy laws after the crises of the fourteenth century brought greater prominence to the right of inheritance to kin. This 'kindly tenancy' was mostly held through feuing, a late medieval practice which enabled smaller landholders to amass greater tracts of land through the sixteenth century and thus to gain status.[117]

As legal systems developed, ecclesiastical and secular institutions established centres for studying the law. These included, to a lesser extent, the lawyers of the royal court, and to a greater extent ecclesiastical centres where educated clergy were able to examine Scots law.[118] Legal theory was not a major concern of these men; instead they compiled lists of laws.[119] The compilation of lists of Scottish laws forced the authors to ask themselves, what was "Scottish", and to consider the problem of dealing with variance in laws across the realm.[120] The ensuing legal

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[114] Ibid., 254.

[115] Ibid., 252.

[116] Ibid., 22.

[117] Furneaux, "Pre-Reformation Scottish Marriage Cases of the Papal Penitentiary," 60.; R. K. Hannay, *Acts of the Lords of Council in Public Affairs, 1501-1554* (Edinburgh, H.M. General Register House, 1932), p. 128.; Jenny Wormald, *Court, Kirk and Community : Scotland, 1470-1625*, vol. 4, The New History of Scotland (Toronto: University of Toronto Press, 1981), 80.

[118] Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 255.

[119] Ibid., 261.

[120] Walker, *A Legal History of Scotland: The Later Middle Ages*, 67.

developments were part of Scotland's development of a national consciousness in the face of major regional divisions. Noblemen, such as the Lords of the Isles, also held court.

Men of Law

The localised court systems often appointed permanent judges, but these judges rarely received a formal education. Throughout the medieval period, Scottish justices were not required to train in law.[121] Advocates in court were not common but were allowed as early as the thirteenth century. Litigants still had to appear in court to delegate a procurator to act on their behalf.[122] The Education Act of 1496, however, required that all noble children receive a formal education from the age of eight until they had learned Latin and the law. This meant that the justices of the sixteenth century were all educated in basic law to the same extent as their peers.[123]

Despite the lack of a requirement that justices be trained, most legal advisors and judges in late medieval Scotland had received a formal legal education.[124] Attendance at the continental universities was very common, and those who were successful there eventually participated in a wave of university foundations in fifteenth-century Scotland. The University of St Andrews was founded between 1410 and 1413 by the local bishop and the pope. In 1451 the pope, on recommendation of the king, founded the University of Glasgow. The University of Aberdeen became the third ecclesiastical foundation in 1495 and allowed for even

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[121] Walker, *A Legal History of Scotland: The Beginnings to A.D. 1286*, 264.
[122] John Finlay, *Men of Law in Pre-Reformation Scotland*, Scottish Historical Review Monographs Series (East Linton: Tuckwell, 2000), 32.
[123] Walker, *A Legal History of Scotland: The Later Middle Ages*, 264.
[124] Finlay, *Men of Law in Pre-Reformation Scotland*, 54-5.

more widespread study of both canon and civil law among its other subjects, which included medicine, theology, and the liberal arts.[125] The University of Edinburgh, the first civic university, was not founded until after the Reformation, in 1582.

The establishment of universities in Scotland enabled discourse on Scottish law, and it was because of these developments that the judicial system came under increased scrutiny. Still, the study of law in Scotland was in its infancy and so scholars continued travelling to Europe in order to get training in the theory of the law.

Changes in the Sixteenth Century

The sixteenth century in Scotland saw a series of major changes in the way justice was administered. These changes included the establishment of the ecclesiastical Court of the Official and the secular College of Justice. The Reformation in 1560 caused even greater upheaval, but the regulation of marriages remained fairly stable throughout the establishment of the Kirk. After 1560, canon law continued to be referred to in Kirk Sessions but did not have binding authority.

The most adamant confirmation of the decrees of the Fourth Lateran Council was immediately preceding the Reformation, during the general council of January 1551/2. The council was particularly concerned about the fates of the many couples who ignored the requirement of banns, bringing themselves "into the greatest risk of losing inheritances from their fathers or forebears, and all their fortunes, and this chiefly through lack of legal documents bearing upon births and dates of birth and

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[125] Leslie J. Macfarlane, *William Elphinstone and the Kingdom of Scotland, 1431-1514* (Aberdeen: Aberdeen University Press, 1985), 293.

proclamations of banns."[126] This was followed by a decree that all parishes keep dated records of baptisms, parentage, and banns, a practice that began just as the Reformation got underway. In addition the council forbade clandestine marriages.[127] The statutes also addressed the problem of cases of divorce that were too easily granted. Only bishops were allowed to decide cases of annulment, and so the officials were required to consult with them before making their judgments to ensure that they were based on sound evidence and testimony.[128]

Court of the Official

Throughout the middle ages, Scottish bishops held judicial jurisdiction within their dioceses and did so collectively. As time passed, individual bishops, rather than groups of bishops, began to make judgments until, by the thirteenth century, Scottish bishops were delegating judicial power to subordinates.[129] Originally, bishops and clerics exercising judicial duties in synod heard marital disputes.[130] Later similar consistorial courts heard these cases.[131] This type of court is first recorded in the thirteenth century, and they were ubiquitous by the sixteenth century.[132] By the end of the thirteenth century, Glasgow and St Andrews both had courts run by the bishop's officials that would tend to all ecclesiastical business. By the sixteenth century there was also an archdiaconal Official of Lothian working

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[126] Patrick, *Statutes of the Scottish Church, 1225-1559*, 142.
[127] Ibid., 268.
[128] Ibid., 138.
[129] Ollivant, *The Court of the Official in Pre-Reformation Scotland*, 41.
[130] Ibid., 44.
[131] Ibid.
[132] Ibid., 22.

permanently out of Edinburgh.[133] These formal courts met frequently but not on a regular schedule, with the court meeting on seemingly arbitrary days including Sundays and Easter.[134] The courts dealt with matrimonial issues, but these were not the majority of cases. In fact, marriage cases only consisted of about six percent of cases brought to the officials.[135] Decisions were generally considered final, but some appeals would be brought from diocesan courts to the principal official and could then move again to the papal courts in Rome.[136]

The officials who the bishops appointed to their courts were well versed in secular and canon law and often had experience in both types of trial. They followed the dictums of western canon law but supplemented them with the judgments of the Scottish Church councils, which meant that the interpretation and implementation of canon law had a unique Scottish flavour.[137]

The most common marriage cases included adultery and requests for annulments. The Court of the Official of St Andrews saw twelve cases of adultery between 1546 and 1548, about ten percent of the cases dealing with marriage.[138] These were recorded in a number of manuscripts noting court decisions, although they rarely explained why officials decided the way they did. These principles of canonical marriage were explained in William Hay's lectures on the seven sacraments.[139] His lectures on marriage explained in detail how to handle specific

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[133] Ibid., 46.
[134] Ibid.
[135] Ibid., 69.
[136] Ibid., 119.
[137] For example, Barry, *William Hay's Lectures on Marriage.*
[138] *Liber Officialis Sancti Andree: Curie Metropolitane Sancti Andree in Scotia Sententiarum in Causis Consistorialibus Que Extant.*
[139] Barry, *William Hay's Lectures on Marriage.*

theological dilemmas relating to marriage. Most of Hay's questions and answers concerned the legal status of a marriage, and how certain impediments affected the legalities of marriages. Hay generally agreed with canonical teaching, asking some bold questions about issues such as chaste marriage, consanguinity, and concubinage.

The College of Justice & the Court of Session

In 1532 a major shift occurred in the Scottish legal world. The College of Justice was established to promote legal discourse and to organise judgments of the courts, including the newly revamped Court of Session. The College of Justice was based on the Italian *collegium dominorum judicum*, which united all men of law in Pavia under one professional body. The king's secretary had spent time in Italy learning how the college worked in tandem with courts and realised that it was essential for promoting legal development in Scotland and would provide Scottish judges with more weight when discussing law internationally.[140] The College dealt with questions of criminal and civil law, with eight justices initially appointed to the College who were able to debate law with a certain degree of consistency.[141]

The establishment of a permanent royal court, supplanting the jurisdiction of many feudal courts, contributed to the idea there was a single Scots law that was common to the entire realm.[142] The Court of Session, established in 1532 as a part of the College of Justice, was the heir to a series of courts that had developed the

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[140] Walker, *A Legal History of Scotland: The Sixteenth Century*, 509.
[141] Finlay, *Men of Law in Pre-Reformation Scotland*, 55.
[142] Walker, *A Legal History of Scotland: The Sixteenth Century*, 364.

practice of civil law in Scotland. In many ways its establishment showed continuity in the legal realm, rather than an entirely new institution.

Many of these justices eventually kept records of their decisions in their "Practicks" books, and so precedent was first recorded. James Balfour's *Practicks*, a list of exemplary legal cases, discusses marriage law specifically, including rules governing tocher and terce, and the appropriate treatment of some particular marital situations dating back to the 1530s and other judgments from the late fifteenth century.[143] These precedents were not followed consistently, and many aberrations from the original practices continued in Scottish society without being challenged in court. These were not the first records of decisions in the courts of Scotland, but they are the earliest to deal with the intricacies of marriage law. The existence of this pre-Reformation material provides insight into how marriage cases were handled under the ecclesiastical courts and how those precedents might be transferred to the Kirk Session.

Similarly, Sinclair's *Practicks*, compiled by Henry Sinclair while he was parson of Glasgow between 1540 and 1549, dealt with decisions in the Court of Session; however, the work omitted the substantive law, and instead looked only at procedural matters and judicial decisions.[144] Sinclair had been a judge for three years when he began his records, but he did not write the final version of his book until 1581, well after the Reformation.[145]

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[143] Balfour, *Practicks*.

[144] A.L. Murray, "Sinclair's Practicks," in *Law-Making and Law-Makers in British History*, ed. Alan Harding, *Royal Historical Society Studies in History Series* (London: Royal Historical Society, 1980), 90.

[145] Ibid., 93.

After compiling records of decisions, Balfour, along with other lords of council and session, was charged with recording laws, statutes, and court decisions and, most importantly, had the authority to amend precedents in order that they might coalesce into a single body of law.[146] This was the most comprehensive attempt ever in Scotland to record the laws in a single reference volume, and it must have been necessary due to the centuries of amended laws, civil, criminal, and canon, that formed a complex web of legislation. The subsequent shift in the ecclesiastical courts accompanying the Reformation meant that the entire corpus of Scottish law needed to be reviewed.

Changes with the Reformation

For the most part, the Reformation had little immediate impact on Scottish people's perception of marriage. Instead, it influenced the judicial structures governing marriage. The General Assembly immediately declared that forbidden degrees of marriage should shrink substantially, allowing relatives of the second, third, and fourth degrees to marry freely.[147] They also declared that there were only two sacraments, communion and baptism, and that marriage was a secular relationship. The declarations made by Archbishop John Hamilton of St Andrews in the decade prior to 1560 had been primarily to stave off a Protestant Reformation. In the end, many of the rules of matrimony that Hamilton was belatedly trying to uphold became the foundation of Kirk marriage law, with the exception of the law of consanguinity, which had always had many exceptions.

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[146] Walker, *A Legal History of Scotland: The Sixteenth Century*, 365.

[147] Thomas Thomson, *Acts and Proceedings of the General Assemblies of the Kirk of Scotland, from the Year M.D.LX. Collected from the Most Authentic Manuscripts*, vol. 1 (Edinburgh: 1839), 5.

This anticipation of reformation was not foresight on the part of the archbishop, but rather a reactionary measure, much like the Council of Trent, trying to mitigate damage to the Catholic Church. Scotland's humanist and Protestant ideals had developed in tandem with those of Europe. A growing sense of Scottish nationalism and independence gave Scots reasons to be wary of papal authority and this was reflected in the anti-Papal legislation of the fifteenth century.[148] The legislation consisted mostly of measures to keep benefices and Scottish monies in Scotland to aid in the provision of tax revenues for the king.[149]

Scottish scholars helped to transport Erasmus and Luther to Scotland's shores. Indeed, the first protestant martyr in Scotland, Patrick Hamilton, had travelled to universities on the continent including Paris and had learned the reforming doctrine. Hamilton returned to St Andrews as faculty but was eventually burned for his heretical teachings in 1528. From that day, reformers grew in number throughout Scotland, and by the 1550s they held major posts in government. The murder of the archbishop of St Andrews and chancellor of Scotland, Cardinal David Beaton, was evidence of the power of Protestants as early as 1546.

Throughout Mary, Queen of Scots', reign the role of religion in governance remained confused. Mary remained personally a staunch Catholic but allowed for the kingdom of Scotland to be governed as a Protestant realm. This resulted in struggles with her Protestant Privy Council, whom Mary had selected herself.

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[148] W. Stanford Reid, *The Origins of Anti-Papal Legislation in Fifteenth-Century Scotland* (Washington: Reprinted From the Catholic Historical Review, 1944), 4.
[149] Ibid., 11.

Furthermore, the laws of marriage and divorce had never been formally re-examined, and so many people, including Mary's third husband, the earl of Bothwell, ended up in precarious marital situations governed by parallel sets of Protestant and Catholic marriage laws. The Catholic archbishop of St Andrews annulled Bothwell's first marriage on the grounds of consanguinity, although he had previously issued dispensations for it.

On 24 August 1560 the Papal Jurisdiction Act upheld the positions of the bishops and their officials, but abolished the Church courts. The abandonment of the courts of the officials during the Reformation left the method that Church justice would follow to be determined. Individual Kirk Sessions dealt with some marital disciplinary issues, but presbytery meetings were eventually established in the 1580s to provide theoretically less biased justice, a step removed from the people.[150] In 1563, Mary established the Commissary Courts as a replacement for the pre-Reformation bishop's courts, whose jurisdiction included all matrimonial causes. The reformers also established the General Assembly in order to provide a governing body for the Kirk. It was in this way that the dispensation for the marriage of the earl of Bothwell and Jane Gordon was issued in 1564, with the approval of Archbishop Hamilton, who had also personally authorised their annulment one year previously.[151] Likewise, sessions of the Kirk had been offering verdicts in cases more than a year before the Reformation.[152] Nevertheless, the Kirk's jurisdiction shrank and many ecclesiastical matters were shifted into the civil

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[150] Walker, *A Legal History of Scotland: The Sixteenth Century*, 276.

[151] Ibid., 287.; and William Fraser, *The Sutherland Book*, 3 vols. (Edinburgh: Edinburgh University Press, 1892), 3:131.

[152] Walker, *A Legal History of Scotland: The Sixteenth Century*, 657.

Court of Session. Other matters relating to marriage were divided among various levels of Kirk governance including Kirk Sessions. The commissarial courts took over many marriage cases, but deferred to the Court of Session when necessary.[153]

Much like famous divorce cases in other realms, annulments could be demanded in order to facilitate political changes. Before he married Mary, Queen of Scots, on 15 May 1566, James Hepburn, the earl of Bothwell, was married to Jane Gordon. After James had fled with the queen (willing or not), Jane tried to obtain a divorce on account of his adultery, which she claimed was with a maidservant, probably to avoid restrictions on his remarriage. He simultaneously tried to have the marriage annulled based on consanguinity, despite the fact that the couple had obtained dispensations in 1565 from the archbishop of St Andrews.[154] Jane kept these records from the officials.[155] In the end, the couple received a divorce based on Jane's case, followed soon after by the annulment James demanded from the same Catholic archbishop who had issued the dispensations in the first place. James and Queen Mary married two weeks later in a Protestant wedding.

There were other issues concerning marriage that were not resolved by these courts. With the limits of the consanguinity laws drastically reduced and the process of annulment gone, couples who wanted to plead for divorce had no clear process to follow. The first case to really test the new Protestant divorce system was that of Jane Stewart and the earl of Argyll. Other couples, such as the earl of Bothwell and Jane Gordon, had pursued Catholic annulments after the Reformation,

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[153] Ibid.
[154] Fraser, *Sutherland*, 3:131-2.
[155] Walker, *A Legal History of Scotland: The Sixteenth Century*, 681.

and some couples had received Protestant divorces from the commissary court, but none had fought the rulings, thereby challenging the authority of the courts, the Kirk, and Parliament in regulating marriage. Argyll was an ardent Protestant and pled for a divorce, but the case did not go smoothly.

The marriage of Jane Stewart and the earl of Argyll had been bitter and resentful, including domestic violence and the imprisonment of Jane, illegitimate children on his part, and accusations that Jane had been adulterous.[156] That their marriage was childless further divided the couple. Jane's half-sister was the Catholic queen, who, along with her nemesis, the iconic Protestant John Knox, joined forces to reconcile the couple but succeeded only briefly. Jane's desertions of the earl and refusal to seek divorce meant that he was unable to father a legitimate heir.[157] Jane's refusal to accept a quick divorce also took the case out of the commissary courts and to the General Assembly. The grounds for divorce were difficult to establish because the earl wanted to avoid an adultery charge, which might have prevented a remarriage.[158] The General Assembly refused to make a ruling without consulting other Protestant bodies in Europe for precedent. The earl of Argyll finally turned to Parliament, who in 1573 passed an act that convinced the Commissary Court to grant him a divorce and all of Jane's lands.[159] Although the General Assembly and Parliament argued over jurisdiction in certain issues, for the most part, King James VI remained distant from the governance of the Church of Scotland because he was in his minority.

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[156] Dawson, *The Politics of Religion*, 27.
[157] Ibid., 28.
[158] Ibid., 31.
[159] Ibid., 33.

This challenge to the courts arose mainly because of the sudden disappearance of the Roman Catholic Church's annulments and separations, a system, which the couple could have used to end their marriage on grounds of consanguinity, affinity, spiritual affinity, precontract, bigamy, impotency, insanity, or nonage.[160] Official separations, divorce *a mensa et thoro*, could result in the loss of a wife's dowry, if she had committed adultery.[161] They did not, however, allow for remarriage. The new Kirk assumed that the adultery of either husband or wife was sufficient evidence of a destroyed relationship but could not decide whether desertion also constituted grounds for divorce. The Kirk was confused about how it wanted to frame its new laws and how to enforce them. This struggle was forced to conclude that indeed desertion was grounds for divorce, only because of an act of Parliament.[162]

The development of divorce procedures was one reason why the Scottish justices had to re-determine jurisdiction for a variety of legal issues as well as procedures such as appeals. Nevertheless, marriage law actually remained fairly constant throughout the Reformation and into the early modern period. Reformation-era changes were necessary to bring the law into line with Protestant doctrine, but for the most part laws stayed the same. This is clear in Balfour's *Practicks* where he compiles precedent from legal decisions dating back as far as the mid-fifteenth century in order to provide the basis for law in the 1570s.

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[160] Charles J. Guthrie, "The History of Divorce in Scotland," *Scottish Historical Review* 8 (1911): 42.
[161] Ollivant, *The Court of the Official in Pre-Reformation Scotland*, 180.
[162] Jane E. A. Dawson, "The Noble and the Bastard: The Earl of Argyll and the Law of Divorce in Reformation Scotland," in *Sixteenth-Century Scotland, Essays in Honour of Michael Lynch*, eds. Julian Goodare and Alaidair A. MacDonald (Leiden: Brill, 2008), 164.

The new Kirk developed an intense desire to control people at an individual level, and so family life became a subject of interest. The Kirk was able to keep track of relationships and to partially control marriage through the Kirk Sessions and other fora.[163] The Kirk began to chastise and punish betrothed couples who engaged in fornication, an act that would previously have completed their marriage *per verba de futuro.* This meant that the grounds for marriage had informally changed, although marriages without proof of solemnisation continued to be recognised as legal. Scottish marriage law had always recognised irregular unions. Nevertheless, the Kirk made every effort to force couples to marry publicly.[164]

In addition to changing the way that marriage could be formed, reformers altered the rules about incest and consanguinity to better reflect the values of their countrymen. The Marriage Act and the Incest Act were passed in 1567. The acts provided increased leniency to distant consanguinity by legalising first-cousin marriage in Scotland. However, they made close incest punishable by death for "the abhominabill, vile and fylthie lust of incest" in relationships within the first degree.[165] Although these were major changes in law, they did not represent significant changes in the attitudes and actions of the lairdly and noble classes, who had demonstrated similar feelings for a long time.

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[163] Janay Nugent, "Marriage Matters: Evidence from the Kirk Session Records of Scotland, c. 1560-1650", 93-4.
[164] Ibid., 198.
[165] RPS, A1567/12/15. http://www.rps.ac.uk/trans/A1567/12/15; and A1567/12/14. http://www.rps.ac.uk/trans/A1567/12/14 Date accessed: 22 October 2010.

Conclusion

The changing laws and courts of medieval Scotland allowed for more reliable and regular use of the judicial systems. The establishment of the Court of Session and the Court of the Official allowed for clearer delineations between jurisdictions and the growth of recorded charters and contracts allowed people to further manipulate regulations to their own needs. Permanent courts and trained judges were necessary to prevent parties from entering into contracts that they did not intend to uphold. As precedent was established, clerks became increasingly specific in their contract clauses, fully understanding what the outcome might be.

The experience of Jane Stewart and the earl of Argyll in seeking separation and divorce indicates that although the new Protestant regime was the first in Scotland to officially sanction divorce and remarriage from a legal union, the new Kirk was not enthusiastic about the break-up of a married couple. The Catholic Church courts had a legal process for allowing the separation and remarriage of union if the couple could prove certain impediments. Couples and their advisors knew how to use this system to their greatest advantage and so were more easily able to achieve their goals in the court systems. Likewise, couples seeking dispensations realised that threats of imminent violence, resolved only by their marriage, would enable them to more easily achieve papal dispensations for politically expedient marriages.

Nevertheless, Scottish couples continually broke Church and secular regulations to form marriages that suited their own needs and those of their families. This involved clandestine marriage, consanguinity, ignoring banns, child

betrothals, concubinage, desertion, and adultery. Couples sometimes ended up in the court systems at the behest of clerics, family members, or spouses, but this occurred in the minority of marriages. Most marriages detailed in ante-nuptial contracts followed the stipulations laid out in canon law or were able to come to alternate agreements outside of the court system. This continued for decades after the Reformation, although systems for monitoring marriages within individual parishes did eventually develop.[166]

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[166] Todd, *The Culture of Protestantism in Early Modern Scotland*, 267.

Chapter 3: Selecting Spouses: the Individual and the Community

In 1453, the pope granted Margaret Douglas a dispensation to marry James Douglas, her late husband William's brother.[1] Margaret needed permission not only because the men were brothers, but also because she, too, was a Douglas by birth and both of these men were her first cousins and close kin. Margaret's life demonstrates how the marriages of kin were used among the Scottish nobility to mould social structures. Margaret's first marriage gave her husband, the 8th earl of Douglas, and his kin access to her inheritance of Galloway and strengthened the bonds of kinship among the Douglases that had been badly shaken after a series of assassinations.[2] This arrangement was threatened when Earl William died, and Margaret's second marriage demonstrates the need for unstable families to maintain the status quo using marriages and using strategies that were banned by the Church and labelled 'incest'. The dispensation allowed the family to circumvent these barriers and keep Margaret's valuable lands under the control of the earls of Douglas. Margaret and James eventually received an annulment in 1459, but, lest Margaret do as she wished with her inheritance, the king, a sometime enemy of her family, married her to his half-brother, James Stewart, earl of Atholl.[3] This series of unions shows how easily personal choice in marriage could be overshadowed by powerful kin with an agenda.

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[1] Brown, *The Black Douglases*, 298.
[2] Ibid., 299.
[3] Ibid., 318.

In many cases, the family held the upper hand in making decisions about whom their kin might marry. Over 75% of the marriage contracts in this study were not initiated by the bride or groom, suggesting that the opinions of family members, local lords, and even the king were often more significant than those of the couple. These kin regularly had their own interests at heart when they decided upon a match. Their ideas of a good union could include concerns such as affection between the couple, but they often prioritised wealth, kin, and land. Personal choice was still a major aspect of marriage, but it was not always a priority in pre-Reformation Scotland.

Scots were faced with more than just familial counsel in shaping their ideas about marriage. Contemporary literature provided models and suggestions about how to increase marital success. Although the fourteenth- and fifteenth-century advice literature was contained in chronicles, and used kings as exemplars, their morality advice was often aimed at a wider audience. The late fifteenth- and early sixteenth-century Scottish Renaissance resulted in a proliferation of literature of a more abstract nature, and this meant that the concept of marriage was addressed in poetry. The representations of marriage in literature were not all about traditional values. In addition to the traditional virtue-based works, bawdy poetry also existed, describing unhappy marriages, proving that there were many different perspectives on the role marriage played in people's lives. To some, the choice of a marriage partner was critical in ensuring a successful union, and factors such as age, virtue, heritage, and affection were all important considerations. Ultimately, most

marriages came about through a combination of family planning and individual consent. These two factors were not always in conflict.

Personal and Parental Choice

The late medieval Church portrayed marriage simply as a union between two people, and canon law required the consent of the bride and groom. In the twelfth century, Pope Alexander III confirmed that consent, rather than consummation, was the key element for a complete marriage.[4] This ruling did not, however, allow people to seek out their own marriage partners free from the influence of their parents. Although some Scots, especially later in life, were clearly able to marry whomever they liked, most middling and noble Scots practised arranged marriages. Personal consent was valued in society – court cases challenged the validity of marriages based on force and fear – but the occasional forced marriages arose from a widespread belief that the couple's agency was not central to marriage formation. Instead, it is clear that among the upper and middling ranks of society, the close family, or, in the absence of family, lords of the bride and groom, were the prime movers in the search for a marriage partner.

Personal choice was not the antithesis of parental guidance. The goals of the children and their parents were similar and the expectation was that children would consent to unions arranged by their relatives. Just as children could adopt the values of their parents, parents could accept the desires of their children while arranging marriages, such as when an element of physical attraction was incorporated into the

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[4] Charles Donahue, *Law, Marriage, and Society in the Later Middle Ages* (Cambridge: Cambridge University Press, 2007), 16.

marriage contract. In 1548 John, master of Forbes, was able to pick between two daughters of the Countess of Huntly, whomever he liked best, when he entered into a marriage contract.[5] This element of personal choice was not gender-balanced. The stereotype demonstrated in advice poetry such as "O wicket Wemen, wilfull and variable?" was that women were fickle and unable to make sound decisions concerning marriage.[6] This meant that when attraction was incorporated into a small number of contracts, it was always to allow the future groom to select his bride, rather than the other way around.

Women were occasionally personally involved in their choice of a husband. This was especially common during widowhood, when women had accumulated independent wealth. Families sometimes allowed brides to choose their husbands outright. Others were finally able to marry their chosen partner after refusing a series of proposed marriages. Still others chose husbands who fit well with their parents' wishes. This kind of accord could exist between women and their parents and advisors so that they were able to arrange a mutually appealing union. Heiresses who were of age were sometimes in a particularly powerful position to choose their husbands, and their marriages reflected caution and planning for the lineage.

Even though the use of "force and fear" to obtain consent was an impediment to marriage, the Church was very cautious in granting annulments to those who claimed them.[7] This type of coercion can be seen in the case of Elspeth Purdie in

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[5] NRS, GD52/1060.

[6] *The Bannatyne Manuscript* (Edinburgh: Printed for the Hunterian Club, 1896), 4:768.

[7] Donahue, *Law, Marriage, and Society in the Later Middle Ages*, 21-22.

1595, who was being detained against her will and strong-armed into marrying a man not of her choosing.[8] Elspeth petitioned the Lords of Council to free her and allow her to marry "sik as best pleis quhome I sall nominat in presence of your lordships."[9] Another example of the bride's ability to consent to her own marriage is the failed betrothal of Margaret Ruthven to John Oliphant in 1494.[10] This case demonstrates two paradoxical views of the family's involvement in marriage. The existence of this case, coupled with the fact that the marriage did not proceed, does indicate that the courts were concerned with the issue of consent, and that the families reluctantly agreed. This reluctance, however, also shows that the families involved believed they had the right to ignore Margaret's refusal, at least initially, and the records show this as well: "And the lord Ruthven asked why she would not complete the said marriage. And she Margaret again answered and said because she had no carnal affection nor favour for him John, and that she declared this to her said father and mother a year ago and more."[11]

Although most marriages involved the explicit declaration of consent from the bride and groom, there were unusual cases when these rules were not followed. According to her statement, in 1425 a gang of men kidnapped Jonet Jardin and forced her to marry James de Arnot, who imprisoned her for four and a half years and had a child with her.[12] Jonet appealed to the pope for a divorce and, although successful, was excommunicated in the process. James subsequently died, but not

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[8] NRS, GD135/2110

[9] NRS, GD135/2110

[10] J. Maitland Thomson, *The Public Records of Scotland* (Glasgow: Maclehose, Jackson and Co., 1922), 92-3.

[11] Ibid., 93.

[12] E. R. Lindsay and Annie I. Dunlop, eds., *Calendar of Scottish Supplications to Rome, 1423-1428*, vol. xlviii, Scottish History Society. 3rd Series (Edinburgh: T. and A. Constable, 1956), 114.

before Jonet had contracted to marry another man. This bizarre story of a marriage is recorded in a petition to the pope to legitimise her new marriage and may very well be fabricated or embellished in order to support her petition for annulment. Jonet had remarried Henry de Mandeville *per verba legitime de presenti* and had children with him without telling Henry of her excommunication. This case shows both the threat of marriage by force in Scotland as well as the ambivalent attitude of the papal courts towards preventing it.

Personal choice appeared more often in Scotland's less formal marriages than in those involving a formal contract and ecclesiastical solemnisation. Clandestine marriages, which were forbidden by Rome in 1215, were common and demonstrate the independence that couples and their families maintained from the rules of the Church. The definition of a clandestine union was far broader than an elopement, and included all marriages not solemnised at a church. These unions were similar to regular marriages in their purpose and scope and very often included the support of the families. Concubinage was decreed punishable by the Church in 1514, and was not banned until the Council of Trent in 1563, at which point Scotland had ceased to follow new Catholic ordinances.[13]

The Church also recognised cohabitation as evidence of marriage, which allowed for the Scottish "marriage by cohabitation with repute".[14] Couples that had lived together and were recognised by the community as a couple were considered by the Church to be in a legitimate, if irregular, marriage unless it could be proved

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[13] James A. Brundage, "Concubinage and Marriage in Medieval Canon Law," *Journal of Medieval History* 1 (1975): 10.
[14] Sellar, "Marriage by Cohabitation with Habit and Repute: Review and Requiem?."

otherwise by some impediment such as a prior marriage.[15] This caused no end of confusion when a person who had been in a secular marriage tried to enter into a new marriage. For instance, in the early 1520s, the solemnised marriage between Jonet Turnbull and James Heriot was voided by a previous marriage *per verba de futuro* with Adam Forrest.[16] Any of these types of marriage, regular or irregular, could be an expression of individual choice or constitute part of a broader family plan for marriages.

The nuclear family of the future bride and groom normally spearheaded the search for eligible marriage partners. Parents, in particular, were keen to be involved in this process, although it was not uncommon to see a wealthy uncle or grandfather involved as well. These parents used their social and kinship networks and sought out possible marriage partners for their children. Their motives for selecting certain partners varied as much as those of their children. Parents were more attuned to questions of lineage, wealth, land ownership, and power than were their children, particularly when children were still under the age of majority. For this reason, the opinions of the parents were not just important to the choices of their children, but they formed a major part of the framework within which a child conceptualised marriage and personal choice.

Although fathers were often in charge of family organization and the management of wealth, it was still possible for mothers to take major roles in coordinating a marriage. Mothers of brides were actively involved in 6% of the unions considered here, and mothers of grooms in 18%. It was common to see

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[15] Donahue, *Law, Marriage, and Society in the Later Middle Ages*, 32.
[16] *Liber Officialis Sancti Andree*, no. 30.

widowed kin in contracts responsible for making arrangements and for signing over parcels of land. Married women, too, could be seen in this role, but the extent to which they were able to take on this responsibility depended on the dynamics within their own family and marriage.

The Breadalbane letters showcase Katherine Ruthven's efforts to arrange marriages for her children in the late sixteenth century, and they also reveal the roles of her contemporaries taking on similar roles in their own families.[17] Anabella Murray, wife of John Erskine, the earl of Mar, and a companion of Mary, Queen of Scots, wrote to her "freind" and cousin the laird of Glenorchy to ask him if he would be a curator for her daughter, mirroring Katherine Ruthven's role as mother who took an active role in making arrangements for her family.[18] Catherine Campbell of Cawdor, wife of David Lindsay, earl of Crawford, also played a large part in managing her family's money and lives.[19] Similarly, in 1543 Elizabeth Campbell, countess of Moray, reluctantly acted as an intermediary between her husband and Mary of Guise, who believed Elizabeth to have sway over her husband's actions. Elizabeth wrote back, "Zour grace neidis not bid me to solist any man to zour graces plessour."[20] Although no records remain concerning her marriage negotiations, it is clear that strong, educated women in marriages where they were allowed to use their skills would take part in marriage negotiations.

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[17] Jane E. A. Dawson, ed. *Campbell Letters 1559-1583*, vol. 10, 5th series (Edinburgh: Lothian Print, for the Scottish History Society, 1997), no. 133.

[18] Ibid., no. 189.

[19] James Balfour Paul and Robert Douglas, eds., *The Scots Peerage*, 9 vols., (Edinburgh: D. Douglas, 1904), 3:28.

[20] James Maidment, *Analecta Scotica : Collections Illustrative of the Civil, Ecclesiastical, and Literary History of Scotland* (Edinburgh: Thomas G. Stevenson, 1837), 1:345.

Parents frequently arranged for a particular match between two families when their children were still young, drafting a marriage contract between small children, and occasionally even between children yet to be conceived. It is clear in these cases that the parents did not anticipate their children refusing to enter these matches. Instead the only caveats included in the contracts were in the case of the child's death. For example, in the 1569 ante-nuptial contract of James Scot of Balweiry and Christian Douglas, the parents included their names in the contract, but accounted for their possible death by including another son and daughter as an alternate bride and groom, and "failing them baith, any sons gottin".[21] This indicates that the choice of the children entering the marriage was not the primary concern of the parents, who were more focused on the creation of a union between the two families involved, regardless of which of their children married.

Desire to enhance status through local economic factors, through land acquisition, through marriages into more powerful families, and through marriages within their kin groups, all contributed to parental motivation for entering contracts on behalf of their children. Scottish people of all ranks looked to their extended families for advice in marriage. Parents and guardians of unmarried children often consulted their friends, family members, and superiors for advice about potential partners.[22] These motivations, however, did not negate the question of personal affection and good character entirely.

Kin groups were part of networks that used communication with family members and friends. Such networks were maintained through personal

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[21] NRS, GD150/451.
[22] Dawson, *Campbell Letters*, 27.

interactions, letter-writing, and messengers; these advisors often appeared in the witness lists of marriage contracts to show the widespread consent of the kin to the union that was taking place, similar to the use of witness lists in charters.[23] Advisors could be one's immediate superiors or inferiors. Clan Chattan used a formal method of consultation of their cadet branches prior to arranging a marriage, but other families sought similar but less formal advice.[24]

The decisions lords made about the marriages of the people under their charge could range from helpful advice to a more forceful order. In the case of Margaret Douglas, it is clear that she was following instructions when she entered her first marriages, and that her first inclination would not have been to marry the two Douglas brothers.[25] Where marriages of the aristocracy were concerned, the monarch or regent was normally directly involved in the arrangements. Scottish lords felt a need to look after their vassals, and part of this was providing them with good marriages.[26] Kings, queens, and regents, however, were not always able to insert themselves into the marriage arrangements of their vassals, especially when they had difficulty controlling the magnates at all. When a marriage went ahead against the wishes of the king, he was often still able to intervene, as in the marriage of Isabella, countess of Mar, to Alexander Stewart of Buchan in 1404. In the struggle between Alexander and Isabella's Erskine relatives, the king favoured the Erskines, but Alexander took the castle and convinced Isabella to marry him.[27] The king sent

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[23] Neville, "Finding the Family in the Charters of Medieval Scotland, 1150–1350," 14.

[24] Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609*, 76-77.

[25] Brown, *The Black Douglases*, 318.

[26] Duby, *Love and Marriage in the Middle Ages*.

[27] Boardman, *The Early Stewart Kings*, 262; Thomson, *Registrum Magni Sigilli Regum Scotorum. The Register of the Great Seal of Scotland, A.D. 1306-1424*, 251.

advisors north to resolve the dispute, and they were able to redraft the marriage contract to be more favourable to her kin, by determining that the Erskines could inherit the title and property after the death of Isabella and Alexander.[28] The role of Robert III as marriage broker was not unique. David II had meddled in the marriage arrangements for the earls of Fife, Mar, Angus, and Mentieth.[29]

The prioritisation of parents' and overlords' wishes in the choice of a person's marriage partner is also mirrored in the way that the marriages of wards were handled. When an aristocratic child was orphaned, their wardship reverted to their lord, who gifted or sold it to interested bidders, who then had the right to keep the child in their household.[30] For instance, the king granted William Borthwick the title Lord Borthwick and the hand in marriage of Mariota of Hoppringill in 1458, the year before William travelled to England as an ambassador for the king.[31] The two were soon married. A ward was then under the care of their guardian, who also held control of the ward's marriage.[32] Although the ward could also buy or be granted their complete marriage rights, as, for example, when Margaret and Elizabeth Dundas were gifted their own wardship and marriage on their father's death, and wardship and marriage rights to his son George in acknowledgment of the

[28] Thomson, *Registrum Magni Sigilli Regum Scotorum. The Register of the Great Seal of Scotland, A.D. 1306-1424*, 1:251., NRS, GD124/1/121; NRS, GD124/1/123; and Boardman, *The Early Stewart Kings*, 264.
[29] Michael A. Penman, *David II, 1329-71* (East Linton, Scotland: Tuckwell, 2004), 374.
[30] Athol L. Murray, *Sinclair's Practicks*, Publications of the Stair Society (Edinburgh: Stair Society, Forthcoming), no. 537, p. 108.
[31] John Maitland Thomson, ed. *Registrum Magni Sigilli Regum Scotorum. The Register of the Great Seal of Scotland, A.D. 1424-1513*, (Edinburgh: H.M. General Register House, 1882), 2: no. 650.; and Alexander Nisbet, *A System of Heraldry, Speculative and Practical*, A new edition. ed., 2 vols. (Edinburgh: Printed for W. Blackwood, 1816), 2:appendix, 105.
[32] Walker, *A Legal History of Scotland: The Later Middle Ages*, 581-3.

"adventuring of [their father's] persone in service with our governour at the assege of Hadington".[33]

Advice Literature & Poetry

Literature, including chronicles and poetry, contributed to and reflected the culture of marriage advice in late medieval Scotland. Literacy rates changed dramatically during the Scottish Renaissance of the late fifteenth and sixteenth centuries and the laity was becoming more interested in reading and writing as a cultural pursuit at the same time as creation of home-grown secular literature increased.[34] This growth in literature led to an increase in the types of marital advice that permeated court culture. The poems reflected in some ways the advice given in the older Scottish chronicles. Nevertheless, the advice differed significantly enough that Scots were faced with many different types of counsel concerning the choice of an ideal husband or wife. Although the Scottish populace did not whole-heartedly adopt such advice, people did take some of the suggestions to heart.

Some of the earliest representations of marriage in Scottish literature are in the works of historians and chroniclers such as Andrew of Wyntoun, who discussed royal marriages in terms of the influence they had on the country, especially in terms of military stability. Wyntoun's treatment of marriage was almost exclusively political. He avoided offering advice to the kings he wrote about, and instead he discussed marriage only in the context of kings' lives and only when there was some particular oddity to convey. He included sections titled "How Dorworgile that lady

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[33] NRS, GD75/346.
[34] Priscilla Bawcutt and Janet Hadley Williams, eds., *A Companion to Medieval Scottish Poetry* (Cambridge: D. S. Brewer, 2006), 8.

spendit hir tresour dewotly" and "Qwhen weddyt was the Kynge Dawy with Dame Iohne of Towris that Lady".[35] Although Wyntoun's retelling of how Devorgilla, the wife of John Balliol, cut out and embalmed her husband's heart showed a peculiar wifely devotion, his stories went little further in illuminating medieval conceptions of marriage.

The first chronicler to break from this tradition was Walter Bower, who wrote his *Scotichronicon* in the mid-fifteenth century and provided some of the first advice on marriage to Scottish nobility. Bower's work was much more thorough in its investigation of issues affecting marriage. He listed the specific qualities of good and bad wives and outlined why a good marriage was essential to the success of a layman.[36] Bower wrote this in response to the unsuccessful marriage of King David II and Margaret Drummond in 1364. Five years later, the king was granted an annulment, but Margaret successfully appealed to the Pope to have the decree reversed.[37]

Bower assessed economic, social, and moral factors to determine the qualities of good and bad wives. As the abbot of Inchcolm Abbey, he had a decidedly clerical perspective. His approach to marriage was theoretical, and although he did reflect widespread contemporary beliefs, he did not put them into the context of real life. Most of the writers of marital advice were, in fact, clergymen, and their counsel was quite similar, centring on moral continence in both husbands and

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[35] F. J. Amours, John T. T. Brown, and George Neilson, eds., *The Original Chronicle of Andrew of Wyntoun*, 6 vols. (Edinburgh: W. Blackwood, 1903), Cottonian MS: v, 259 (ll. 1462-524) and v, 379 (ll 3075-86).
[36] Watt, *Scotichronicon*, 7:333-59.
[37] Penman, *David II*, 371 and 85.

wives. While Bower stressed morality for both women and men, it is the men who are the actors, or 'choosers' in this advice, and the women who are portrayed as having passive, static morals. His polarising opinions about marriage left no room for a grey area, dividing good and bad women quite starkly, and he did not consider that a woman with poor morality might change her actions at some point. Bower did not acknowledge the phenomenon of secular unions. He addressed the desirable dynamics of marriage but he neither discussed the practical aspects, nor did he discuss marriage contracts themselves. This treatment was, however, far more than can be found in works of his contemporaries.

Bower wrote that the king chose Margaret for her looks, rather than for other desirable characteristics.[38] He thought that a couple must first establish "mutual regard" and "serious forethought". Bower used Biblical references, for instance Shecham's rape of Dinah, which resulted in his lust for her and his pursuit of her hand in marriage, which her family firmly refused, to show that a carefully considered union was safer in the long run that a hastily considered one.[39] He encouraged full love for one's wife, gentle guidance, private correction, and prudence between spouses. He stressed that marriage should be based on the deepest friendship. By carefully choosing a wife thus, a man avoided marrying an immoral woman. Bower's description of good wives was quite similar. A good wife showed gratitude, sympathy, and devotion.

In 1521, John Mair published his *Historia Majoris Britanniae,* offering much more insight into attitudes towards marriage in pre-Reformation Scotland, not only

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[38] Watt, *Scotichronicon*, 7:335.
[39] Ibid.

with the history it provided but also with Mair's editorial commentary. This was written more than a century after Bower's work, and Mair addressed key themes relating to marriage that are still relevant to historians. In his discussion of Malcolm IV's celibacy, Mair recounted that it may have been dangerous for Malcolm to refuse to marry and produce an heir, but because he had brothers to take over the throne it was not problematic.[40] Mair also wrote of the clandestine marriage of heiress Marjorie, countess of Carrick, and Robert Bruce "in the flower of his age". Marjorie, who is called "Martha" here, coerced Robert Bruce to accompany her to her castle. Not only was he "somewhat loath to go", but the king also nearly disinherited her for the marriage.[41] Mair discussed subjects such as dispensations for consanguinity, divorce, marriage into international families, fathers contracting the marriages of their daughters, a woman marrying beneath her status, and a queen's role within the council.[42] On all of these subjects Mair's strong opinions stand out from the historical text. For example, in his discussion of the annulment of David II and Margaret Drummond, he wrote: "Scots of the present day find occasion of divorce all too lightly."[43]

Mair was in Paris while he wrote his histories, and would have been kept abreast of events in Scotland as they unfolded. In fact, the duke of Albany, one of Queen Margaret Tudor's rivals for power during the minority of her son, James V, was also in France during the final years of Mair's writing. Although Mair's political opinions met with considerable opposition in his native realm, his comments on

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[40] Major, *A History of Greater Britain: As Well England as Scotland*, 162.
[41] Ibid., 188.
[42] Ibid., 186, 88, 89, 303, 35, and 72.
[43] Ibid., 304.

marriage are still useful in determining contemporary attitudes, especially in light of the struggle of the queen dowager, Margaret Tudor, to maintain power. Mair's focus on the political implications of royal decisions regarding marriage demonstrates the preoccupation of his contemporaries with the viability of their line of kings. His breadth of coverage also showcases his broad definition of marriage. Unlike Bower, Mair addressed a variety of types of unions, including clandestine, consanguineous, and regular marriages.

Poetry from renaissance Scotland provided the reader with a slightly different perspective on marriage than the chroniclers had given. Poets such as William Dunbar and Robert Henryson wrote about marriage using advice literature that varied from serious to comedic. European works heavily influenced many of their morality ballads, but the poems themselves are distinctly Scottish.[44] These 'makars' wrote poems for the court, and their works were popular among the nobility. The portrayal of marriage in their writing both reflected and influenced contemporary perceptions of marriage. Their poetry represents a much wider range of marital cases than any simply proscriptive literature, because works such as "The Tretis of the Tua Mariit Wemen and the Wedo" provide examples of marriages (and wives) to avoid. Many of these poems were compiled into collections, such as the Bannatyne Manuscript in 1568, which was arranged in such a way as to group together the "Ballatis aganis evill wemen", "Ballatis of the prayiss of wemen, and to the reproche of vicious men", and "the contempt of blyndit luve" among others.[45]

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[44] Bawcutt and Williams, *A Companion to Medieval Scottish Poetry*, 15.
[45] *The Bannatyne Manuscript*, vi-vii.

The collections group advice literature and romance side-by-side, showing two perspectives on motivations for relationships.

Robert Henryson was one of the earlier poets to discuss amorous relationships and his poetry was focused very much on romantic traditions. His writing highlighted traditional virtues and qualities in lovers and did not closely reflect the secular marriage practices. It is representative, however, of the courtly culture of idolising love, and it demonstrates the presence of this culture in Scotland. There were no significant links between this culture and the treatment of marriage by real Scots, but his poem "The Garmont of Gud Ladeis" shows how the traditional romantic virtues can be moulded into advice for marital bliss.

Henryson contributed to a tradition that described 'love by reputation' and a hero who seeks out his lady in his poem "Orpheus".[46] This fit into the tradition of romance in Scotland, which included twelve poems written between 1438 and 1582.[47] This love was similar to the love portrayed in Henryson's "Robene and Makyne", in which Makyne wooed Robene, a shepherd, who spurned her. He later changed his mind and told her he was a willing partner, but she rebuffed him and informed him that he was too late.[48] Makyne taught Robene about unrequited love, rather than romantic, marital love.[49] The poem also exhibited the control Makyne maintained throughout.

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[46] Anne M. McKim, "Henryson's *Orpheus* and *Testament of Cresseid*," in *A Companion to Medieval Scottish Poetry*, ed. Priscilla Bawcutt and Janet Hadley Williams (Cambridge: D. S. Brewer, 2006), 109.
[47] Rhiannon Purdie, "Medieval Romance in Scotland," in *A Companion to Medieval Scottish Poetry*, eds. Priscilla Bawcutt and Janet Hadley Williams (Cambridge: D. S. Brewer, 2006), 166.
[48] Priscilla Bawcutt and Felicity Riddy, eds., *Selected Poems of Henryson & Dunbar* (Chippenham: Scottish Academic Press, 1992), 93-98.
[49] Rosemary Greentree, "Literate in Love: Makyne's Lesson for Robene," in *Older Scots Literature*, ed. Sally Mapstone (Edinburgh: John Donald, 2005), 68.

Henryson's "Testament of Cresseid" was more direct in its advice when the poet warned its female readers "Ming not your lufe with fals deceptioun."[50] This tradition of advice grew in "Garmont of Gud Ladeis", in which a lover offered to have a garment sewn for his lady, which embodied a number of virtues.[51] These virtues corresponded to the qualities a suitor should look for in his ideal lady.[52] The gift of a garment was part of the nuptial tradition and shows marriage as a very personal relationship.[53] The suitor was rewarding his lady's love and virtues by raising her prestige with a well-fashioned garment.[54] Chastity, integrity, stability, good manners, love, and honesty were all values that are sought after in a wife. These qualities were similar to Bower's instructions for qualities of a good wife and queen. Henryson's poetry also emphasised personal choice in marriage.

Some of the bawdiest portrayals of Scottish marriage came from the 'makar' and courtier, William Dunbar, who was an active poet around the turn of the sixteenth century. Some scholars have portrayed Dunbar as a moralist with a perception that the world contained "eternal values and ultimate truths".[55] Dunbar's "The Tretis of the Tua Mariit Wemen and the Wedo" provided an altogether different picture of marriage, far from the ideal presented by Bower. In this poem, a spy accidentally came upon three young, well-to-do women, who were discussing their marriages. Two of the women were married and the third was a widow. The

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[50] Bawcutt and Riddy, *Selected Poems of Henryson & Dunbar*, p. 122, l. 613.; See also, McKim, "Henryson's *Orpheus* and *Testament of Cresseid*," 113.
[51] Bawcutt and Riddy, *Selected Poems of Henryson & Dunbar*, 64.
[52] David J. Parkinson, "Henryson's Matter of Style: *The Garmont of Gud Ladeis*," *The Review of English Studies Advance Access* (2010): 2.
[53] Ibid., 14.
[54] Ibid., 4-5.
[55] E. Reiss, *William Dunbar* (Boston: Twayne Publishers, 1979), 69.

widow took the lead as a questioner and asked the married women about their husbands: "Or gif ye think, had ye chois, that ye wald cheis better".

Each of the married women was unhappy with her husband. The first wife lamented her fate in marriage and wished that marriage were not a lifetime commitment.[56] The second wife, showing her fickle nature, declared that she wished she could choose her own husband, demonstrating that although the idea of choice in marriage existed, it was often overshadowed by gentle coercion. She also declared that she detested her husband, and found him grotesque and disgusting. The second wife described her husband as a lecher who selected her as his wife.[57] When she answered the question of choice she declared: "Hed I that plesand prevelege, to part quhen me likit,/ To change and ay to cheise agane, than chastite adew!"[58] Instead of chastity, she wished for a new partner of her own choosing. Marriage was a "cockfight", and the second wife even complained about being forced into her marriage by "wekit kyn".[59]

Although this poem is full of jests and ironic statements, Dunbar did reveal certain aspects of society that probably reflected reality. The widow then proceeded to tell the women about how she bettered her husbands and gained wealth and happiness without them.[60] The widow was pleased with her second husband's

[56] William Dunbar, "Tua Mariit Wemen and the Wedo," in *Selected Poems of Henryson and Dunbar*, eds. Priscilla Bawcutt and Felicity Riddy (Chippenham: Scottish Academic Press, 1992), l. 56.
[57] Ibid., l. 178.
[58] Ibid., l. 207-8.
[59] Priscilla Bawcutt, "Women Talking About Marriage, William Dunbar and Hans Sachs," in *The Medieval Marriage Scene: Prudence, Passion, Policy*, eds. Sherry Roush and Cristell Louise Baskins (Tempe: Arizona Center for Medieval and Renaissance Studies, 2005): 102-4.; and Dunbar, "Tua Mariit Wemen and the Wedo," 214.
[60] Eileen Bentsen and S. L. Sanderlin, "The Profits of Marriage in Late Medieval Scotland," *Scottish Literary Journal* 12, no. 2 (1985): 7.

wealth but not with his illegitimacy and his role as a merchant, since she was, in fact, of nobler blood.[61] The widow was a curious character, and Eileen Bentsen and S. L. Sanderlin have argued that although the two wives and the spy were standard figures in contemporary literature, the widow was a character very much of her times.[62] They wrote that the widow was unique in her application of property law and written contracts to maximise her wealth through a series of marriages.[63] Priscilla Bawcutt challenged some of these conclusions, writing that many of the legal phrases were metaphorical, rather than literal.[64] The real point of Dunbar's poem, however, comes at the end, when he asks the audience to choose between the women: "Quhilk wald ye waill to you wif, gif ye suld wed one?"[65] He highlighted the undesirable qualities of all of the characters, and the fact that the reader would not wish to marry any of them.

Dunbar's works portrayed ambivalence towards love and marriage. While many of his poems displayed love, lust, and marriage as positive things, they also derided the relationships between the lovers or the husband and wife. "Tua Marriit Women" was not the only poem to mock the institution of marriage and love. "My hartis tresure and swete assured fo" depicts a man calling his beloved a "man slayer", and "In secreit place this hindir nycht" contrasted a man who claimed to have never loved before with a woman who had never loved before – this week.[66]

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[61] J. Rawson Lumby, ed. *Ratis Raving and Other Moral and Religious Pieces, in Prose and Verse*, Early English Text Society (London: Trubner & Co, 1870), lines 311-12.; and Bentsen and Sanderlin, "The Profits of Marriage in Late Medieval Scotland," 7-8.
[62] Bentsen and Sanderlin, "The Profits of Marriage in Late Medieval Scotland," 14.
[63] Ibid.
[64] Priscilla Bawcutt, "Letters to the Editor," *Scottish Literary Journal* 13, no. 1 (1986): 77-8.
[65] Bawcutt and Riddy, *Selected Poems of Henryson & Dunbar*, p. 207, l. 530.
[66] Priscilla Bawcutt, *Dunbar the Makar* (Oxford: Clarendon, 1992), 299.

Indeed, "Thir ladyis fair" similarly portrayed women dishonouring their husbands, and discussed the use and misuse of the courts to conduct their business. In particular, the ladies granted sexual favours in exchange for having their cases dealt with favourably.[67]

Anonymous advice poems were also part of the Scottish literary renaissance. Poems such as "The Thewis of Gudwomen", which detailed advice given from a mother to her daughter about how to be honourable and honest, had a basis in European literary culture.[68] Although the poem involved women, its audience could equally have been men.[69] The poem addressed the question of how to choose a good partner for both men and women, and it included the common suggestion that a man should choose his wife according to the morality of her mother.[70] It condemned fathers who were slow to marry off their daughters, because the girls might stray, even though the fathers might not like having to provide their daughters with dowries.[71] In general the poem shows that to choose a good wife, a husband must consider how she will act during their marriage. A wife should keep her husband's honour and follow guidance well.[72]

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[67] Ibid., 216.

[68] Kathryn Saldanha, "The Thewis of Gudwomen: Middle Scots Moral Advice with European Connections?," in *The European Sun: Proceedings of the Seventh International Conference on Medieval and Renaissance Scottish Language and Literature, University of Strathclyde, 1993*, ed. Graham D. Caie (East Linton: Tuckwell Press, 2001), 292.

[69] Ibid., 294.

[70] Ibid., 296.

[71] Ibid., 299.

[72] Lumby, *Ratis Raving and Other Moral and Religious Pieces, in Prose and Verse*, p. 106-8, ll. 4 & 68-9.

Another popular advice poem from the early fifteenth century was "Ratis Raving" whose author was anonymous.[73] A companion piece to "The Thewis", "Ratis Raving" recorded a father's advice to his son. When it came to the question of marriage, the father said he would not advise his son whether or not to marry, a departure from the advice of the *Scotichronicon* and "The Thewis" that early marriage was important.[74] In this case the father said that often things do not always turn out according to one's expectations. Qualities such as strength, good kin, wealth, and skill, can go contrary to expectations.[75] If the son did wish to take a wife, he should choose "lyklynes, atour the laif, and contenance, of persone, and of good line and good renown".[76] A women who had a good mother should also be a good wife: "For comonly thai folow kynd, /And gretly to the moderis strind [lineage], / Sen thar is bot, the lyklyest/ Hald ay gud mother dochter best"[77]

Occasionally, women wrote about love, lust, and marriage. Isabella, also known as Iseabail Ní Mheic Cailéin, wrote poems in Gaelic that described the pursuit of a romantic partner. While these poems centred on love and lust outside of marriage, they made it clear that the tradition of courtly love flourished in highland literature as well.

The poems describe the culture of extra-marital lust:

There's a young man in pursuit of me

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[73] R. Girvan, *Ratis Raving, and Other Early Scots Poems on Morals*, Scottish Text Society, Third Series. (Edinburgh1939), xxii.

[74] Lumby, *Ratis Raving and Other Moral and Religious Pieces, in Prose and Verse*, l. 925.

[75] Ibid., 52, ll. 927-34.

[76] Ibid., 52, ll. 936-38.

[77] Ibid., ll. 936-42

Oh King of Kings, may he have success!

Would he were stretched out by my side

With his body pressing against my breast!

The poem continues to discuss the limitations faced by the couple in pursuit of their lust:

If everything were as I would wish,

No distance would ever cause us separation,

Though that is all too little to say

With him not yet knowing the situation.

The final stanza of the poem brings the reader back to the reality of the situation – there are real impediments to fulfilling their desires:

But it isn't easy if his ship doesn't come,

For the two of us it's a wretched matter:

He is East and I am West,

So what we desire can never happen.[78]

The two other poems attributed to Isabelle follow similar themes. In "Woe to the one whose sickness is love", she writes, "That love I have given in secret,/ it

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[78] Catherine Kerrigan and Meg Bateman, *An Anthology of Scottish Women Poets* (Edinburgh Edinburgh University Press,1991), 61.

being better not to declare it".[79] Here Isabella continues the theme of having passionate feelings about men and having them constricted, reflecting the values of the late medieval Campbell clan of which she was a member, and indeed those of the Scottish aristocracy as a whole.

Isabella's third poem is her most vivid, in which she described, in detail "the tale of the powerful penis" of her household priest.[80] In this poem, she broke from the tradition of courtly love and, indeed, of discretion, and instead mocked the institution of clerical celibacy, writing that it has "made my heart greedy".[81] The poetry of Isabelle was not a literal representation of love and lust in the highlands, but rather demonstrates that the literary tradition of courtly love extended across Scotland and affected women's perceptions of love and marriage just as much as it influenced men.

Where the chroniclers gave advice about the choice of a wife, especially in the royal family, Dunbar gave advice about the choice of a husband, as seen among women from the middling ranks of society. Dunbar's audience was still at court, but his poems demonstrated how it is just as likely for a wife to be upset with a poor match as it was for a husband. Dunbar's work, however, did not differ that drastically from the morality ballads or the advice of the chroniclers. All of the writers agreed that women with poor morals made poor wives. Women were also seen as controlling and dangerous, as exemplified by Bower's description of bad

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[79] Ibid.

[80] Malcolm Maclean and Theo Dorgan, *An Leabhar Mòr - the Great Book of Gaelic* (Dublin: O'Brien Press, 2008), 54.

[81] Ibid.

women as serpents.[82] In this way, Bower's advice coincided with the message from Dunbar's "Tretis" and Henryson's "Garmont". Through all of this literature, Scots received the message that as much as possible a man and his family should choose a wife who is morally upright and follows her husband's guidance. Early marriage was favoured and encouraged spouses to be sexually loyal to each other, but the key to success was the careful consideration in place of desire. Bower wrote, "a wife should be chosen prudently, and not married suddenly or hastily, for such passion in the beginning produces its penalty in the future."[83]

The Choice of a Spouse

Potential brides and grooms, their parents, and their advisors used a variety of criteria to choose potential spouses. Some of these choices relied on the advice they received from literature, and other choices rested more strongly on the advice of their peers or other factors. The most obvious factor in the choice of a spouse was wealth, but this was not necessarily the predominant element of the decision. Social networking was essential, and it was common for language in marriage negotiations to show that individuals were representing their kin. Most contracts began by listing the parties involved, which did not always include the bride or groom.[84] Fathers were the most common parties to arrange the marriage. One 1563 contract began:

> Lord George Erle of Caithnes for himself and takand the burding upon
>
> him for Elisabeth Sinclair his dochtir on thar ane part and ane uther

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[82] Watt, *Scotichronicon*, 7:341.
[83] Ibid., 7:335.
[84] Downie, *She is but a Woman*, 86.

honorabil man Alexander Sutherland of Duffus for himself and takand

the burding upon him for Alexander Sutherland his son and apperand

air on that uther part[85]

Although the contract names the children, they are subordinate, partly

because of their youth. A marital agreement from 1438 gave even less

prominence to the couple, listing their fathers as the main parties: "that is

acordyt betwyx twa honorabyll men, Alexander Mongomry, knycht, lord off

Ardrossane, on the ta part, and Alan Stewart, Lord of Dernle, on the tothir

part".[86] Other contracts had other relatives included, such as the 1464

contract of Margaret Scott and John Lindsay, jr., which named both fathers as

well as an uncle and a grandfather.[87] Marriages in Scotland were for

centuries based on strengthening bonds of kinship,[88] and this pattern

continued through the Reformation.

The first step for parents choosing partners for their children was finding out

which eligible men and women were available. Family was a good source of

information on potential spouses, and marriages within families solidified these ties

of blood. Locally based marriages were common because families knew who the

eligible men and women were. Local unions also allowed families to accumulate

lands in a single area to concentrate their power. Only with a dedicated information-

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[85] NRS, RH1/2/399.
[86] William Fraser, *The Lennox.* 2 vols. (Edinburgh: 1874), 2:67.
[87] NRS, GD100/282.
[88] McDonald, "Matrimonial Politics and Core-Periphery Interactions in Twelfth- and Early Thirteenth-Century Scotland."

gathering campaign could families arrange marriages beyond the bounds of easy communication networks.

The vast majority of nobles married within Scotland. Politics limited the extent of cross-border marriage. In the fourteenth century, these cross-border unions were rare among the Bruce loyalists but Scottish supporters of the English arranged for their children to enter international marriages to prove allegiance.[89] Fears about fraternisation with the enemy were evident in the 1587 decree that no Scots were allowed to marry Englishmen and -women without the king's consent under the pain of death, because "the marriage of the king's majesty's subjects upon the daughters of the broken men and thieves of England is not only a hindrance to his majesty's service and obedience but also to the common peace and quietness between both the realms".[90] In a conscious attempt at cross-border interactions Mary Queen of Scots attempted to marry the earl of Arran to the daughter of the French duke of Montpensier.[91] The marriage did not take place, but the letters concerning the potential marriage shows the utility of cross-border marriage to solidify the monarch's political needs.

Letter writing was an increasingly viable option for routine communication in the sixteenth century. For example, Katherine Ruthven asked her good friend, William Maitland, secretary to Queen Mary, for intelligence regarding a prospective bride for her son.[92] Maitland replied that by using his wife and other means he

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[89] Michael Brown, "*Scoti Anglicati*: Scots in Plantaganet Allegiance During the Fourteenth Century," in *England and Scotland in the Fourteenth Century: New Perspectives*, ed. Andy King and Michael A. Penman (Woodbridge: The Boydell Press, 2007), 110.

[90] *RPS*, 1587/7/70. Date accessed: 7 August 2011. http://www.rps.ac.uk/trans/1587/7/70

[91] Maidment, *Analecta Scotica*, 1:78.

[92] Dawson, *Campbell Letters*, 27.

acquired information "upoun my honour and credite." [93] These letters were important to the smooth functioning of the family and, combined with messengers and councils, the parties arranging a marriage could receive strategic advice as well as discover more about the personalities of prospective spouses.[94] These personal virtues played a part in the decision-making process, as did age, status, and family ties.

The most obvious method for choosing a spouse strategically was to marry up the social ladder and find a partner that was as powerful and wealthy as possible. One of the best ways to be socially mobile in Scotland was through marriage, although men and women faced different realities in achieving this goal. Social status was more important than following Church law, as can be seen in the Archbishop of St Andrews complaint to the pope in 1554 that it was nearly impossible to avoid consanguineous marriages in Scotland and to remain within the gentle strata of society. [95] The question of status, however, was not as straightforward as it appeared. In the advice poem "Ratis Raving", a father advises his son to marry a woman who will make a good mother, because all other incentives for marriage can backfire. [96] Similar concerns were found outside Scotland; for example, in the apparent concern among French notaries that the wealth of brides counteracted their wifely obedience.[97]

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[93] Ibid., 181, no. 29.
[94] Ibid., 181, no. 29.
[95] Brown, *An Introductory Survey of the Sources and Literature of Scots Law*, 136.
[96] Lumby, *Ratis Raving and Other Moral and Religious Pieces, in Prose and Verse*, 52 (ll 927-34).
[97] Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France*, 74.

The legitimacy of a bride or groom was a concern of the Church, and therefore a concern of the laity, because of the power of illegitimacy to disrupt a lineage or prevent people from obtaining high ranks and offices. This concern was real enough that most of the petitions to the pope from Scots are requests for dispensations of their illegitimacy, especially to enter the priesthood. A man needed to be legitimated in order to become a priest. There were two ways for the pope to address this issue. Either the person's illegitimacy could be dispensed to allow them to enter the clergy, or the original impediments to the marriage of that person's parents could be dispensed, thereby legitimising the supplicant. This was not confined to worldly men. Cardinal David Beaton was able to secure advantageous marriages for each of his children.[98] This allowed his children and their spouses to hold influential positions at court. Their illegitimacy could have been an impediment to inheritance, but Cardinal Beaton had them legitimised, and was also able to find them high-ranking suitors.[99]

Although legitimacy was helpful in a marriage partner, it was not an essential element proving worthiness. This was particularly the case when that person's parentage was impressive. For instance, Robert II was happy to arrange for his daughter Egidia to marry the illegitimate son of the lord of Galloway. Members of the nobility maintained good relationships with their illegitimate sons and daughters. Although these children were rarely allowed to inherit titles directly from their parents, kings frequently granted titles and land to their offspring to compensate for their disinheritance. This included arranging high-profile marriages

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[98] Sanderson, *Cardinal of Scotland, David Beaton*, 137 and 221.
[99] NRS, GD45/17/9.

for them. Potential marriage partners were abundant because of the desire of the nobility to create bonds of kinship linking them to the king. All of the major courtiers pursued marriages with each other, especially with their most prominent members. James IV and his son James V both found profitable marriages for their own illegitimate children, including marrying them into earldoms.

Rules governing marital age did not preclude younger children from entering a marriage, although technically it had to be consummated after the age of consent. Some contracts, such as the mid-sixteenth-century marriage of John Boswell of Balmuto and Grissell or Issabell Sandelands, stated explicitly that they would be carried out once the bride and groom reached the age of consent.[100] These ages were minimum, not average, ages for marriage and many marriage contracts demonstrated a concern that the bride or groom be of a more advanced age before the contract was valid. In 1555, the ante-nuptial contract of Hugh, earl of Eglinton, and Jane Hamilton stipulated that Hugh must reach the age of seventeen before the wedding took place.[101] This demonstrates that families were willing to enter their underage children into betrothals in order to fulfil their own goals.

The role of attraction in the choice of a marriage partner was complicated and was wrapped up in the question of personal choice in marriage. Although people supported the idea of affectionate union, they did not often prioritise mutual attraction when making a marriage contract. Affection between spouses was not synonymous with the idea of 'love' or indeed 'true love', which was highlighted in the romances. One explanation for this was that among twelfth-century French

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[100] NRS, GD66/1/20.
[101] NRS, GD3/2/4/16.

aristocrats, romance in a marriage was rare due to the procedure for arranging marriages, which often included a major age difference.[102] The training of girls and boys was divided by gender such that a bride and groom would have little in common.[103] Although education and age would most certainly have formed a gulf between bride and groom in many aristocratic marriages, a large age gap in marriage was not as common in Scotland.[104] Still, most of the marriages arranged among the Scottish nobility were not primarily for love. In other marriages, especially in less formal arrangements, it is clear that desire was an important factor for the parties involved. This did not, however, necessarily mean mutual attraction between the bride and groom, since the acceptability of desire was highly gendered.

Lustful relationships existed in the Scottish court, but they most commonly appeared in the culture of mistresses and extramarital affairs.[105] Courtly literature that discussed love and the role it plays in life exposed courtiers to ideas about love and lust.[106] Romance literature existed in Scotland, as did love poetry, such as the "Kingis Quair".[107] The Church was careful to discourage fornication and adultery, the two behaviours most closely linked to lust. There was a significant gender gap in the application of these principles.[108] Poems such as Henryson's "Robene and Makyene" also reflected lustful relationship and the forward advances of Makyene, but most of the court poetry was more about control in marriage. In European tradition,

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[102] Duby, *Love and Marriage in the Middle Ages*, 27.

[103] Ibid.

[104] Brown, *Noble Society,* 115.

[105] For example, see Ishbel C. M. Barnes, *Janet Kennedy, Royal Mistress: Marriage and Divorce at the Courts of James IV and V* (Edinburgh: John Donald, 2007).

[106] Joanna Martin, *Kingship and Love in Scottish Poetry, 1424-1540* (Aldershot: Ashgate, 2008), 3.

[107] For a discussion of the role of the Kingis Quair see ibid.

[108] Ruth Mazo Karras, *Sexuality in Medieval Europe: Doing Unto Others* (London: Routledge, 2005), 28.

however, girls were not encouraged to be dispassionate in everything. For instance, girls could refuse marriage out of impassioned love for God, but not out of love for another man.[109] They were encouraged, however, to be measured in their approach to marriage.

Gilbert Hay's *The Buke of Governaunce of Princis*, an advice manual for the Scottish king, demonstrates through its lessons to Alexander the Great that kings should be continent and avoid "all the lustis of outrageous carnale appetitis."[110] Bower wrote that although one should not marry for love, a husband must still love his wife to the fullest.[111] In "The Thewis off Gud Women" the author writes that fathers should marry their children off while they are young to keep them from temptation and vice. If they do not, the parents will be to blame if something goes awry: "For mony lordis ar nocht larg, / Thinkand thai have our gret charge, / To mary thar barnis to ther estat; / And ofte thar lang baid cummys to lait."[112]

It is clear that real love did exist in late medieval Scotland and that these romances sometimes correlated with marriages and cohabitation. The lack of a discussion of affection in the marriage contracts did not preclude the existence of affection between the bride and groom.[113] Even more relationships without marriage contracts would have been based on fondness for one another. The

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[109] Duby, *Love and Marriage in the Middle Ages*, 25.

[110] Martin, *Kingship and Love in Scottish Poetry, 1424-1540*, 4.; and Jonathan A. Glenn, *The Prose Works of Sir Gilbert Hay. Vol. 3, the Buke of the Ordre of Knychthede and the Buke of the Gouernaunce of Princis*, Scottish Text Society (Edinburgh: Scottish Text Society, 1993), 3:67.

[111] Watt, *Scotichronicon*, 7:335 and 39.

[112] Lumby, *Ratis Raving and Other Moral and Religious Pieces, in Prose and Verse*, p. 108, ll. 265-68.

[113] Shatzmiller, "Un Mariage D'amour Etait-Il Possible Au Moyen Age? ," *Mariage au Moyen Age (XIe au XVe siecle). Actes du colloque de Montferrand du 3 mai 1997* (1974): 11.; and Michael Sheehan, "*Maritalis Affectio* Revisted," in *The Olde Daunce: Love, Friendship, Sex, and Marriage in the Medieval World*, ed. Robert R. Edwards and Stephen Spector (Albany: The State University of New York Press, 1991).

Chronicle of Lanercost records a vicar in the late thirteenth century who kept a concubine even though he was repeatedly punished, a situation that was common in medieval Scotland, and was indeed condemned in the statutes of the Scottish Church in the thirteenth century, which ordered priests to put away their concubines within a month lest they be suspended from office.[114] Concubinage continued nevertheless. There are other reports of husbands who acted "out of love for his wife", including Blind Harry's *The Wallace*, a fictive history of William Wallace composed in the fifteenth century.[115] Marriages like this are most noticeable among the nobility in their marriages later in life when widows and widowers had more financial freedom including the freedom to marry for companionship.[116] This pattern exists because as the men and women aged, they gained more control over their own arrangements.

Despite the canon law ban on consanguineous marriages, Scots were willing to enter such relationships for a wide variety of reasons. Clerics did recognise a difference between close incest, which broke God's "natural law" and more distant relationships, which, although banned, could still be dispensed by the pope.[117] Cases of incest between close relatives did occur, but were abhorred. In 1405 John, abbot of Arbroath, was accused of keeping his own daughter as a concubine and having children by her. Although he had previously done penance for concubinage, this had

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[114] Herbert Maxwell, ed., *The Chronicle of Lanercost, 1271-1346* (Glasgow: James Maclehose and sons, 1913), 3.; Patrick, *Statutes of the Scottish Church, 1225-1559*, 14-15.

[115] Maxwell, *The Chronicle of Lanercost, 1271-1346*, 104-6.; and Blind Harry, *The Wallace*, ed. Anne McKim (Edinburgh: Canongate Books, 2010).

[116] For a discussion of companionate marriages in the early 1600s, see Brown, *Noble Society,* 122.

[117] Barry, *William Hay's Lectures on Marriage*, 207.

been 'forgotten' when he was elevated to abbot. If the charges were correct, he was to be deposed.[118]

More distant incest was perceived differently. Scots, included many clerics, believed these rules should be looser. Unease with the current rules stretched all the way through the ranks to the Archbishop of St Andrews when he wrote his letter claiming that the unreasonable prohibition of consanguineous marriages was making it difficult for Scottish men and women to follow the Church's rules in their search for marriage partners.[119] When he wrote this letter, he demonstrated that whether or not the situation in Scotland was different, the Scots certainly believed it to be so. The archbishop did not request that the rule be changed at its source, but rather that its application be relaxed, because of what he believed to be Scotland's particular problems. The major difficulty lay in the fact that the nobility prioritised status over incest in their search for a marriage partner. Scots were equally appalled by incest within the degrees prohibited by natural law, but had very different perspectives when assessing the value of more distant bonds of consanguinity. Even William Hay, a lecturer in canon law and theology at King's College, Aberdeen, wrote that "the love of family has grown tepid" after the third or fourth degree, and that marriage among those kin was not a major problem.[120] For this reason, intermarriage should be allowed. Many nobles used the Church's system of dispensations to get over these hurdles. Other Scots ignored the rules altogether

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[118] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 146-7.
[119] Brown, *An Introductory Survey of the Sources and Literature of Scots Law*, 136.
[120] Barry, *William Hay's Lectures on Marriage*, 207.

until it was in their specific interest to resolve the problems they faced. This was similar in cases of consanguinity, affinity, and spiritual affinity.[121]

The marriage patterns of the nobility indicate that consanguinity was rarely a pressing concern, unless they actively pursued it to ensure their ability to inherit a particularly contentious land or title. Despite quite clear bans on incest, Scots intentionally married distant family members of different surnames in order to rebuild blood ties between various branches of the family. In 1548, Elizabeth, countess of Huntly, committed either of her daughters, Jane or Margaret, to marry John, master of Forbes, "for the renewing of the auld amitie lyg [alliance] and kindness that hes ay bene betwix the houssis of Huntlie and Forbes als . . . tymnis begane and prefer amite and kindness to continue in all tymes cumming god willing".[122]

It was not unusual for a family to repeatedly marry their kin, which strengthened the slowly diverging bonds within the family. Although some families intermarried accidentally (which was excused by the Church), others were very intentional in their consanguineous marriages. The Kennedys were particularly adept at this. A 1465 contract by John, 2nd Lord Kennedy, committed his son and daughter to marry the daughter and son of Gilbert Kennedy of Bargany.[123] Not only would a single match between the families have been consanguineous, but a double match was intentionally so. This was not an isolated incident. Two generations later, two siblings (and grandchildren of one of the earlier consanguineous matches) each

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[121] For a discussion of dispensations for spiritual affinity see Cowan, "Spiritual Ties of Kinship in Pre-Reformation Scotland."
[122] NRS, GD52/1060.
[123] NRS, GD25/1/91.

married Kennedys. Thomas and Margaret married another brother and sister pair, who also happened to be their fourth cousins. This was followed by the marriage of Katherine, either their sister or first cousin, who married David Kennedy of Knowdaw a more distant relative, in 1570.[124] Thomas continued this tradition of consanguinity by marrying his son, Hew, to Katherine Kennedy of Bennane.[125]

Kennedy Family Tree

Gilbert Kennedy of Dunure & his progeny
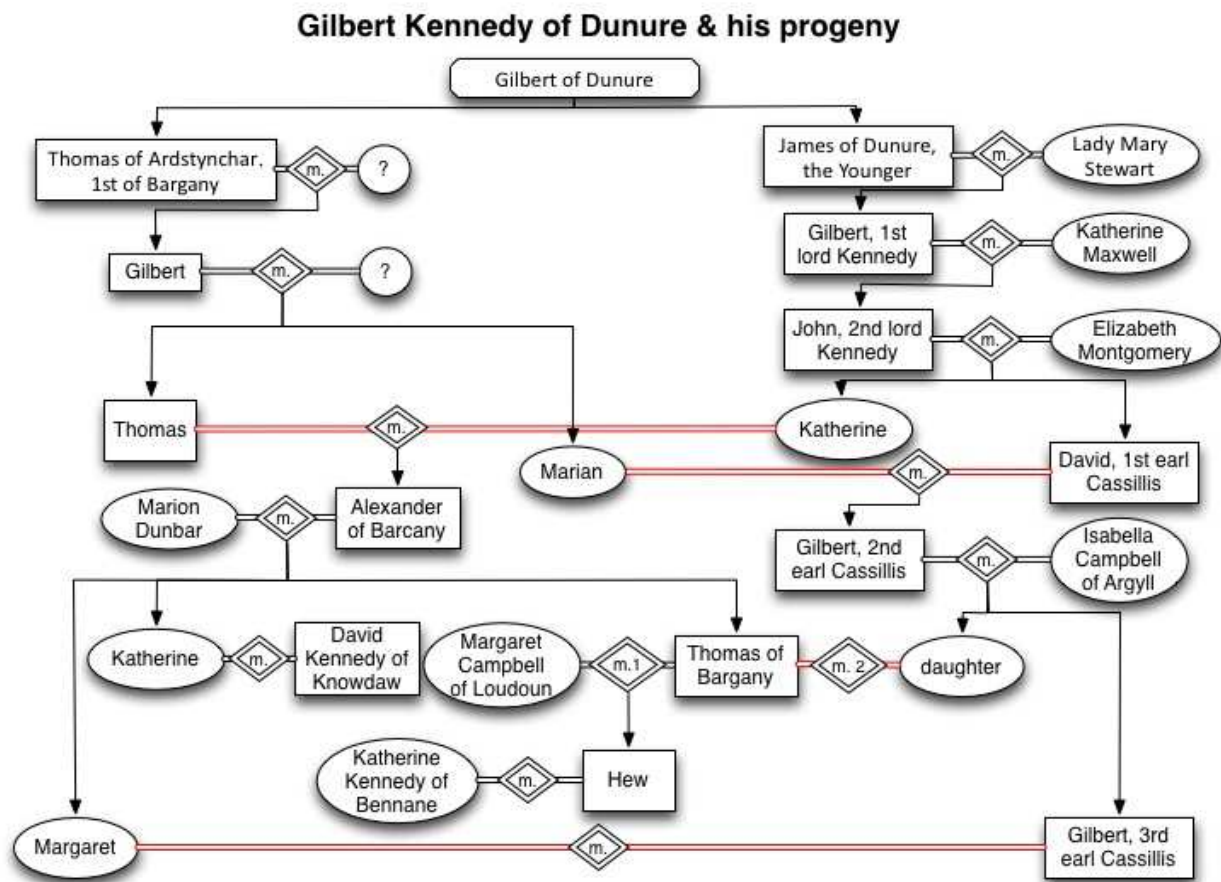
* The generations of the Kennedy of Bargany lines are in dispute, but this provides one interpretation of how the family is connected.
Marriages in **red are endogamous.

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[124] NRS, GD109/2677.
[125] NRS, GD60/20.

This internal marriage pattern was not confined to a single branch of the Kennedy family tree. A marriage contract from 1563 records the betrothal of Margaret Kennedy to Gilbert Kennedy of Girvanmains.[126] The contract recorded that both of Margaret's parents had been born Kennedys themselves. Four years later a similar arrangement was recorded in a discharge for tocher. Not only did Agnes Kennedy marry a man who shared her surname, but her parents had both been Kennedys as well.[127]

Alison Cathcart described this sort of intermarriage in her description of kinship and political ties among the members of Clan Chattan. Clan chiefs would marry their children into satellite branches of the kin group in order to strengthen the blood ties.[128] Nearly all of the younger children in the clan were married locally, but some of the eldest sons married women from the satellite branches, and others married daughters of Scottish nobles, a pattern of marriage that was quite common throughout Scotland.

The Church did not have a single approach to deal with this pattern of marriage in Scotland. Although the Church discouraged various types of secular unions, canon law also considered these relationships to be technically valid.[129] This allowed the Church to maintain control over all types of cohabitation, not just those done under the watchful gaze of their clergy. People who had entered secular or

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[126] NRS, GD25/1/638.
[127] NRS, GD109/2677.
[128] Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609*, 107.
[129] Donahue, *Law, Marriage, and Society in the Later Middle Ages*, 31.

consanguineous marriages could still then apply to Rome for dispensations, which were frequently granted.[130]

Scots who became involved in consanguineous matchmaking usually knew that they were abusing the Church's bans on consanguineous marriage. When they did seek out dispensations it was rarely for special circumstances, but instead for routine socially and politically motivated unions. Many couples were betrothed with the condition that a family member would obtain the necessary paperwork, including a dispensation, to allow them to proceed with the wedding. These weddings could still proceed without dispensation, and indeed there was a risk of unintentionally completing a betrothal through consummation. The contract of Elizabeth Dunbar, countess of Moray, and George Gordon, master of Huntly, in 1455 developed this concept even further. While George was required to send for a dispensation as soon as possible, in the meantime he was also restricted from compelling her into carnal copulation, unless she agreed of her own free will.[131] Women and men entered into their marriages with the belief that the impetus behind their union was more important that canon law. Couples did this despite referring to it as a "stain" in their community in order to please the papal officials, when they sent requests for dispensations to Rome.[132]

The way Scotland interacted with Rome was not as a representative of Europe as whole. Although the Church tried to enact rules that would curb such activities, the culture of mistresses, adultery, and concubinage at court made it

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[130] For instance, Lindsay and Dunlop, *Calendar of Scottish Supplications to Rome, 1423-1428*, 156-7.

[131] John Stuart, ed. *The Miscellany of the Spalding Club*, vol. 4 (Aberdeen: Printed for the Spadling Club, 1849), 129.

[132] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 226.

incredibly difficult for members of the nobility to find potential spouses to whom they were not related by consanguinity or affinity, and the efforts of Churchmen were unsuccessful. In other areas of Europe, however, it is clear that Christians were heavily prosecuted when they entered consanguineous marriages. When the Church began reformation of marriage practices in Sweden, a nation very similar in demographics to Scotland, consanguinity was one of their first major targets.[133] Incestuous unions still existed in Sweden, but the increased insistence on clerical solemnisation of marriages helped to contain the spread of incest.[134] The difference in the influence of the Church was a direct product of the difference in secular law between the two realms. Sweden had no way of recognising irregular unions, while Scotland's common law recognised irregular marriage.[135] Scotland also had an engrained culture of marriage within kin groups, which was seen as a crucial part of maintaining the Scottish social structure.[136]

Marriages within a single extended family allowed kin groups to settle disputes that had arisen. This could take several attempts, as in the example of the marriage arranged between Lachlan Macgilleon and Anna Macleod in 1403.[137] The bride and groom were related in the third degree and Anna had been betrothed to two different members of Lachlan's kin group, but their marriage was arranged "in order to prevent dissension and unrest in the lands of the nobleman, Donald, lord of

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[133] Korpiola, *Between Betrothal and Bedding: Marriage Formation in Sweden 1200-1600*, 10.; and Wormald, *Court, Kirk and Community: Scotland, 1470-1625*, 166.

[134] Korpiola, *Between Betrothal and Bedding: Marriage Formation in Sweden 1200-1600*, 151.

[135] Ibid., 220.; and Sellar, "Marriage by Cohabitation with Habit and Repute: Review and Requiem?", 117-36.

[136] Brown, *Noble Society,* 124.

[137] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 103.

the Isles, whose subjects they are."[138] Traditional scholarship has shown that despite the best of intentions marital bonds were not able to resolve feuds, but the evidence of the dispensation applications suggests that families crafted marriages specifically to resolve major disputes.[139] These quarrels were normally within a single kin group that had grown apart, and dispensations such as the one granted to Charles McDowell and Alicia Maxwell in 1556 explain this. Charles and Alicia were granted a dispensation for consanguinity by their local canon, rather than from the papal office directly, because the cleric had been delegated authority to grant dispensations in Scotland that were designed to prevent bloodshed and dissention among kinsmen.[140] Of course, a marriage did not mean that blood ties then inextricably linked the two families, but the marriage did form a part of the conflict resolution process. Agreements involving promises of military support and the end to feuding were often solidified through marriage. The promise of children from both bloodlines provided a solid link between the two families involved, but the breakdown of such a marriage could cause the relationship between the families to turn bitter.[141]

When families initiated these types of unions among royalty, they became diplomatic marriages. Many royal children were sent to the continent to be married, just as Scottish kings often married foreign women. There were kings and queens who married into the nobility. When David II thought his divorce from Margaret

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[138] Ibid., 103.

[139] Keith M. Brown, *Bloodfeud in Scotland, 1573-1625: Violence, Justice and Politics in an Early Modern Society* (Edinburgh: J. Donald, 1986), 16.

[140] NRS, GD46/18/8.

[141] Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609*, 108.

Drummond would be valid, he expressed an interest in marrying Agnes Dunbar and helping her brothers achieve status at court.[142] These marriages or the alliances they symbolised could fall apart as the relationships with the women's families deteriorated and did not always represent permanent treaties. Much like marriages designed to strengthen kinship ties, peace-making marriages did not allow the spouses much room for choice. In many cases marriages designed for conflict resolution were also consanguineous. These unions were used by high-ranking Scots to patch up quarrels that had arisen within a family.

It was easier for couples to obtain a dispensation for consanguinity, affinity, or spiritual ties when they claimed the marriage was to promote peace, because the Church listed this as an exception to the rule. In his lectures on marriage, William Hay wrote that the pope could dispense consanguinity and affinity, "but the reason for the dispensation is not increase of power, wealth, or estates, but peace, concord, the prevention of war, and the like."[143] And although some applications were probably legitimate, many were also inflated in order to improve the supplication. Elizabeth Vache and John Patrick were allowed to marry "to prevent strife among families", despite the fact that they were cousins in the second degree, a level of incest that was rarely permitted by the Church.[144] Egidia Stewart and Robert de Benachtyn received a dispensation from the first degree of spiritual affinity in 1387 "in order to foster peace between their friends", although it would have helped the

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[142] Penman, *David II, 1329-71*, 373.
[143] Barry, *William Hay's Lectures on Marriage*, 207.
[144] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 199.

success of their supplication that it was sent by Egidia's father, King Robert II.[145] Despite being successful in the supplication, which they had presented to the pope as an absolute necessity, it appears that Egidia then went on to marry William Douglas, an illegitimate son of the lord of Galloway, in another politically-motivated marriage, and they received a £300 pension from the king.[146]

Conclusion

The choice of a marriage partner in late medieval Scotland was a complicated process that included a wide range of people in any single marriage negotiation. In a formal, arranged marriage, the couple, their parents, and their kin groups were all involved in gathering advice and opinions on ideal matches. This was consistent throughout the time period in question. Powerful kin were often effective in forcing their relations to marry according to their wishes, and this could include marrying into a more influential family, marrying for money or specific tracts of land, or, indeed, marrying back into one's own extended family. The question of personal choice and consent in these marriages was also complex and situational, but it is clear that the Church's prohibition of force was not universally heeded.

Despite these prominent diplomatic marriages, personal choice in the selection of a bride or groom played a part in many marriages. These included later-life marriages and also secular unions, which were less formal and more prone to individual whims, including romantic love. Nevertheless, formal marriages still frequently reflected a desire among all parties that the bride and groom be happy

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[145] Burns, *Calendar of Papal Letters to Scotland of Clement VII of Avignon, 1378-1394*, 132.

[146] Thomson, *Registrum Magni Sigilli Regum Scotorum. The Register of the Great Seal of Scotland, A.D. 1306-1424*, no. 753.

together. An unhappy marriage was prone to quick annulment or a prolonged separation, neither of which helped family members achieve their more worldly goals of the acquisition of land or power. Scottish advice literature began as moralistic musings about the marriages of kings, but transformed in the fifteenth century into a genre of poetry which addressed marriage in a variety of ways including earnest pleas for love in marriage, tales of romantic trysts, and bawdy literature disparaging both men and women.

In this way, Scots from noble and lairdly families demonstrated a certain ambivalence about marriage. They were enthusiastic in using marriage to settle disputes and solidify bonds, even though it was rare that either side of the family would treat that marriage as the final chapter in their disputes. Although children and unmarried family members could be used as pawns, the extent to which their personal feelings about marriage were addressed depended on their status, the political situation, and, most importantly the personalities of the family members and lords who were involved in arranging a marriage. Unfortunately for Margaret Douglas, her life was in the hands of both her kin and the king himself, and her inheritance of Galloway was just too valuable to let slip through their fingers.

Chapter 4: Negotiations & Solemnization

In 1567, the St Andrews Kirk Session enquired as to the legality of the marriage of Isobel Lyndsay and William Cristeson after questions arose concerning the couple's free consent to their union.[1] This investigation not only shows the importance of the technical elements of a marriage to its validity but also shows some of the steps involved in preparing for such a union. In the case of Isobel and William, they completed their contract and marriage in the house of a friend and in the presence of their kin, a practice that was fairly common at the time.[2] The basis for such a union, clandestine in the eyes of the Church, came from late medieval tradition, and these customs were brought forward into reformed Scotland. Most of the elements of the formation of this marriage were similar to the weddings taking place across Scotland. The Protestant authorities eventually mandated that the process of the formation of marriage should take a set amount of time from contract to solemnisation, follow a fixed procedure, and take place publicly, but they struggled to enforce these changes in an attempt to control the institution of the family. The new rules were not entirely successful at combatting deeply entrenched medieval traditions.

Pre-Reformation marriage traditions included significant negotiations on behalf of the families involved, ensuring that the parents, the bride and groom, and any offspring maximized their gains. Families drawing up contracts seamlessly

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[1] Fleming, *Register of the St Andrews Kirk Session*, 288.
[2] Ibid., 287.

interwove the negotiations, naming of the spouses (or a selection of possible spouses), and the dowries, lands, and clauses in the contracts, which could all contribute to the decision of whether or not a marriage would enhance a family's status. For the most part, these aspects of the contracts remained the same after the Reformation. The impact of other factors contributing to marriage arrangements, such as kinship and social ties, changed very little during the Reformation, although, as usual, changes in the political atmosphere could derail the planning of a marriage.

Early Negotiations

In over three quarters of marriage preparations, the prime movers in the arrangements among the landed classes were the families of the bride and groom. Even before a match was settled upon, negotiations would begin between the two families involved. Most of the time a specific couple was involved in the arrangements, but occasionally the selection of a particular bride or groom was postponed until after the monetary arrangements were settled. When the Rates and Arbuthnots decided to form a union between their families, in 1490, the bride was to be "ane of the douchteris of the forsaid Robert".[3]

For an important marriage, often that of an older son, families employed every resource at their disposal to obtain a match with the most eligible bride or groom who could help to further the success of the family. In the case of high-profile unions, the parents, and occasionally uncles or brothers of the bride and groom, negotiated on their behalf and provided the tocher, terce, and jointure. The fairly high instance of literacy, a result of widespread schooling among the elites, enabled

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[3] Aberdeen University, MS3021/31.

families to write letters to friends and family enlisting their help. These friends then used their own contacts to obtain further information about potential matches, dowries, and the suitability of the spouse. For long-distance matches, discovering which families had available, unmarried children was just as crucial as the decisions and negotiations themselves. At this stage, friends and family members served as intermediaries between the families of the bride and groom, when those families had not met or were not on friendly terms. This was the case when Katherine Ruthven was trying to negotiate with the neighbouring earl and countess of Atholl, and she asked a friend who was related to the Atholls to intervene because of the ill-will between the two families.[4]

Arrangements for these important unions were also made upon, or indeed before, the birth of the child. In 1545, the earl of Eglinton signed a contract with the earl of Arran agreeing to eventually draw up a marriage contract between a daughter of Arran and an heir of Eglinton when they were of age.[5] Ten years later, the contract was fulfilled when the son of the former, now earl in his own right, entered a marriage contract with Lady Jane Hamilton, daughter of Arran.[6]

Other marriages, especially those of younger siblings, took place locally, where it was more common for families to know each other prior to the negotiations. This was the case when James, Lord Ogilvy, met with James Ogilvy of Cardell to discuss the marriage of their niece and nephew, respectively.[7] It was much easier to communicate and plan such endogamous marriages. The

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[4] Dawson, *Campbell Letters*, 132.
[5] NRS, GD3/2/4/6.
[6] NRS, GD3/2/4/16.
[7] NRS, GD16/23/81.

negotiations concerning land were also simpler in certain cases, because any land the bride brought into the marriage would still stay within her extended family. A very prominent example of this was the marriages of the heiress Margaret Douglas to the 7th and 8th earls of Douglas.[8]

When family and friends were employed as intermediaries, they bore the burden of negotiating the preliminary terms of the contract. This was then followed by a draft of the pre-nuptial contract itself, which could be drawn up with the "advys of freindis and men of judgment".[9] Members of the nobility maintained large households and had staff on hand to advise them on matters such as how to best arrange marriage contracts for their children and other dependents. For example, the earls of Douglas maintained retinues and councils responsible for providing legal, financial, and military advice.[10] Large networks of allied men also existed who were not only tied by blood but also by contractual obligations of manrent.[11] Bonds of manrent in many ways compelled behaviour similar to kinship, and it was ties such as this that drove people to volunteer to assist with the formation of a marriage, especially among their near relatives.

Family ties were crucial, especially if the advisors offered financial support. In Scotland as in England, the investments involved in high-status marriages required the involvement of kin.[12] Financial contributions were also occasionally part of the assistance provided to families of lower economic means. This was

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[8] Brown, *The Black Douglases*, 298.

[9] Brown, *Noble Society,* 124.

[10] For a thorough discussion of the earls' retinue see Brown, *The Black Douglases*, 157-65.

[11] See Wormald, *Lords and Men in Scotland: Bonds of Manrent, 1442-1603*.

[12] Catherine Frances, "Making Marriages in Early Modern England: Rethinking the Role of Family and Friends," in *The Marital Economy in Scandinavia and Britain: 1400-1900*, eds. Amy Louise Erickson Maria Ågren (Aldershot: Ashgate, 2005), 40.

normally seen among siblings, when a wealthier brother contributed to the tocher of his sister or niece, or when he contributed parcels of land to family members to provide them with a living after marriage.

Contracts also show another type of assistance. In the 1555 marriage contract of Christian Stoddart and Robert Bryden, Christian was given one hundred merks to help with the marriage of her sister. Christian's father had already died, and her mother was making plans for her own legacy, planning the inheritance of her property, and insuring Christian's sister was provided a tocher.[13] Christian's involvement in providing for her sister after the death of their parents emphasizes the roles women could take in making marriage arrangements.

Men dominated the witness lists of marriage contracts, because they often held stakes in the land and money being used for the marriage, but women appeared as interested parties in 23% of the contracts, especially as widows or heiresses who held land. Women also had behind-the-scenes roles that only occasionally surfaced in the legal documents, such as in the case of Christian Stoddart. Married women held roles within their families of birth and of marriage, and so they could act as hubs of communication across multiple kin groups. Although it was common for paternal relatives to assist with marriages, maternal ties could still bind those who contributed to marriage, such as in the case of half-brothers, Sir David Lindsay of Edzell and James Ogilvy, 5th Lord of Airlie, who corresponded about raising a tocher of their sister, Margaret.[14]

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[13] NRS, GD104/3.
[14] NRS, GD16/34/3.

The authority of negotiators varied across a wide spectrum. In the case of financial assistance, it was common for the donor to be heavily involved in the arrangements, since his or her consent was normally required in the contract to guarantee the smooth transmission of property. Legal advisors were also sometimes signatories to contracts, especially when they negotiated a preliminary agreement without the presence of the men who planned to contribute land for tocher and terce. These advisors often had more at stake than arranging a simple marriage. Just as some unions were accompanied by agreement to fight alongside one another,[15] similarly, advisors could cite peaceful motivations. When William Maitland of Lethington wrote to William Stewart of Grandtully on behalf of the Campbells of Glenorchy to arrange a marriage between the Campbell family and the Stewarts of Atholl, he mentioned that any potential union could prevent more disputes between the two houses.[16] In these cases, it was crucial for the family members in charge of the fighting to be involved in brokering peace.

When a bride or groom was under wardship, there were even more explicit practices concerning the balance of power in their marriage. The marriage rights of subjects had always been used as a tax for a lord, and so when the ward had no father, the lord could buy, sell, or gift this right, meaning that whoever had the rights to the wardship and marriage had a genuine stake in the outcome of the marriage as well as physical control of the ward.[17] This power was not absolute and was not supposed to override rules of consent. In some instances, the holder of the wardship

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[15] NRS, GD150/55.

[16] Dawson, *Campbell Letters*, no. 132.

[17] Murray, *Sinclair's Practicks*, no. 537, p. 108. Hector L. MacQueen, *Common Law and Feudal Society in Medieval Scotland* (Edinburgh: Edinburgh University Press, 1993), 21.

and marriage waived the fees associated with marriage; for instance, in the contract of Grizzel Vaus and John McDowell of Logan, George Campbell granted John his rights to wardship and marriage.[18] In many instances, lords used their power over wards to encourage them to marry within the lord's family, thus providing a cheap but potentially advantageous marriage. David Carnegie made especially good use of wardships he inherited by marrying two wards to his two daughters on the same day.[19] This meant that the ward himself had little bargaining power when drawing up his own marriage contract and did not necessarily have access to his own advisors unless he was able to purchase outright rights to his own marriage. The only way for a ward to choose his own spouse was to buy his marriage rights from his lord or have someone else offer the money. This happened in 1368 when John Hay of Tullibody paid John Logie of Logie 100 merks for the purchase of the marriage of his wife, Margaret.[20]

The lines between advice and authority were blurred at every level. Monarchs also took an interest in the marriages of their friends and family and occasionally took a personal interest in the marriages of their subjects. They were particularly active when a marriage had major influences for a dynasty, such as the 1404 marriage of Isabella of Mar and Alexander Stewart, master of Buchan. The coercion involved in the take-over of Mar and its countess prompted the ailing Robert III to send men north to negotiate the marriage arrangements to ensure they

[18] NRS, GD141/41.
[19] See pp. 253-4.
[20] NRS, RH1/6/37.

were in the interests of the crown.[21] Close friends could benefit from the explicit consent of the monarch, which happened in the case of the marriage between Mary Beaton, "familiar servatrix" to the Queen, and Alexander Ogilvy of Boyne.[22]

Wards and children could face diffculty resisting the will of the adults who held control over their lives. This is exactly what happened in the case of Alexander Napier of Merchiston, who was betrothed to Agnes Murray in 1525 while still a minor. Agnes' mother and step-father had given the 1200-merk dowry to Alexander's kin, who had kept the money "ex sinistra machinatione" rather than pass it on to Alexander.[23] Nevertheless, Agnes' parents received a discharge for the sum, which Alexander officially revoked nine years later in front of the bishop of Dunblane, after spending at least three years trying to resolve the situation.[24] After he initiated his legal battle, he arranged a marriage with Annabella Campbell and applied to the local clerics, rather than the pope, for a dispensation.[25] Kin were thus involved in every stage of marital negotiations, especially where their land or wealth was involved. For the upper echelon of society, kin were the driving force behind many marriages, and their consent was required to proceed with the land and financial transactions recorded in the contracts.

The crux of medieval marriage was the consent of the couple to be married, and, in theory, this was supposed to have guided the preparations for marriages. After the Gregorian reforms of the eleventh century, consent took pride of place in

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[21] Boardman, *The Early Stewart Kings*, 264.
[22] NRS, SP13/92.
[23] NRS, GD430/193.
[24] NRS, GD430/192 and GD430/190/1.
[25] NRS, GD430/191. The local clerics had been granted the right to issue twenty dispensations themselves, eliminating the need of the couple to apply directly to Rome.

defining marriage above events such as consummation for a number of reasons.[26] According to the teachings of certain medieval theologians, such as Peter Abelard, a marriage could technically be chaste.[27] The most prominent example of such a decision to live a chaste married life was that of Mary, mother of Jesus, and Joseph, a union that was never consummated, yet still regarded as "perfect".[28] For this reason, consent was deemed the key issue in solemnisation of a marriage that determined its validity. This was not a clear-cut idea, however, since consummation was crucial to certain decisions regarding the validity of a marriage. Unconsummated marriages were still eligible for annulment but were not automatically annulled.

Consummation was also important to the validity of certain types of marriage. Medieval Christian marriages fell into two categories: those that had been solemnised using vows in the present tense, and those that arose from promises to marry followed by consummation. Although, in the latter case, consummation was seen as evidence that the marriage had been completed, it was still the consent, either in the present or future, that made the marriage. These two types of union were known as marriages *per verba de presenti* and *per verba de futuro carnali copula subsecuta*. These terms were especially common in the supplications for dispensations and in annulment cases before the bishop's courts, because the validity of the marriage was being questioned. Such cases could become complicated, when the Official of St Andrews voided the *per verba de futuro* of

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[26] Irven M. Resnick, "Marriage in Medieval Culture: Consent Theory and the Case of Joseph and Mary," *Church History* 69 (2000): 353. Audre Vauchez and Daniel Ethan Bornstein, *The Laity in the Middle Ages* (Notre Dame: University of Notre Dame Press, 1993), 185-90.

[27] Resnick, "Marriage in Medieval Culture: Consent Theory and the Case of Joseph and Mary," 355.

[28] Ibid., 354-9.

Margaret Cornwell and Alexander Gourlau in 1515 because of a pre-existing marriage of the same type.[29] They emphasised the explicit consent of both bride and groom in the formation of a marriage.

Much of the evidence that exists about the normal procedures for ensuring consent comes from records of incidents that were quite extraordinary. For instance, Jonet Jardin's 1425 account of her first marriage accused her husband of kidnapping, imprisoning, and forcing her into marriage.[30] In such clear-cut cases, the complainant was able to take the issue to the court of the Official, where the marriage could be annulled. In 1516, Elizabeth Crichton obtained an annulment for her marriage to Edward Hering, because Elizabeth was "rapta et per vim metum ac violenciam qui possunt cadere in constantant mulierem fuit compulsa et coacta per dictum Eduardum suos amicos et complices".[31]

Canon law also required that the bride and groom be of age to properly consent, twelve years of age for the bride, fourteen years of age for the groom. Marriages were certainly contracted before the couple was of age, but these were supposed to have been chaste until both parties reached puberty. The parties were then expected to reconfirm their consent before consummating the union; however, proceeding with consummation and cohabitation was also considered evidence of implied consent.[32] In Scotland, couples were occasionally granted annulments for underage unions in which they no longer wanted to participate. This was the case in

[29] *Liber Officialis Sancti Andree*, no. 4.
[30] See also, p. 93 & 118-20.
Lindsay and Dunlop, *Calendar of Scottish Supplications to Rome, 1423-1428*, 114.
[31] This translates to "she was seized and by force, fear, and violence, which could affect a reasonable person, compelled and coerced by Edward, his friends, and accomplices to be his wife." *Liber Officialis Sancti Andree*, no. 6.
[32] Resnick, "Marriage in Medieval Culture: Consent Theory and the Case of Joseph and Mary," 361.

the short-lived marriage of Elizabeth Leith to Andrew Elphinstone of Selmys. In 1523, the court of the Official of St Andrews annulled their marriage because she was only ten years old at the time.[33]

It is clear that requirements for consent, such as age, were important factors in the arrangement of marriages but were not always the primary concern of kin. Despite the focus of the Church on the consent of the couple, in reality the consent of the families involved was also very important to a marriage. Families provided the couple with land and money for their livings and so were normally involved in the marriage arrangements and choices of their sons and daughters. This was often explicit in the paperwork surrounding a marriage. It also followed an early medieval tradition of considering obedience to one's family's wishes to be the equivalent of explicit consent.[34]

After the Reformation, the Kirk continued to emphasise the role of consent in a marriage. Protestant authorities were diligent about confirming the consent of the couple, such as when the St Andrews Kirk Session investigated the legitimacy of a marriage based on questions about the vows undertaken.[35] In fact, consent was required from anyone involved in the transactions surrounding a marriage. When Christian Marjoribanks married George Heriot in 1584, their contract noted the advice and consent of Sir William Little, provost of Edinburgh. This was important to the arrangements, because Christian was giving up an annual rent of over 108 merks provided to her by the provost, baillies, and council of Edinburgh. Instead,

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[33] *Liber Officialis Sancti Andree*, no. 41.
[34] Resnick, "Marriage in Medieval Culture: Consent Theory and the Case of Joseph and Mary," 352.
[35] Fleming, *Register of the St Andrews Kirk Session*, 288.

she and George Heriot would both receive an annual payment gathered from the common mills on the Water of Leith.[36]

Once consent was present (or occasionally ignored), the next step in the negotiations was to draw up the formal antenuptial contract. Not all marriages had contracts, but they were increasingly common, and they were perceived as essential for preserving the rights of the bride, groom, families, and other associated parties, to the lands and moneys agreed upon.

Elements of a Contract

As the legal system developed throughout the later middle ages, the perceived need for written contracts in land deals increased exponentially. Charters eventually superseded spoken promises, and because land transfers were often paired with marriages, modified charters began to appear accompanying marriages. These were common throughout the later medieval period and gradually changed into a genre of document quite separate, which addressed specific arrangements associated with a marriage. At first, these written contracts accompanied only the most prominent of marriages. The first extant pre-nuptial contracts from Scotland are those of Princess Margaret and King Erik II of Norway in 1281 and later that of their daughter, Margaret, the Maid of Norway, with the future Edward II in 1290.[37] These agreements should be considered first as treaties between countries and second as marriage contracts, but they set examples for the types of contracts that emerged at lower levels of society.

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[36] NRS, GD421/1/2/5.
[37] NRS, RH5/6., and *RPS,* 1290/3/2, http://www.rps.ac.uk/trans/1290/3/2 Date accessed: 6 May 2011.

Regardless of status, families often specified terce and tocher amounts in a marriage contract, because they represented a significant amount of wealth to the families involved. A desire to protect these investments and the increased popularity of written records in general led to the use of contracts trickling down through the nobility in the fifteenth and sixteenth centuries. Marriage contracts permeated the burghs and were even seen among cottars in similar formats as were seen at the middling and upper echelons of society.

The involvement of legal advisors at this stage was crucial, because every clause of the contract could influence the way that wealth was distributed among the two families and the marrying couple. Events such as annulment, death, and infertility could all have a bearing on the ownership of land and moneys because in Scotland, marriage contracts were allowed to override many aspects of customary practice. They were, however, still theoretically restrained by certain aspects of customary law, which could limit terce amounts or determine if a fine for non-compliance was viable.[38] In practice, however, marriage contracts routinely and successfully ignored some of these stipulations.[39]

Marriage contracts became more popular as families discovered how useful written documents were in preventing and resolving disputes. The proliferation of ante-nuptial agreements in the sixteenth century went hand-in-hand with their increase in length. What had previously been an adapted charter outlining the key properties of money exchanging hands turned into multi-paged documents detailing

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[38] Balfour, *Practicks*, 107-10.

[39] Winifred Coutts, *The Business of the College of Justice in 1600: How It Reflects the Economic and Social Life of Scots Men and Women* (Edinburgh: Stair Society, 2003), 150.

the specifics of boundaries, rights to exploit lands, provisions covering the annulment of the union, the death of one or both parties, and the possibility of infertility. This development required skilled lawyers and advisors to assist the family in drawing up contracts that would be advantageous. These advisors consisted of kin, lords, and clerics who could provide advice and experience in ways to make use of the customs of marriage. Men of the church had been in key positions as advisors to lords on these matters, but a 1568 decree by the Aberdeen Kirk Session banned locals ministers from being present at the signing of the contract, a symbol of the secularity of marriage.[40] This was a major departure from earlier practice when clerics had been key witnesses to a wide variety of agreements because of their training in literacy and the sacramental nature of marriage at the time.

Tocher

Although the Church wanted consent to be the key to vows of marriage, the primary element of the vast majority of medieval marriage contracts was an agreement about the tocher, or dowry, that the bride would bring into the marriage. In the fourteenth century, this generally consisted of land donated by the father of the bride, and there was an expectation that the father would provide this to a daughter.[41] Legally, it was defined as "that quhilk is giuen be the womans friends with her, to the husband".[42] The money culture that had emerged in Scotland in the

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[40] John Stuart, ed., *Selections from the Records of the Kirk Session, Presbytery, and Synod of Aberdeen*, Publications of the Spalding Club (Aberdeen: n.p., 1846), 14.
[41] Balfour, *Practicks*, 99.
[42] Skene, *Regiam Majestatem*, 29.

twelfth century began to influence the way that contracts were designed and by the fifteenth century it became more common to provide a tocher in Scottish merks or Scottish pounds, one and a half merks being equal to one pound.[43] Families could be creative, though, and a tocher could consist of whatever was at hand, for instance, twelve barrels of butter.[44] These investments were designed in a wide variety of ways to suit each individual situation. For instance, heiresses who brought land into a marriage could add particular stipulations to their contracts to address the common practice of women being required to obtain the consent of their husbands before disposing of the lands.[45] Elizabeth Dunbar, countess of Moray, did this when she was betrothed to George Gordon, master of Huntly in 1455. Among other stipulations concerning the care of her son and provisions for the defence of her lands, Elizabeth required that "als sua thare sail na officiars be made within the regality of the said erledome of Murra, bot with liking and consent of the said lady".[46]

A statistical analysis of 271 marriage contracts from between 1388 and 1600 for lairdly and noble families reveals a number of consistent features of cash tochers. These amounts were added to contracts beginning in the fourteenth century.[47] Fifteenth-century contracts still commonly had gifts of land as tocher; later contracts contained primarily cash tocher. The average tocher amount in marriages of landed individuals (not including reigning monarchs) increased

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[43] For a discussion of the emergence of a cash culture in the twelfth century see, Elizabeth Gemmill and N. J. Mayhew, *Changing Values in Medieval Scotland: A Study of Prices, Money, and Weights and Measures* (Cambridge: Cambridge University Press, 1995), 15.

[44] NRS, GD106/264.

[45] Balfour, *Practicks*, 95.

[46] Stuart, *The Miscellany of the Spalding Club*, 129.

[47] NRS, GD150/55. (1388)

consistently over the fourteenth, fifteenth, and sixteenth centuries, and the mean

tocher can be calculated for any year between 1388 and 1600 by using a

Cash Tochers by Year
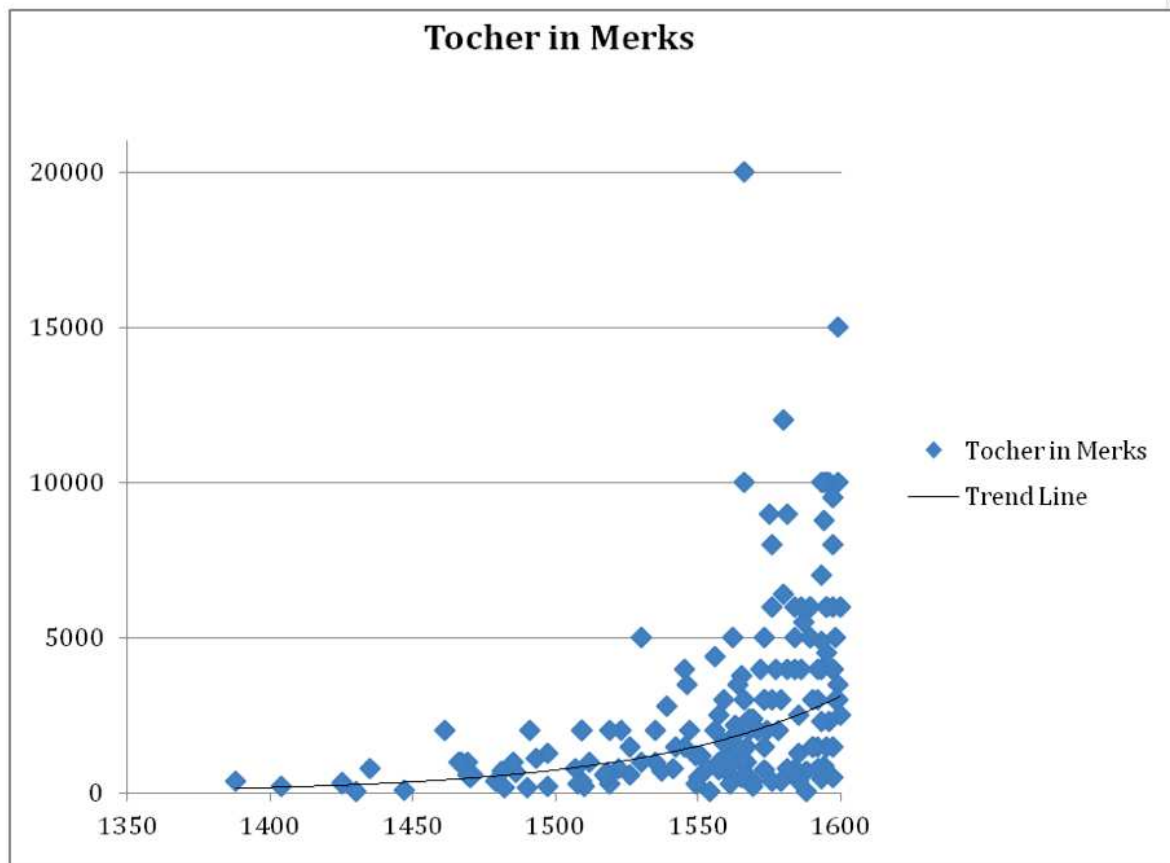
formula.[48] The increase was approximately 3.3% per year, which is steeper growth

than estimated inflation rates for late medieval Scotland. Although there are not

fixed numbers available for monetary inflation, between 1342 and 1542 the price of

wheat grew only 1.2% per year.[49] In 1342 Edinburgh, a merk bought enough wheat

[48] There is a formula to find the mean tocher amount for any given year. It uses the logarithm of the mean tocher, which provides more consistency in the prediction. The formula is: log(mean annual tocher + 20) = year * 0.0139 - 14.177.
[49] Gemmill and Mayhew, *Changing Values in Medieval Scotland: A Study of Prices, Money, and Weights and Measures*, 145.

to make 1040 pounds of bread. In 1542 St Andrews, a merk only bought 82 pounds of bread.[50]

Computed Mean Annual Tocher

Year	Mean Tocher	Year	Mean Tocher
1350	78.30	1480	578.84
1360	92.96	1490	668.15
1370	109.80	1500	770.76
1380	129.16	1510	888.69
1390	151.40	1520	1024.19
1400	176.96	1530	1179.91
1410	206.33	1540	1358.84
1420	240.08	1550	1564.46
1430	278.87	1560	1800.74
1440	323.44	1570	2072.26
1450	374.65	1580	2384.27
1460	433.50	1590	2742.80
1470	501.13	1600	3154.80

There were notable events during this period that affected values in certain areas of Europe, but the Black Death did not alter the structure of prices in Scotland, and it only slightly altered values.[51] The tochers' values were consistently rising by approximately 3.3% per year, but the years that varied slightly from the model as slightly lower than the mean roughly align with the years of the highest annual wheat prices.[52]

These prices represent a computed mean tocher for each year, based on a logarithmic calculation. They provide a reliable guideline as to how high tochers

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[50] Ibid., 20, 152, 60.
[51] Ibid., 19.
[52] For cereal prices, see ibid., 20.

were on average during any period, and as to the extent to which they rose compared to other indices of inflation for late medieval Scotland. They provide a good comparator for studies of individual families and their marriage negotiations in any given year.

This information is significant to the understanding of inflation and quality of life in medieval Scotland, because the work that has been done on changing values has rested on the values of moveable commodities like grain, butter, and salt.[53] The marriage market was affected by such different factors that it grew much faster than food prices, and this is important to a complete understanding of the value of money. This is also significant to an analysis of marriage contracts because it reveals a number of consistent aspects of these documents. The growth in the mean tocher amount of approximately 3.3% per year from 1388 to 1600 shows that the marriage market increased more rapidly than the prices of moveable goods. It also shows an increased reliance on money-based tochers and an increase in the wealth of landed society. Urban tochers could equally consist of either money or property. Small properties were more common among marriages recorded in urban protocol books in comparison to contracts from across Scotland.

Comparisions across Europe vary. Although dowries were the key marital exchange across Europe, other gifts existed in parallel. In Sweden, dowries were used alongside morning gifts and 'friend gifts' from the groom to the bride's kin, but the absence of written contracts means the amounts are untraceable.[54] In the rural areas surrounding Florence, mean dowries shrank a total of 5%; however, in urban

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[53] Ibid., 12.
[54] Korpiola, *Between Betrothal and Bedding*, 69-71.

Florence mean dowries grew from 438 lire to 1507 lire between 1242 and 1436, only 0.45% per year.[55]

Dowry studies in Venice followed a dramatically different pattern. When separated by the relationship of the donor, it is clear that paternal donors acted like those of rural Florence, showing a slight decrease in the amount of the dowry between 1370 and 1450.[56] This is also similar to the pattern of all dowries, regardless of the donor, in fifteenth-century Manosque.[57] Non-paternal dowries in Venice bore a much closer resemblance to both urban Florence and noble Scotland, rising 1.9% per year.[58] Although it seems unusual that fathers would appear uninterested in their daughters' marriage prospects, it was a result of somewhat cash-strapped families, combined with the large bequests that Venetians gave to women in their wills and testaments, allowing bequeathers to hand-pick unmarried women they wished to support by giving them increasingly competitive dowries.[59]

Mean Tocher Amounts By Family

	Campbells	Carnegies	Gordons	Littles	Douglases
Mean tocher	3375	4150	2800	2600	3019

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[55] Maristella Botticini and Aloysius Siow, "Why Dowries?," *The American Economic Review* 93 (2003): 1392.

[56] Donald E. Queller and Thomas F. Madden, "Father of the Bride: Fathers, Daughters, and Dowries in Late Medieval and Early Renaissance Venice," *Renaissance Quarterly* 46, no. 4 (1993): 695.

[57] Andrée Courtemanche, "Women, Family, and Immigration in Fifteenth-Century Manosque: The Case of the Dodi Family of Barcelonnette," in *Urban & Rural Communities in Medieval France: Provence & Languedoc, 1000-1500*, ed. Kathryn Reyerson and J. Drendel (Leiden: Brill, 1998), 101-129.

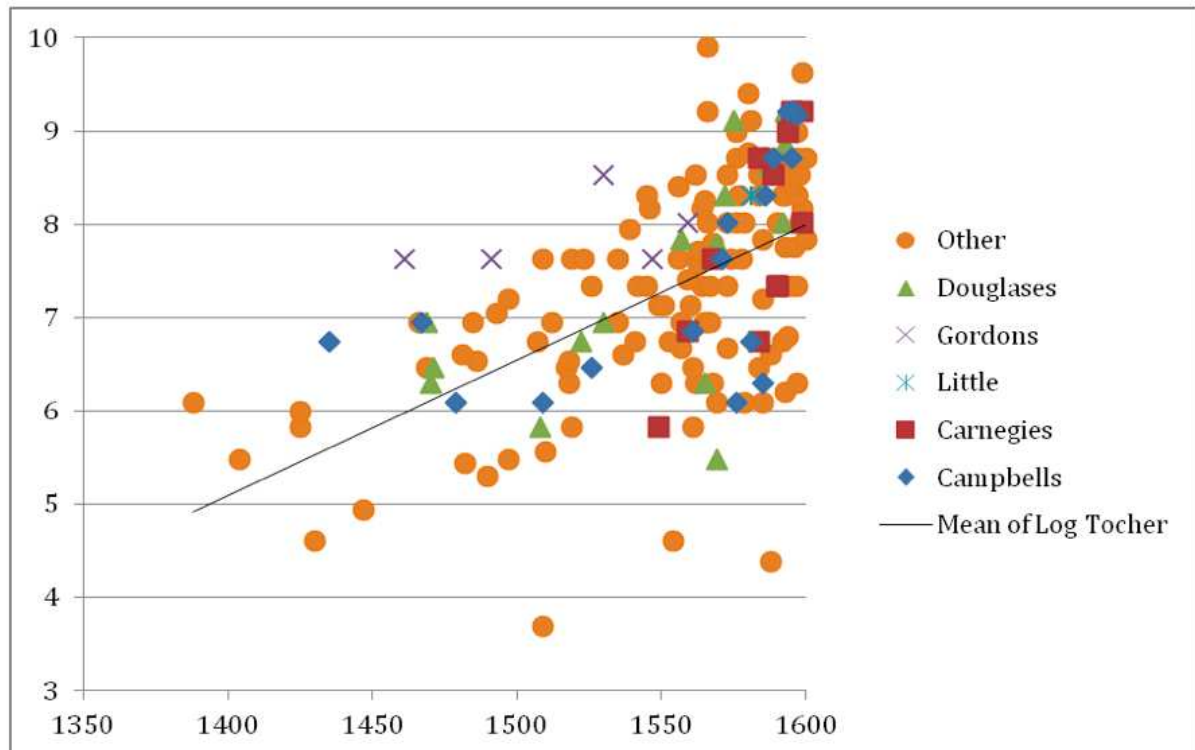[58] Queller and Madden, "Father of the Bride: Fathers, Daughters, and Dowries in Late Medieval and Early Renaissance Venice," 695.

[59] Ibid., 696.

Tocher Comparison by Family (using the logarithm of the tocher)

Scottish dowries were similar throughout much of the lairdly and noble families. Certain families had slightly different average tochers. A comparison of the tocher amounts of contracts including members of the Carnegie, Gordon, Campbell, Douglas, and Little families shows that the Littles had the smallest tocher amounts, at an average of 1040 merks throughout all their contracts between the years 1524 and 1590, and an average of 2600 merks through the contracts that included a monetary tocher. The Littles were one of Edinburgh's most prominent burgess families, and the donation of Clement Little's personal library contributed to the first collection of the University of Edinburgh. Clement died in 1580 and is buried in Greyfriar's Kirkyard.

When the Douglases were involved in contracts involving money tochers rather than land tochers, they had the highest amounts, with means of 2300 merks including all contracts and 3019 merks in the contracts with money tocher. When one accounts for the differences in the years of the contracts, the difference between the families was not particularly notable. An examination of all of the contracts shows that the Carnegies, an up-and-coming family of lairds, lawyers, and court officials, were more likely to bestow a large cash tocher than other families, who might rely on land for their tochers. This is to be expected and represents their rising status on the social ladder.

Certain customs governed the way tocher was disbursed. The donor (often the father, uncle, or brother of the bride) paid the dowry directly to the groom, and there was no significant difference in dowry amounts from different categories of donors. The donor occasionally made it explicit that his heirs and assignees were responsible for fulfilling his commitments.[60] The property was then held exclusively by the husband to be inherited by his children or relatives upon his death, although it was often used jointly by both spouses.[61] Payment could be due immediately, on completion of the marriage, or at a later date. It could be paid in a lump sum or in partial payments. For instance, in the 1457 marriage of Patrick Gray and Elizabeth Hay, Elizabeth's father, the earl of Erroll, was to pay her 1000-merk tocher in fifty-merk payments: one payment the following Whitsunday, and one payment each

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[60] For example, see NRAS792/6/4, 1595, October 8.
[61] Ewan, "To the Longer the Liver: Provisions for the Dissolution of the Marital Economy in Scotland, 1470-1550," 193.

term until it was paid in full.[62] These payments beginning on Whitsun were very common in contracts that did not require a more immediate schedule for payment.

Partial payment schemes had a number of advantages to the bride's family. They allowed families to gather the necessary money. They also allowed for a certain level of protection of their investment. If one of the parties died before the payments were complete, the bride's family could often avoid finishing the payments, especially if there were not yet any children from the marriage. If the wife died childless before a year and a day had passed since the wedding, the tocher could be refunded to her family.[63] Delayed payments from the parents of a bride could also be used to ensure she was being treated well.[64]

Equally, marriage contracts could require that land transfers take place at a specific stage in the process, before or after a wedding took place, thus providing increased protection to the donor or recipient of the tocher. The most common transfers would be done "at the completing of the said marriage".[65] These transfers were one of the trickier parts of the marriage process and forty-eight cases in the 1600 College of Justice records were challenges concerning unfulfilled marriage contracts and specifically unpaid tochers.[66]

Rules governed these transfers in the case of a failed betrothal. When a tocher was transferred before the date of completion of a marriage and the marriage did not go ahead as planned or the wife died immediately, the tocher was supposed

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[62] NRS, RH1/6/69. Term days were Whitsunday (26 May), Lammas (1 August), Martinmas (11 November), and Candlemas (2 February).
[63] Balfour, *Practicks*, 100.
[64] Botticini and Siow, "Why Dowries?," 1332.
[65] Fraser, *Buccleuch*, 2: n. 151.
[66] Coutts, *The Business of the College of Justice*, 155.

to be refunded to the original donor.[67] For this reason, people kept discharges issued to them on payment of an instalment of the agreed moneys.[68] This rule posed a risk to the enormous dowry of Madelaine de Valois, the first queen of James V, who died only a few months into their marriage. Her dowry had been over 100 000 gold crowns, and Scotland was fortunate to retain it in addition to the slightly smaller dowry of Mary of Guise that James obtained when he remarried soon after.[69]

Illegitimate children often received reasonable dowries and marriages. Pre-Reformation clerics with children occasionally provided dowries for their daughters out of Church lands and moneys. Fingo, the abbot of Iona, had used the monastery's goods as dowries for three of his daughters by his concubine, although it was considered unacceptable by his clerical colleagues.[70] The enterprising Cardinal David Beaton had his children legitimised and then found advantageous marriages for them with large liferent lands.[71]

Finding money for a tocher could be challenging to families at all levels of society. The author of the *Thewis of Gudwomen* wrote about the difficulty of providing a dowry:

> Mony lordis ar nocht larg,
>
> Thinkand thai have our-gret charge
>
> To mary thar barnis to thar estat (ll. 265-7)

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[67] Balfour, *Practicks*, 100.

[68] NRS, GD103/2/2/4.

[69] Jamie Cameron and Norman Macdougall, *James V : The Personal Rule 1528-1542*, Stewart Dynasty in Scotland (East Linton, East Lothian, Scotland: Tuckwell Press, 1998), 261.

[70] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 144-5.

[71] NRS, GD1/327, and GD45/17/9.

This claim was probably addressed to the upper middle class and lower nobility,[72] and it acknowledged the difficulties families faced in scraping together tochers for their daughters. Not only did contemporary literature suggest that providing for tochers could be difficult, but so too did the many specific provisions included in wills, letters, and contracts describing the details of the tochers of family members. In the case of Sir David Lindsay of Edzell, writing to his half-brother James Ogilvy, 5th Lord of Airlie, they corresponded about making arrangements for their sister, writing, "with Grate diffecultie I haive maid permission for my pairt of our sister's tocher and is assinit to get the sam honestly payit in dew tyme".[73] He then continued that he understood:

> your l[ordship] haid gottin four thousand marks fra Mr John Scharpe, with quhom gif your l[ordshp] had aggreit. I request your l[ordshp] to come delyver the selver to my lord Innarmaith and resave his acquittancie thereupon. He is sa extreim that noth onlie he has refusis to give his son and our sister saisine of the conjunct fee. Bot, also hes send me plaine word that he will noth suffer the mariage to pais fordwart except we keip our promise first to him according to the contract. [74]

[72] Saldanha, "The Thewis of Gudwomen: Middle Scots Moral Advice with European Connections?," 293.
[73] NRS, GD16/34/3.
[74] NRS, GD16/34/3.

Some unusual arrangements appear to have reversed the cash payment, with payments going from the groom's side of the family to the bride's, and they reflected special circumstances. In 1596 Alexander, bishop of Brechin, arranged for the marriage of his daughter Jean to Sir John Hamilton of Lettrik.[75] Sir John was to pay his father-in-law 12,000 merks in exchange for land in conjunct fee given to John and Jean. The land was the barony of Cargill and the patronage of the kirk of Kinclavin, and it was to have been part of the inheritance of Jean's brother, who witnessed the contract. It accompanied another contract citing a tocher of 10,000 merks, and lands in liferent.[76] It is clear in this case that there were other factors to this marriage that made it unique, requiring a different trajectory for payments.

After a marriage, tochers legally fell under the control of the husband, but the land or money remained associated with the couple. Most often the tocher was paid directly to the husband but sometimes to other relatives, which could raise difficulties if they refused to hand over the money to the groom. If the marriage ended, ownership of the tocher was sometimes under debate. For the most part, dowries were returned to women's families, but they or their kin sometimes had to go to court to recover the lands and money.[77] Since dowries represented a woman's inheritance from her parents, it was a great value to her if her marriage failed. The only instance in the book of the Official of St Andrews that permanently removed the wife's claims to her tocher was the case of John Horner and Margaret Croill in

[75] NRS, GD109/1308.
[76] NRS, GD109/1307.
[77] Coutts, *The Business of the College of Justice*, 149.

1544.[78] The couple was granted a legal separation due to Margaret's adultery with Hugo Symmer and Margaret's tocher was forfeit to her husband because of her infidelity. This is in contrast to the other 106 cases in which tocher was restored to the wife. This happened both in instances of adultery and in cases of annulment.[79] Other contracts, like that of Elizabeth Bonar and Thomas Trahill in 1596, explicitly stated standard practice governing tocher, which was that if the bride died with no heirs, the tocher would be refunded.[80]

Terce

It was also important that marriage contracts address the question of terce, or dower. Women could claim a terce upon the death of their husband, but the lands were not guaranteed to be ideal.[81] Sixteenth-century lawyer James Balfour described late-medieval terce as being no more than a third of the husband's land, as calculated at the beginning of the marriage, but he also cautioned that a wife should receive "ane ressonabill" terce upon her husband's death, normally amounting to a third of his property at the time of the marriage.[82] Terce was crucial to widows, who were otherwise reliant on family members to sustain them throughout their widowhood. Terce provided widows with land, which not only provided them with sustenance but also allowed them to search for a new husband.

The importance of terce to women meant that it appeared as part of a marriage contract. The presence of these arrangements in antenuptial contracts

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[78] *Liber Officialis Sancti Andree*, no. 140.
[79] Ibid., For instance, no. 2, 5, 7, 8.
[80] NRS, GD7/1/24.
[81] Coutts, *The Business of the College of Justice*, 150.
[82] Balfour, *Practicks*, 105.

shows that families were genuinely concerned that the bride be provided for in her widowhood. Agreements could explain the amount of terce lands a woman would receive and frequently detailed the exact lands that would be involved. For example, in 1448 Adam, master of Halis guaranteed his bride, Elyne Home, the Castle Home as her terce.[83] The contract between Arthur Forbes and Margaret Burnet in 1509 even included the term that Margaret would only receive her terce in exchange for a yearly payment of "ane penny".[84] The unusual contracts of Jean Campbell and Sir John Hamilton of Lettrik included named terce lands, including "Eister Bengour alias Blackcraig, parish of Inglismachane, sheriffdom of Lynlithgow", but because a contract of alienation for that parcel of land had been dissolved, Jean was to receive other lands instead.[85] Her husband was careful to have a contract drawn up to explicitly state this two years after their initial marriage contract was drafted.

Terce lands could constitute a major portion of an estate, and there was always the danger that two generations of widows in a family would tie up a vast amount of income. When Elspeth Douglas, daughter of the late earl of Buchan, married Andrew Fraser of Stoneywood, the contract stipulated that Elspeth should have her conjunct fee lands before the marriage took place, and that she and her husband would not receive the rest of their principal lands until after the death of his mother, Isabelle Forbes. Isabelle held these as her terce and the contract made it

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[83] Fraser, *Buccleuch*, no. 44.
[84] Aberdeen University Archives, MS 3361/1/22/1.
[85] NRS, GD109/1315.

explicit that she would not renounce them.[86] Similarly, the 1555 marriage contract of Christian Stoddart and Robert Bryden made it explicit that the couple was to inherit the terce lands of Christian's widowed mother upon her death.[87]   In these circumstances, the second widow would only get a third of the remaining lands,[88] so specific arrangements for the succession of terce land through two generations of widows could help to mitigate this problem. The 1586 marriage contract of Matilda Fotheringham and John Ogilvy, stipulated that Matilda's terce was to consist of land, "12 challder victual, 2 part mail and third part ber". However, Maltilda's tercelands would come to her via her widowed mother-in-law, who was still quite young. This was a way for the Ogilvy family to avoid providing two terces from their estates, but it was not a good deal for Matilda.[89]

Women could renounce their right to terce, provided their husband was not present at the time, a measure put in place to ensure the woman was acting freely.[90] This was rarely beneficial to a widow but could be of assistance to her family if they needed the lands to broker a new marriage agreement. In these cases, the widow could be compensated. Agnes Livingston only renounced her terce and jointure rights from her contract with the late Harry Hamilton when his family gave her and her new husband lands in liferent in return.[91]

Legal provisions were in place to ensure the receipt of these lands. Although married women could not bring actions against their husbands (since their

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[86] NRS, GD150/490.
[87] NRS, GD104/3.
[88] Balfour, *Practicks*, 110.
[89] NRS, GD205/12/33.
[90] Balfour, *Practicks*, 90.
[91] NRS, GD30/340.

husbands' consent was require to bring an action to court), widowed women not only appeared at the Court of Session but also fought for their rights to terce lands as promised to them in their marriage contracts.[92] Widows were allowed to pursue legal action to ensure they received these lands by raising a brieve of terce to the sheriff, if the previous occupants refused to vacate the properties.[93] This did not, however, apply to lands in an annulment or divorce, which reverted back to the original owner.[94] Terce also provided women with the ability to remarry as independent women, no longer seen as the chattel of their fathers and husbands.[95]

Conjunct fee

Because the parameters of terce and tocher were limited, conjunct fees (also known as jointures) became more popular in marriage contracts throughout the fifteenth and sixteenth centuries. Conjunct fees allowed for more flexibility in the distribution of marital property, and each contract was able to lay out specific terms concerning the jointure. The basic idea behind this method of holding land was that the husband and wife would both hold the property, and whoever outlived the other would retain the property in full until his or her death. In theory, tocher lands already provided this for husbands and terce specifically for the wife; in practice, conjunct fees increased the amount of property held by a widow.

Conjunct fees increased in popularity over time. Although rare in earlier marriage documents, they had been known as *donatio ante nuptias*; however, by the

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[92] Coutts, *The Business of the College of Justice*, 149.
[93] Balfour, *Practicks*, 108.
[94] Ibid., 112.
[95] Brown, *Noble Society*, 119.

sixteenth century they were known as *donatio propter nuptias*, because they could be given by a husband to his wife at any time during their marriage.[96] Because terce could be no more than a third of the husband's lands at the time of marriage, jointure was a way for the family to offer her protection in her wealth throughout her lifetime. As the specific negotiations for marriages were increasingly recorded, these ways of circumventing standard practice became more common. By the end of this period, most titled women were conjunct fiars.[97]

The agreements were similar in many ways to those for terce, including less common contracts requiring annual payment, for instance a silver penny, to retain the conjunct fee lands.[98] Conjunct fee properties could be given to the couple from the bride's parents alongside a smaller tocher or they could be contributed by the groom's family, presumably the result of shrewd negotiations on behalf of the bride. Jointly held properties could accompany a traditional terce which would allow the women to have an income in widowhood that reflected more than one third of the income she had enjoyed with her husband. Contracts could even stipulate that conjunct fee land be provided to the couple before the wedding took place. This happened in the marriage of Jane Hamilton and the 3rd earl of Eglinton, when Jane had her father, James, duke of Chatellerault, advocating for her.[99]

In this way, marriage contracts were able to overcome certain limits set upon them by slightly altering the types of arrangements that were being made. Women

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[96] Balfour, *Practicks*, 101.

[97] Coutts, *The Business of the College of Justice*, 151.

[98] NRS, GD3/1/10/113.

[99] NRS, GD3/1/10/71/3. This contract has been published in William Fraser, *Memorials of the Montgomeries, Earls of Eglinton*, 2 vols., vol. 1 (Edinburgh: Privately printed, 1859), no. 151.

were also able to take their conjunct fees into a second marriage. Sir Patrick Vaus included his daughter, Grizzel's, liferent from her marriage to John Kennedy of Barquhonne in the contract for her second marriage, to John McDowell of Logan, which included specific provisions for a second set of jointure lands.[100]

Theoretically, lands held in conjunct fee could not be alienated by a husband if he had granted the lands as part of their marriage contract.[101] However, since a wife could not take her husband to court during their marriage, she was forced to wait until after his death to reclaim any conjunct fee lands that he had alienated in error. [102] Most often, however, all of the parties involved understood the implications of liferent properties, and they appeared in the majority of contracts among sixteenth-century aristocrats. The cases challenging liferenters addressed the validity of the claim itself, but not the soundness of the marriage contract agreeing to such terms.[103]

Other Clauses

Early antenuptial contracts dealt mostly with tocher, terce and jointure. However, through the sixteenth century, the range of clauses included in contracts grew enormously and involved other aspects of the marriage including stipulations concerning pre-existing conditions as well as clauses designed to influence the shape of the wedding and clauses to help avoid annulment or divorce.

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[100] NRS, GD141/41.
[101] Balfour, *Practicks*, 94.
[102] Ibid., 104.; and Coutts, *The Business of the College of Justice*, 150-1.
[103] Coutts, *The Business of the College of Justice*, 152.

One of the most curious of these inclusions was a clause to permit the substitution of alternate children in the marriage. The fact that these clauses were used shows that negotiators were indisputably concerned with a marriage between the families and not the particular couple involved. The first type of these clauses was used to allow grooms to pick his bride from a selection of sisters. The second type was a provision that if the particular bride or groom were to die before the marriage could be completed, one of their siblings would take their place.

These clauses were not gendered in the same way, applying equally to both parties. This is shown by the 1474 marriage contract of Alexander Gordon, master of Huntly, and Jean, daughter of John Stewart, earl of Atholl. If the marriage failed through the death of Alexander, his younger brothers must step up "and sa furth fra son to son lauchfully gottin or to be gottin apparand ayr to hym".[104] However, quite surprisingly, if the marriage were to fail "throw wilfulnes of owr said douchter Jehan or ony of hir sisteris", then the financial settlement was nullified. In a similar situation, the supplication to the pope from Mariota de Riklington demonstrated how she was betrothed to a series of brothers who died and then married a cousin of theirs to complete the union between the families.[105] These marriages show that the identity of the bride or groom could be secondary to the family involved in the marriage.

Another type of clause that emerged was one referring to the condition of the bride (and occasionally groom) upon marriage. For the most part, these dealt with the age at which the wedding would go forward. This could range from the age of

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[104] NRS, GD181/174.
[105] Lindsay and Dunlop, *Calendar of Scottish Supplications to Rome, 1423-1428*, 210-11.

consent (as young as twelve) to the age of eighteen.[106] Waiting to marry off daughters until they reached adulthood was seen as dangerous by some because of the risks associated with adolescence.[107] It is no surprise that these fears were reflected in contracts that called for the bride "in her pure virginitie". The chastity of the bride, or perhaps, more importantly an absence of a pre-existing betrothal, was often linked to the terce that she might receive upon becoming a widow.[108] This was not just a mindless practice; in the 1593 contract of Robert Montgomery of Skelmorlie to Margaret Douglas, the phrase was an addendum, added right above the section detailing her tercelands, reflecting a concern that the marriage be entirely legal.[109]

These additional clauses were not present in the majority of marriage contracts, but all appeared in more than one arrangement, indicating that the issues they addressed were genuine concerns among landholding families. Antenuptial contracts in Scotland could be so variable, though, that they often contained situations unique in the contracts, but more common among the general populace. The 1555 contract of Margaret Grenfeild and Walter Steill indicated that the couple would live with Jonet, the mother of the bride, after their marriage. It was careful to make explicit, though, that the couple should "labor and wyrk also dewlie as it war thair awyn in all thyngis and to spend it at thai maye wyn amang them, and the said Jonot to be maister of hyr awinlandis and gwydis, and houssis and utheris proffettis

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[106] NRS, GD110/169.
[107] Lumby, *Ratis Raving and Other Moral and Religious Pieces, in Prose and Verse*, 52 (l. 925).
[108] For example, NRS, GD150/458; and Fraser, *The Stirlings of Keir, and Their Family Papers*, 378-9.
[109] NRS, GD3/2/13/9.

on to the tyme at sche deces."[110] These types of living arrangements were fairly

common in the sixteenth century.[111]

There were also clauses that provided for the possibility that no sons would

be born from the marriage. If only daughters were born, then some contracts

stipulated which of their grandparents would provide them with tochers. In the case

of Clement Little and Agnes Sharpe in 1590, if they had one daughter, she would

receive 3000 merks tocher; if they had two daughters, each girl would get 2500

merks.[112] A similar clause appeared in the contract of William, son of the earl of

Eglinton, and Elizabeth Francis. This contract provided land to the couple, and in

exchange the bride's father, Robert Francis, would get 100 merks from the groom's

father.[113] This was so he could pay the tocher of his other daughter as well.

The negotiators for many couples included clauses that compensated for the

marriage failing to proceed as planned. The contract of James Sandilands of St

Monans and Grissell or Isabelle, daughters of John Boswell of Balmuto, included a

clause nullifying the agreement if it was not carried through within a year.[114] There

were even clauses that discouraged the couple from renouncing a contract in order

to preserve the impetus behind the marriage, often land, money, or allegiances.

Revocation could occur for many reasons. In 1573, William Edmonston revoked his

contract with James Edmonston, giving up his claims to certain lands, so that they

might be given to relatives of theirs, Archibald and Marjory Edmonston, for their

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[110] John Anderson and William Angus, eds., *Protocol Book of Sir William Corbet, 1529-1555*,
Publications of the Scottish Records Society (Edinburgh: 1911), no. 90.
[111] Sanderson, *A Kindly Place? Living in Sixteenth-Century Scotland*, 51.
[112] NRS, GD122/2/880.
[113] NRS, GD3/2/2/16,
[114] NRS, GD66/1/20.

marriage.[115] The consanguineous marriages allowed for a shuffling of lands amongst the interested parties.

Contracts could also be broken without the consent of one of the parties. This happened in the case of Henry Pitcairn and Mirabelle Quhitt, who never married because of the excommunication of Henry's father.[116] Although the contract had included a clause that compelled either party to pay a 100-pound fine if they withdrew from the agreement, the court ruled that this should not apply in a case of excommunication. This type of fine was common, and could even be used ad hoc to buy one's way out of a marriage contract, as Jon Fairlie did when he paid 300 merks to cancel his daughter's marriage with Jon Chapman.[117]

Dispensations

Not only were betrothals vulnerable to the whims of the participants, they were also subject to decisions of the Church as to their legitimacy. Obtaining dispensations for any impediments to the marriage, and thus avoiding possible disputes about inheritance and succession could avoid this problem. The decision to apply for a dispensation for a marriage normally occurred in the later stages of the negotiations. Applications for dispensations in Scotland were also used to formalise consanguineous marriages, and these unions could be dispensed before or after solemnisation.[118] Dispensations would be issued for bonds of consanguinity, affinity, and spiritual ties, and this affected most noble couples in late medieval Scotland.

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[115] NRS, GD86/237.
[116] *Liber Officialis Sancti Andree*, no. 132.
[117] Coutts, *The Business of the College of Justice*, 154.
[118] See also, pp. 76-84.

Marriage contracts protected couples and their families from this threat to a certain extent to ensure the viability of the union by including clauses requiring one party to pay for a dispensation. This need to protect the union carried on into the early years of the Reformation. In the 1560 contract of John Ogilvy and Elene Ogilvy, their parents ensured the contract included provisions concerning possible annulment or divorce:

> Providing always that if ony caus of divorcement beis fund be the laws of this realme quhairby the marriage may not be contractit and the same being contractit may bie decernatt- In that case the said Johne Ogilvy younger with consent of his fadir sall provide use and acceptable remaid for the saidis impedimentis as may stand with the common law and lawis of the realme for the tyme quharwt the said Johnne and Elene may remaine in all tymes thaireftir in the band of matrimony as husband and wyff.[119]

If the marriage failed nevertheless, John agreed to refund her tocher of 1600 merks.

Consanguinity

Much like the use of marriage contracts themselves, the use of dispensations began among the royalty who were trying to protect their marriages, which, if challenged, could have resulted in a dynastic overthrow. As people began to put more faith in the value of the written word and pre-nuptial contracts proliferated, there was more evidence that dispensations could be used as a method of controlling marriage at every socio-economic level. The cost of applying for a dispensation discouraged

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[119] NRS, GD205/12/33.

poorer couples from applying, but some did, as can be seen in the rare applications from paupers.[120] The decision to seek a dispensation for consanguinity or affinity depended on many factors, such as cost and vulnerability of the marriage to challenges for inheritance, but many couples did seek dispensations before and after their wedding days.

Consanguinity, marital affinity, and spiritual affinity were the major reasons for matrimonial dispensations and the laws covering consanguineous marriages in Scotland were layered. After the Fourth Lateran Council in 1215, the Church ruled that marriages within four degrees of consanguinity and affinity, such as one's third cousin, were null. Not only was one prevented from marrying these individuals, but also from marrying anyone who had had sex with one of their relatives within the fourth degree. In Scotland this posed a problem. The culture of marriage within one's own social rank combined with a culture of mistresses, illegitimate children, and concubinage within the nobility made it nearly impossible to find potential spouses who were not related.

Spiritual affinity, created by godparentage in baptism, was not as all-encompassing and only restricted marriages within the first degree – between two godparents, between two godchildren of the same godparent, and between a godchild and a natural child of a godparent.[121] However, it is clear that Scots were not committed to avoiding spiritual affinity and, instead, attempted to circumvent these rules with dispensations.[122]

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[120] Furneaux, "Pre-Reformation Scottish Marriage Cases of the Papal Penitentiary," 66.
[121] Patrick, *Statutes of the Scottish Church, 1225-1559*, 39.
[122] Cowan, "Spiritual Ties of Kinship in Pre-Reformation Scotland," 117.

Marriage within the prohibited degrees was acceptable if all of the impediments were dispensed by application to Rome. This was a time-consuming and costly process, and despite the best of intentions, as represented in marriage contracts, not all marriages were dispensed before they were solemnised. Irene Furneaux has identified specific trends in applications for dispensation in late medieval Scotland. She has demonstrated a spike in applications for marriage dispensations between 1500 and 1508.[123] The dramatic increase can be attributed to changes in inheritance laws that encouraged legal marriage, Scotland's status as *filia specialis* of Rome, and an increased dissatisfaction with the Catholic Church.[124]

Some couples, presumably on the advice of their elders, arranged for one of the parties in a marriage contract to seek dispensation. This shows that couples were happy to marry in full knowledge of their consanguinity. It also shows that there was a concern that a dispensation be obtained, most likely because of their concern for the stability of the marriage itself rather than being the result of a pious belief in the doctrine.

The inclusion of clauses demanding dispensations within the contracts also shows that there was imbalance between the families in their treatment of dispensations. This disparity could come from their unequal reliance on the marriage for economic gain, belief in the necessity of dispensations, or part in the process of obtaining the dispensation. For instance in the 1517 marriage of Elizabeth Stewart, daughter to the earl of Atholl, and John, master of Lennox, John

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[123] Furneaux, "Pre-Reformation Scottish Marriage Cases of the Papal Penitentiary," 59.
[124] Ibid., 62-8.

himself was required to obtain the dispensation, and Andrew, bishop of Caithness, was required to confirm the dispensation.[125]

Unlike many other aspects of contracts, the timing of dispensations was not normally considered critical to the families who were proceeding with a marriage. When the earl of Rothes arranged for his daughter, Elizabeth, to marry the earl of Errol, they agreed that the marriage could proceed without an immediate dispensation to protect it, as long as financial sureties were established to protect the marriage from wilful dissolution.[126]

In a similar arrangement addressing dispensations, the earl of Montgomery, brother to the bride, and their mother Dame Marion Seton, dowager countess of Eglinton, were to pay the expenses for a dispensation from known bonds of consanguinity, affinity, or anything else. If more bonds arose after the marriage, however, then the groom and his father were responsible for the fees, "how oft occurris the same in ony tyme cuming".[127] The contract said that when these dispensations arrive, the couple promised to "iterat and solempizat of new the said band of matrimony . . . geif neid beis, als oft as salbe be expedient, ay and quhill the samin may lefullie stand be the lawis of the realm."[128]

This contract reveals a number of issues about the supplication process. It shows that there was an expectation in Scotland that dispensations for known impediments would be granted before a marriage took place. This did not align with the Church's official policy for dispensations throughout Europe, where

[125] NRS, GD220/1/F/6/1/7.
[126] NRS, RH1/6/117.
[127] NRS, GD3/2/4/18.
[128] NRS, GD3/2/4/18.

dispensations were supposed to be reserved for existing marriages, where the couple had unknowingly wed kin.[129] The contract also indicates that it was sometimes, but not always, important to re-solemnize a marriage after a dispensation arrived. This implies that there was an attitude that some dispensations were not, in practice, retroactive. This is surprising, given the number of people who applied for dispensations after weddings had taken place.

Archibald, 5th earl of Douglas, and Euphemia Graham applied for a dispensation for their marriage before their nuptials in 1425.[130] Their supplication to the pope explained in more detail their exact process. The couple had a third party send the petition to Rome for a dispensation in the third and fourth degrees. The pope sent a mandate to the bishop of Glasgow to grant this dispensation and sent letters to the third party confirming the mandate. Having been told by this third party that it was sufficient to proceed with the wedding, the couple solemnised their marriage and consummated the union before the bishop of Glasgow had been presented with the apostolic letters. This posed a problem to them, and lest "scandals should arise and discords break out between them and their friends", they requested that the pope re-dispense them to remain in matrimony and legitimise their children.[131]

It was ideal that dispensations would be obtained before a wedding, but this was not always the case. It was not uncommon for supplications to note that the couple had just recently discovered spiritual ties, consanguinity, or affinity. Some of

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[129] James A. Brundage, *Sex, Law and Marriage in the Middle Ages* (Aldershot: Variorum, 1993), 200.
[130] Lindsay and Dunlop, *Calendar of Scottish Supplications to Rome, 1423-1428*, 94-5.
[131] Ibid.

these couples must have been telling the truth, but in a society so aware of kinship as Scotland, it is probable that many of the postnuptial dispensations were only obtained because the couple anticipated facing some challenge to their marriage or inheritance. These pleas were framed to induce sympathy at the Vatican by describing instances in which the couple would be more likely to be successful. For instance, William Livingston and Elizabeth de Caldecote noted the "stain of incest" their marriage would have unless it were validated.[132] This was not enough to induce them to separate, just to ensure their marriage was dispensed.

Scottish supplications for dispensations differed from those in other parts of Europe. In general, dispensations were used to obtain permission to stay married.[133] Scottish couples were most likely to apply to Rome for a dispensation for consanguinity, affinity, or spiritual affinity, but it was not uncommon to go to the courts to request an annulment, sometimes even after a dispensation had been issued for other bonds. It is also clear that when consanguineous couples wanted to remain married with a dispensation from Rome, different regions reacted to this in different ways. Norwegian ecclesiastical authorities required each couple to prove they entered their marriage not knowing of the impediments.[134] This was a test that few Scottish couples would pass. In Sweden, a claim of ignorance was generally sufficient and proof was not required.[135] This pattern of behaviour is something that occasionally appeared in Scotland. The Low Countries allowed consanguineous

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[132] Lindsay and Dunlop, *Cal. Scot. Supp.,* 7:226.
[133] Karras, *Sexuality in Medieval Europe: Doing Unto Others*, 62.
[134] Torstein Jørgensen, "Illegal Sexual Behavior in Late Medieval Norway as Testified in Supplications to the Pope," *Journal of the History of Sexuality* 17, no. 3 (2008): 348.
[135] Korpiola, *Between Betrothal and Bedding: Marriage Formation in Sweden 1200-1600*, 213.

couples to marry first and deal with dispensations later.[136] Scotland's attitude towards dispensations rested somewhere amongst these varied practices. This diversity of behaviours surrounding matrimonial dispensations in Europe demonstrates that regional differences reflect distinctive local attitudes towards marriage itself and its role in society.

Legitimacy

Reasons for requesting a dispensation went beyond questions of sin and incest. Legitimacy was important to ensure inheritance rights to offspring, and likewise the legitimacy of a marriage was crucial to a wife who was giving up her lands in marriage, who needed to know that she would have the protection of terce and conjunct fees when she released her inheritance to her husband. Elizabeth Hamilton was not obliged to give over the lands of the Lennox until her husband, Matthew Stewart, brought home a dispensation legalising their marriage and legitimating their children, at which time she would be given her conjunct fee.[137]

When couples and families did not consider marital impediments at the beginning of a relationship, such as the marriage between Robert II and Elizabeth Mure, it could create more confusion. Their children were legitimised retroactively when it became clear that their right to inherit the crown was at risk.[138] Other times,

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[136] R. H. Helmholz, *Marriage Litigation in Medieval England*, Cambridge Studies in English Legal History. (London: Cambridge University Press, 1974), 79-81.; and Monique Vleeschouwers-van Melkebeek, "Incestuous Marriages: Formal Rules and Social Practice in the Southern Burgundian Netherlands," in *Love, Marriage, and Family Ties in the Later Middle Ages*, eds. Isabel Davis, Miriam Müller, and Sarah Rees Jones (Turnhout: Brepols, 2003), 77-95.
[137] NRS, GD220/2/1/94.
[138] Boardman, *The Early Stewart Kings*, 8.

couples seem to have been genuine in their ignorance of impediment. For the most part, these supplications to Rome after-the-fact pled for dispensation.

Other couples requested similar dispensations well into their marriages claiming ignorance of relationships that were so close they could not have missed them. Alexander Frysel and Margaret Douglas applied for a dispensation for the spiritual bond between them. His father was her godfather and they claimed they had not known and wanted to avoid "grave scandal of divorce".[139]

All of these concerns about the legitimacy of a marriage ultimately resulted from the fact that annulments were easy for wealthy Scots to obtain, and the negotiators of a contract were trying to prevent the marriage from failing to protect their investments. In 1543, Jacques la Brosse visited Scotland, and wrote his *Discours* as a report on the state of affairs in Scotland. La Brosse wrote that the queen and cardinal had confessed to him that the governor had allowed heresies to exist in the kingdom:

> The governor's father had contracted his first marriage with a woman
> from whom he has been separated by a church decree on the grounds
> of consanguinity. Against that decree there has been neither challenge
> nor appeal. And since this decree he has married the woman by whom
> he has had issue.[140]

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[139] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 148.
[140] Gladys Dickinson, ed. *Two Missions of Jacques De La Brosse: An Account of the Affairs of Scotland in the Year 1543 and the Journal of the Siege of Leith, 1560*, vol. 3rd series, vol. 36 (Edinburgh: T. and A. Constable for the Scottish History Society, 1942), 27.

Although most couples remained married despite impediments, other couples did request annulments based on consanguinity and affinity. Of those who applied to the Official of Lothian between 1512 and 1554 to rule on their illegitimate unions, most were granted an annulment. [141] James Hamilton, earl of Arran attempted to annul his marriage to Margaret Douglas in 1544 and to simultaneously preserve the legitimacy of their children.[142]

Families found ways to protect their lands and money when drawing up a contract. The ante-nuptial agreement of Hugh, earl of Eglinton, and Dame Agnes Drummond, lady Loudoun, required the earl to obtain a dispensation to proceed with the union and also demanded that if the couple annulled their marriage, Agnes' 5000-merk tocher would be returned.[143] They did obtain an annulment after all, and Agnes went on to marry her kinsman, Patrick, Lord Drummond.[144] It is an indication of the lack of difficulty in obtaining a dispensation that the earl was immediately able to apply for another one for his next marriage. Dispensations were added protection to insure the marriage and inheritance but did not protect it entirely. Enterprising families could always find ways to annul what appeared to be legitimate unions if it suited politics.

Completing the Marriage

The last stage before the actual wedding took place was to declare the banns. This involved the priest announcing the impending marriage of a couple at three

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[141] For annulments see *Liber Officialis Sancti Andree*, no. 11.; For divorces see ibid., no. 16.
[142] Amy Blakeway, "The Attempted Divorce of James Hamilton, earl of Arran, Governor of Scotland" *Innes Review* 61.1 (2010), 1-23.
[143] NRS, GD3/2/5/3.
[144] NRS, GD3/2/5/7.

subsequent church services. This process meant that the churches were able to discover any impediments, although many couples proceeded with their marriages anyway. During the preparation for the wedding of Agnes Drummond to her second husband, Hugh, the 3rd earl of Eglinton, the banns were published at least twice, and presumably the requisite third time.[145] In theory, banns were to be declared on three subsequent Sundays in the parishes of the bride and groom to ensure that any impediments to the marriage would come to light. Banns were required under both the Catholic and Protestant Churches and the Kirk Session of Aberdeen recorded banns being declared on 28 March 1577 for a wedding the following Saturday.[146] Although banns were required by the Church, a marriage without banns was still considered legal albeit sinful.[147] Eventually there were attempts to change the legality of irregular marriages because of the complexity of unravelling facts about bigamous unions in the mid-eighteenth century. In Scotland, the legislation failed, but in England the new rule became known as Hardwicke's Act.[148]

The descriptions of the breakdown of the union of Alexander, earl of Mar, and Maria van Horne demonstrate the many stages to the completion of a marriage. As early as 1415 Pope Benedict XIII had issued a mandate to the bishop of Moray to annul this marriage, as had been requested by Robert, duke of Albany. It explained the Alexander had contracted marriage *per verba de presenti* with Maria without knowing that she was still married to a previous husband she had abandoned.[149]

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[145] Fraser, *Memorials of the Montgomeries, Earls of Eglinton*, 1:87-9 no. 164-5.

[146] Stuart, *Selections from the Records of the Kirk Session, Presbytery, and Synod of Aberdeen*, 22.

[147] Helmholz, *Marriage Litigation in Medieval England*, 27.

[148] Leah Leneman, "The Scottish Case That Led to Hardwicke's Marriage Act," *Law and History Review* 17, no. 1 (1999): 22.

[149] McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 313.

The betrothal was completed through consummation, solemnized *in facie ecclesiae* and followed by cohabitation for eight days before Alexander left her to return to his wars in Scotland.

This plea seemed a fairly straightforward case for annulment, but in 1424 the marriage had still not been annulled, and the new supplication to the pope blamed Maria for the abandonment rather than Alexander: "nevertheless the wife (led by what spirit in unknown) betook herself away and refuses to live with her husband and to follow him, and does not fear to reside elsewhere in contempt of matrimony".[150] The supplicant then requested an annulment, if she failed to return, so both of them would be free to remarry. Examples of the implementation of canon law such as this were fairly common, because they were recorded in the courts when things went awry.

Conversely, information about where the wedding ceremonies took place was rarely recorded in late medieval Scotland. Royal weddings were the exception and were often recorded in great detail, but accounts of weddings of aristocrats and lairds were rare. Pope Alexander III insisted that marriages in Scotland were supposed to take place in the presence of a priest;[151] clandestine marriages, however – those without banns or solemnization – remained popular. This was similar to other areas in Europe, where clandestine marriage continued. For instance, the 1455 trial of Giovanni and Lusanna describes a secular marriage in

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[150] Lindsay and Dunlop, *Calendar of Scottish Supplications to Rome, 1423-1428*, 59.
[151] Joseph Robertson, ed. *Concilia Scotiae*, 2 vols. (Edinburgh Printed for the Bannatyne Club, 1866), 1:cclxix.

Florence and the trials that the union produced when the purported marriage broke down.[152]

As contracts grew longer, however, they started to include more details about the marriage itself. Just as families looked to dispensations to guard the legitimacy of marriage, so too, did they begin to focus on the solemnisation of the union. In 1518, the marriage contract of Lady Margaret Lyon of Guthrie and David Inverquharty included a clause stipulating that the marriage would take place "in the face of the haly kirk" or *in facie ecclesiae*.[153] This grew more common throughout the sixteenth century and coincided with the Church's increased campaign for solemnised marriages.

This specific wording continued through the Reformation and experienced increased use throughout the realm. Avid Protestants had a different perception of marriage and began to use the phrase "in faice of the congregation", as early as 1560 in the St Andrews Kirk Session.[154] This occurrence was a clear reference to the fundamental changes in the Kirk; the *Book of Common Order,* printed in 1562, mandated the words "in the face of his Congregation" as part of the marriage ceremony.[155] However, the phrase did not appear widely until a generation later, and then it was normally associated with particularly pious families. In 1590, the contract of Andrew Boyd and Elizabeth Cunninghame declared that they should be married "in the face of christis congregation".[156] The following year the marriage

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[152] Brucker, *Giovanni and Lusanna.*
[153] NRS, GD205/12/33.
[154] Fleming, *Register of the St Andrews Kirk Session*, 30.
[155] John Carswell and Thomas Maclauchlan, eds., *The Book of Common Order, Commonly Called John Knox's Liturgy* (Edinburgh: Edmonston & Douglas, 1873), 145.
[156] NRS, GD8/352.

contract of Lilias Drummond and Lord Urquhart declared not only that the marriage would be "in the face of Kristis Kirk and congregation" but also provided specific details about the religious aspects of the marriage, including the ministers involved.[157] Four years later, a similar contract between William Spottiswood of Fowlleran and Margaret Prymeste (the daughter of a minister) said the wedding should be "in face of christis halie congregation".[158]

The somewhat ambiguous "in the face of god mutuallie contractit", appeared in the marriage contract of Patrick, lord Drummond, and Agnes Drummond as early as 1585.[159] The change in the wording was precipitated by the Protestant reforms, but the Drummond family had strong connections to Queen Mary and to France.[160] Indeed, the Drummonds sided, rather half-heartedly first with the Party of the Revolution, and later with Queen Mary.[161] In theory, conversion to Protestant marriage rites was not optional, as evident in the trial of James Arthur in 1562 for marrying and baptising "in the fashion of the Papistry".[162] The secular customs surrounding marriage, such as the writing of contracts, were slower to evolve.

The phrase is also intriguing for another reason: because it expresses the idea of mutual consent before God – an idea that was central to a Catholic framework for marriage. The new Kirk placed a greater emphasis on parental consent, even when it allowed couples to marry against the wishes of their parents,

[157] NRS, GD160/139/1/6.
[158] NRS, RH9/7/2
[159] NRS, GD3/2/11/13.
[160] William Drummond, *The Genealogy of the Most Noble and Ancient House of Drummond* (Glasgow: Privately Printed, 1889), 114-5.
[161] Gordon Donaldson, *All the Queen's Men: Power and Politics in Mary Stewart's Scotland* (London: Batsford Academic and Educational, 1983), 37 and 74.
[162] Charles Rogers, *Scotland, Social and Domestic. Memorials of Life and Manners in North Britain* (London,: Grampian Club, 1869), 312.

because it enabled ministers to "enter in the place of parents" to allow the marriage to proceed.[163] This implies that the parents should have had the final word on whether the union should proceed. Although the use of the phrase in marriage contracts is intriguing, it did not represent a widespread trend, since it was unique in sixteenth-century Scotland. This continuity through the Reformation resulting in eventual change was common in wording used for other Catholic sacraments, such as baptism and communion.[164]

It is significant that the participants in this case had both been previously married and, because of Agnes' age, were unlikely to have children. Their age and status as widow and widower also provided them with a certain amount of independence and insight into marriage negotiations. The emphasis on their mutual consent to the marriage highlights the explicit consent of the bride and groom as the event that creates a marriage.

Their contract also provides a window into the timing of weddings in relation to the negotiation of marriage contracts. There was clearly a large amount of variation in this matter because the contracts were so variable. While some couples arranged their marriage contracts after the wedding itself, and other families made pre-nuptial contracts for their infant children, the most common contracts were for marriageable children and required a somewhat speedy completion of the union. Agnes Drummond and Patrick Drummond's wedding date was set when they wrote their contract. The contract was dated 15 November 1585 and it stipulated that the

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[163] Todd, *The Culture of Protestantism in Early Modern Scotland*, 267.
[164] Ibid., 82-126.

wedding be four months later, on 2 February.[165] An order demanding the completion of a marriage by a specific date was often accompanied by a financial penalty for non-compliance.[166]

The four-month wait was on the long side for contracts that insisted on a wedding "in gudlie haste".[167] Many betrothals, however, were not followed by formal nuptials, while the couple cohabitated anyway. This was an interesting legal situation because under canon law, if a couple's betrothal was followed by intercourse, it was considered a marriage *per verba de futuro subsequente copula*. The reformers did not, however, see cohabitation in this light, and instead insisted that these couples have actual weddings to initiate their marriages. In the records of the 1562 Kirk Session of Aberdeen and entry reads:

> Because syndrie and many within this toun ar handfast [betrothed], as
> thai call it, and maid promeis of marriage a lang space bygane, sum
> sevin year, sum sex year, sum langer, sum schorter, and as yit vill
> nocht mary and compleit that honourable band, nother for fear of God
> nor luff of their party, bot lyis and continewis in manifest fornication
> and huirdom[168]

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[165] NRS, GD3/2/11/13.
[166] Balfour, *Practicks*, 97.
[167] For example, NRS, GD45/16/682; and Fraser, *The Stirlings of Keir, and Their Family Papers*, 378-9 no. 160.
[168] Stuart, *Selections from the Records of the Kirk Session, Presbytery, and Synod of Aberdeen*, 11.

The council declared that these couples must be married by "festeranis evin" (Shrove Tuesday) or they will be punished. It goes on to declare that in the future, no couples shall be permitted to cohabitate and offers a fixed amount of time (which is missing from the document) between betrothal and marriage. The Session wanted betrothal dates to be recorded so that they could be vigilant.[169] This became a pattern throughout the meetings of the Session.[170]

Questions of location and of shared company during contract-making and solemnization were important to the reformers. In a case which appeared before the St Andrews Kirk Session in 1566, William Cristeson and Isobel Lyndsay were summoned before the meeting to explain their separation. Isobel claimed that she was not legally married to William, and so the Session investigated the legality of their pre-Reformation union. William claimed that a "solempt contract and promys of marriage" was made between them and their "hands conjunit be Schyr James Mortoun, in Cowpar, in Robert Mackeis hows, twelve year bypast".[171] This was done among their kin, whose credibility as witnesses was eventually questioned, asking them to describe the wedding in detail, if it:

> was mayd in hall or chalmer, befoyr nuyn or efter nuyn, at quhat
>
> howris quhai was minister tharat, quhidder ane Papist preist, or ane
>
> other laufull minister, and gyf marriage was mayd in Inglis or in Latyn,

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[169] Ibid.
[170] Ibid., 18.
[171] Fleming, *Register of the St Andrews Kirk Session*, 286.

quhat the priest or minister said . . . quhar sat the allegit bryd and

brydgrum, and the Papis preist or minister for the tym[172]

These questions were left unanswered in the witness testimony that was

recorded, and ultimately their marriage was determined to be valid based on the

testimony of friends, family, and neighbours that they lived as man and wife and had

been seen naked together in bed on more than one occasion. [173] Although

unanswered, the questions raised about the wedding ceremony itself shed light on

the weddings of common folk during the Reformation. Protestant weddings that

took place before 1559 were in a vulnerable position.

The best documented weddings were those of royalty, which could be

extravagant, involving months of planning, and multiple days' worth of events

celebrating the nuptials. When Mary of Guelders married James II, there was a royal

procession, a ceremony in Holyrood Abbey, and a luxurious banquet.[174] In the case

of James IV and Margaret Tudor, the festivities included a reception, and a

tournament among other extravagances.[175] These wedding celebrations had more at

stake than a marriage, and important political messages were part of the festivities

and processions.[176]The marriages of Scotland's monarchs, however, reflected the

general population in many ways. Just as there were celebrated nuptials, so too

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[172] Ibid., 288.
[173] Ibid., 293.
[174] Christine McGladdery, *James II* (Edinburgh: John Donald, 1990), 47.
[175] Louise Olga Fradenburg, *City, Marriage, Tournament: Arts of Rule in Late Medieval Scotland* (Madison: University of Wisconsin Press, 1991), 95.
[176] Giovanna Guidicini, "Scottishness on Stage: Performing Scotland's National Identity During Triumphal Entries in the Sixteenth and Early Seventeenth Centuries," in *The Shaping of Scottish Identities: Family, Nation, and the Worlds Beyond*, eds. Jodi A. Campbell, Elizabeth Ewan, and Heather Parker (Guelph: Guelph Series in Scottish Studies, 2011), 113-28.

were there marriages under dubious circumstances. The wedding of Mary Queen of Scots to Lord Bothwell was the clearest instance of this.

The festivity of royal weddings was mirrored among some of the nobility, many of whose families were intermarried with the royal family. Weddings such as that of George, 6th earl of Huntly and Henrietta Stewart, sister of the duke of Lennox, in 1588 were times for celebration. King James VI did his best to ensure this when he wrote to the laird of Abercairny requesting food for the feast: "We haif thairof ane occasioun to desyre you richt affectuoslie to help ws with sic vennysoun, wylt foulis, fed caponis and sic utheris".[177] James declared that such a wedding created, "the want of sindrie things quhilk can not weill be had in ony commoun marcat", so he had to source them personally from Abercairny. In her letter to her brother in 1586, Annas Campbell thanked him for his assistance during the marriage negotiations, and especially for the clothing and banquet. He took on "greit chargis and expenssis upone my claithing and bancat the tyme of my marriage".[178]

It was common to have weddings and celebrations at all levels of society and the festivities could get out of hand with too many attendees. The 1605 Kirk Session of Aberdeen declared that "young men and young wemen of this citie [were] dancing throcht the towne togidder this last vlk, the tyme of the brydellis; the young men being cled in wemennis apparel, quhilk is accompted abhominatioun be the law of God".[179] Kirk Sessions and Prebyteries continued to try to manage these festivities throughout the seventeenth century, limiting their size and banning certain

[177] NRS, GD24/5/57/15. [See full transcription in Appendix]
[178] NRS, GD112/1/271. [See full transcription in Appendix]
[179] Stuart, *Selections from the Records of the Kirk Session, Presbytery, and Synod of Aberdeen*, 47.

practices outright.[180] The Church saw postnuptial celebrations as a dangerous conflagration of sex, gluttony, and violence.[181]

Conclusion

Documents recording the marriages and marital difficulties faced by the upper strata of society clearly show that marriage in Scotland was a multi-faceted institution, which was controlled by many parts of society. The medieval Church in Scotland and in Rome claimed jurisdiction over marriage and was able to use canon law to define which marriages were valid and which were unlawful or sinful. This gave them the power to control dynasties and political fortunes.

Scottish courts tried to codify custom in order to influence the way that people used marriage to transfer land and money. They offered protection to married women and widows for some of their lands and they limited the rights of people to dispose of lands. These protections were useful but were also bypassed by the shrewd use of marriage contracts, which laid out specific terms for holding land and money being transferred because of a marriage. Those who entered contracts acknowledged protections, but some rules were ignored outright.

Marriages were also organised and controlled by kin, who ranged from nuclear families to wide kinship networks. In the case of major clans, these kinship networks were invaluable to maintaining and developing their power throughout

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[180] For discussions of the Kirk's attitude towards marriage in the early modern period, see both Leah Leneman and Rosalind Mitchison, "Girls in Trouble: The Social and Geographical Setting of Illegitimacy in Early Modern Scotland," *Journal of Social History* (2001): 40-71.; and Leah Leneman and Rosalind Mitchison, *Sin in the City: Sexuality and Social Control in Urban Scotland, 1160-1780*, 19-39.

[181] Janay Nugent and Megan Clark, "A Loaded Plate: Food Symbolism and the Early Modern Scottish Household," *Journal of Scottish Historical Studies* 30, no. 1 (2010): 49.

Scotland. While love, lust, and affection certainly did exist in many marriages, they were not normally the primary reason for marrying among the aristocracy, and when they were the motivations for marriage, they were normally accompanied by equally robust marriage negotiations.

These three influences were inextricably linked in the formation of marriage. Families had the ability to manipulate common and canon law through the use of marriage contracts, dispensations, and annulments. The marriage of Alexander, earl of Mar, and Maria van Horne shows both attention to every step of marriage completion and simultaneous disregard for the institution of marriage, as the Church would like them to see it. These attitudes were reflected throughout Scotland. Although people sometimes met with resistance, they were usually able to alter the purpose of documents to suit their own needs. At the same time, the Church and secular courts were able to maintain control over the institution by requiring couples and their families to jump through certain hoops.

The Reformation changed this balance by bringing the Church laws, which had been widespread in Europe, within the fold of Scottish identity, allowing the Kirk to shape Protestant marriage within its own image. This process, however, was slow to change certain aspects of marriage. Large portions of the law and of the practice of marriage was maintained through the early Reformation, and many of the laws governing marriages took decades or even centuries before they were modified. Eventually, both secular and ecclesiastical bodies claimed shared jurisdiction over marriage, a situation that has provoked a great deal of conflict in the years since. The proliferation of marriage contract evidence alongside letters

and church records from post-Reformation Scotland means that there is much more evidence about the nuances of marriage negotiation and solemnization for this period.

Chapter 5: The Campbells of Glenorchy: Mixed Marriage Strategies

While an overarching study of marriage in Scotland can reveal much about what happened during the formation of marriage, case studies of particular groups suggest how marriage patterns and strategies emerged. The mid-sixteenth-century Campbells of Glenorchy offer an interesting case study for a number of reasons. The family participated in diplomacy within Scotland and were prolific letter-writers. They left particularly rich sources recording aspects of their political and social endeavours. Where some members of the nobility appear to have made decisions about marriage in a primarily political manner,[1] the families of lairds had to consider different attributes in their marriage patterns. Although politics were still crucial to their decision making, advantageous marriages with the children of peers ensured that the Campbells of Glenorchy remained within noble circles.

The reality was that Campbell power came from extensive lands and from relationships with earldoms such as Argyll, Atholl, and Menteith.[2] A patriarch such as Colin Campbell of Glenorchy had to conserve and cultivate these relationships to sustain his power while maintaining a relatively good relationship with the crown and his neighbours. Meanwhile, the onset of the Reformation and the resulting changes in marriage law directly affected the Campbell clan. All of these factors combined to produce a marriage strategy that strengthened the kin networks, influence, and wealth of the Campbells of Glenorchy. Throughout the Reformation,

[1] Brown, *Noble Society,* 129.
[2] Dawson, *Campbell Letters*, 39.

the Campbells had consistent and advantageous approaches to the selection of spouses and to the disbursement of tocher and terce.

The Campbells of Glenorchy left a large collection of letters, which, after being mis-catalogued as products of the seventeenth century, were uncovered, re-catalogued, and edited in the late 1980s and early 1990s. Jane Dawson's extensive editorial comments about the family dynamics of the Campbells of Glenorchy would not have been possible without such a rich collection of documents, and the type of nuanced analysis that she made is different from that of other family histories, where sources such as charters limit the types of conclusions historians are able to make. This unique collection is ideal for a case study, because of the variety of sources that are available to the historian. Although Dawson discussed the marriage strategy and decisions concerning some of the Glenorchy marriages in her book *Campbell Letters*, the marriages in which the lairds and ladies of Glenorchy were involved were more extensive that those of their immediate family, and so it is possible to do more investigation concerning these connections.

The World of the Campbells of Glenorchy

The Campbells of Glenorchy, a cadet branch of Clan Campbell, were associated with Glen Orchy, Argyll. They also, however, spent a significant amount of time in Balloch Castle, the precursor to Taymouth Castle, near Kenmore, in various places in Argyll and Breadalbane, and at their house in Perth.[3] This family branched off from the main Clan Campbell line in the late fifteenth century and maintained good relationships with its kin. The Campbells of Glenorchy were part of a tight-knit

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[3] Ibid., 23.

group of Campbell cadet families that served their lord, the earl of Argyll. In the mid-sixteenth century, the family consisted of the laird Grey Colin (1499-1583), his second wife Katherine Ruthven (d. 1584) and their eight children, including the heir Duncan (1551-1631) and a daughter Annas (d. 1589), both of whom appear extensively in the records. Colin's daughters from his first marriage, Beatrix and Margaret, remained in the household until they were married in 1559 and 1570 respectively.[4]

Colin inherited his lordship in 1550, although he had been actively running the estates for a decade during his older brother's illness.[5] When Colin died in 1583, Duncan took over the operation of the family and estates and continued to receive extensive advice from his mother. Katherine's correspondence and signatures on charters and marriage contracts show that she was central to the management of the Glenorchy family and retained influence throughout her life.

These generations of the Campbell family had different allegiances at different points in the conflicts of the Reformation. The 5th and 6th Campbell earls of Argyll were leading figures in the Reformation[6] and had a fair amount of influence over the Campbells of Glenorchy. Further influencing the Glenorchy family, Katherine's sisters married into other reforming families and the Ruthvens had shown Protestant leanings as early as the 1540s.[7] Katherine's parents were William, second Lord Ruthven, and Jane Haliburton. Her brother, Patrick, Lord Ruthven, was provost of Perth, and an early supporter of the reformers. Protestant affiliations

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[4] Ibid., 15.
[5] Ibid.
[6] Dawson, *The Politics of Religion*, 24.
[7] For a discussion of Katherine's upbringing, see Dawson, *Campbell Letters*, 24.

could develop through marital kinship as well as through kin groups with shared surnames, but the extent of alliances and the nature of the religious schism often forced families to opposing sides.[8]

These challenges contributed to the mixed allegiances of the 7th laird to both the Protestant Argyll and the neutral Atholl.[9] Further confusing matters, Argyll had initially joined the Party of Revolution in 1559-60, but split from regent Moray over his regency, and in 1568 became the leader of his friend, Queen Mary's, cause.[10] He was a key member of the Queen's Party, a group that supported the Catholic Mary Queen of Scots until 1571 when he switched his allegiance to the Protestant king.[11] This political division through Scottish society posed a challenge, too, to those engaged in the process of negotiations for betrothals, because they were forced to tread very carefully to avoid upsetting kinsmen of potential spouses.

While the Campbells of Ardkinglass were closest to the earls of Argyll, Grey Colin maintained an interest in both the Campbell lands in Argyll and the affairs of the earl.[12] They regularly corresponded and consulted with each other and this relationship continued across generations. In 1593, when the new, underage 7th earl of Argyll entered a marriage contract, Colin's son and heir, Duncan, was a witness to the agreement.[13] The cooperation between the branches of Clan Campbell was long-established, and experiences of the earls of Argyll directly affected the marriage practices of the Campbells of Glenorchy.

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[8] Ibid., 49. For examples of kinship links see, Donaldson, *All the Queen's Men: Power and Politics in Mary Stewart's Scotland*, 40-1.
[9] Dawson, *Campbell Letters*, 50.
[10] Donaldson, *All the Queen's Men: Power and Politics in Mary Stewart's Scotland*, 164.
[11] Dawson, *The Politics of Religion*, 37.
[12] Dawson, *The Politics of Religion*, 17.
[13] NRS, GD150/2997.

One of the seminal moments of the Reformation, and an indicator of its effects on family life, directly involved the 5th earl of Argyll, who was betrothed as a child to Jane Stewart, an illegitimate daughter of the James V, and later married this royal bride. Their marriage disintegrated dramatically and publicly, and the relationship's collapse influenced both the legal context of unions and the social understanding of marriage itself in post-Reformation Scotland. Marriage arrangements between young people were not unusual, and Archibald Campbell, the 5th earl of Argyll's marriage had been arranged for him in 1538, while he was still an infant.[14] No doubt the Campbell clan had been eager to solidify the details of such as advantageous marriage as this. This allegiance to the royal family wavered briefly, and Archibald was temporarily betrothed to Margaret, daughter of the earl of Huntly, but that marriage never took place, and Archibald instead married Jane Stewart after all, in 1554.[15] Jane provided Argyll with a link to both the courts of Mary of Guise and Mary, Queen of Scots.

The marriage resulted in a clash of personalities and eventually soured, with neither party agreeing to relax their positions; Argyll refused a separation that would deny him an heir, and Jane initially refused to return to her husband.[16] The resulting dispute included such dramatic actions as flight, imprisonment, and a ground-breaking court case.[17] The couple did not, however, receive an immediate, official separation, as others had done before them, and, instead, their personal friendships with Mary, Queen of Scots, and Protestant reformer John Knox led that

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[14] Dawson, *The Politics of Religion*, 19.
[15] Ibid.
[16] See Jane Stewart's comments on the marriage in Dawson, *Campbell Letters*, no. 111.
[17] Dawson, *The Politics of Religion*, 27.

improbable duo to act as the marriage counsellors for the couple.[18] The foursome

arranged for a reconciliation, which broke down over the following four years and

led to the seemingly inevitable plea for divorce.[19]

    The difficulties Argyll faced included a wife who insisted on physical

separation but refused outright divorce, an earldom in need of an heir, and a system

of marital law that relied on courts that had become defunct since the

Reformation.[20] The right of an adulterer to remarry was also under debate, and the

existence of this obstacle created the possible consequences for Argyll's ability to

produce a legitimate heir.[21] Although church courts, and the Kirk Session of St

Andrews, had tried to step into the role of regulating divorce, the Kirk was hesitant

to allow any but the highest officials to hold such power.[22] Confusion reigned in

determining jurisdiction of the courts and by 1564 both the civil and ecclesiastical

courts claimed the right to regulate marriage.[23] In the end, it was Argyll's actions in

Parliament that caused lawmakers to pass an Act that resolved the case and allowed

for divorce on the grounds of desertion so that the commissary court could provide

the couple with a divorce, allowing Argyll to remarry.[24] Jane continued to fight this

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[18] Ibid., 28.

[19] Dawson, "The Noble and the Bastard: The Earl of Argyll and the Law of Divorce in Reformation Scotland," 147.

[20] Ibid., 148.

[21] David Baird Smith, "The Reformers and Divorce: A Study on Consistorial Jurisdiction," *Scottish Historical Review* 8 (1912): 25.

[22] Dawson, "The Noble and the Bastard: The Earl of Argyll and the Law of Divorce in Reformation Scotland," 148. An example of an early Protestant divorce through the Kirk Session and dealing with adultery can be found in Fleming, *Register of the St Andrews Kirk Session*, 18-27.

[23] Dawson, "The Noble and the Bastard: The Earl of Argyll and the Law of Divorce in Reformation Scotland," 149.

[24] Ibid., 164.

after the death of her erstwhile husband, and was eventually rewarded with her title and terce from the marriage.[25]

This new Protestant system meant that only the party not at fault in a divorce could remarry.[26] This posed a serious problem for the Scottish nobility who had an established practice of men keeping mistresses and producing illegitimate children. These same men, such as Argyll, also needed to produce a *legitimate* heir, and so it was crucial that they have a fecund and willing wife in addition to any mistresses. In a case such as this, when the marriage disintegrated, Scotland's nobles needed a robust system of divorce to replace the Catholic annulments they had come to rely upon to dissolve their marriages. The new Kirk-issued divorces rested primarily on accusations of adultery of either party, which put promiscuous men like the earl of Argyll at risk of receiving a separation from his wife with no permission to remarry.[27] In the end, it took an act of Parliament to redress this issue, and lawmakers were initially only partly successful.

This chaos set the scene for the marriage negotiations of the children of Colin Campbell of Glenorchy and Katherine Ruthven. Both of these parents knew of the turmoil of the Argyll marriage and of what Colin had described as the "grate burden" this was to the earl.[28] Consultation with the earl of Argyll was absolutely crucial to the negotiation of a marriage, because the earl maintained a tight watch over his kinsmen and the various Campbell territories.[29] The Campbell council was called to

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[25] Ibid., 167.
[26] Ibid., 163.
[27] Ibid.
[28] Dawson, *Campbell Letters*, no. 110. Atholl to Glenorchy, 28 June 1570.
[29] Dawson, *The Politics of Religion*, 46.

deal with a wide range of affairs, including keeping the cadet branches of the clan in check, and in Glenorchy's time, Argyll delegated the running of the earldom to his cadet lairds.[30] The earls of Argyll had always kept close control over the marriages of their tenants and cadet branches, and so Argyll's attitudes towards kinship and marriage affected many of the inhabitants of Argyll.[31]

The prominence of Argyll's marriage and divorce shows that the Campbells remained very much at the leading edge of contemporary marriage strategies. The marriage practices of the Campbell family differed somewhat from those of their lowland peers in their selection of partners – the Campbell endogamy was more prevalent than in many other families – and in their use of lands – the clan was able to maintain control over many of the lands and inhabitants of those lands that they received through marriage. Nevertheless, the Campbell earl was partly responsible for defining some of the marriage law that would be applied across Scotland.

These letters make it clear that Katherine Ruthven, the matriarch of the Campbells of Glenorchy, was personally responsible for gathering intelligence on potential marriage partners for her children through her letter writing.[32] Colin, too, was involved in the process, but it is clear in certain instances that Katherine took the lead and Colin merely helped to negotiate and seal the contracts when the time came.[33] Katherine gathered information in advance of marriage arrangements to ensure that the final decisions concerning spouses were sound. She was interested

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[30] Ibid., 64-8.; and Dawson, *Campbell Letters*, 42.
[31] Steve Boardman, "The Campbells and Charter Lordship," in *The Exercise of Power in Medieval Scotland, C. 1200-1500*, ed. Steve Boardman and Alasdair Ross (Dublin: Four Courts Press, 2003), 115.
[32] Dawson, *Campbell Letters*, 29.
[33] Ibid., 34.

in the availability and temperaments of potential matches for her children, and used networks of relatives and friends to achieve this. In response to a request from his friend Katherine that his wife inquire about her sister's stepdaughter, William Maitland of Lethington informed her, "as towart the gentill woman quhilk ye persavit cume to spy and gett intellegence of I haif by my wyff [. . .] and sundry uther meanes speirrit and inquiret at divers [. . .] upon my honour and credit".[34] Because of her prolific correspondence, it was common for Katherine to receive letters discussing business. Even letters written directly to her husband acknowledged her role in the arrangements.

The Campbells employed a strategy of arranging endogamous marriages for their younger children and both endogamous and exogamous, advantageous marriages for their eldest children, a similar pattern to Clan Mackintosh.[35] This allowed the family to maintain the concentration of kinship ties within their own kin group while building up connections with powerful Scots across the realm.

Early Campbell Marriages

Members of Clan Campbell had been engaged in a strategy of marriages within the forbidden degrees of consanguinity and affinity since at least the mid-fourteenth century. These early marriages, however, were mostly the result of multiple marriages into another kin group, which the family used to reinforce alliances. For instance, two of the children of Robert, Duke of Albany, married two of the

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[34] Ibid., no. 129.
[35] Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609*, 232.

grandchildren of Gillespic Campbell of Lochawe, despite links of affinity.[36] These marriages were useful because they allowed one kin group to build their strength through advantageous marriages into another kin group. These unions were different in character from the later consanguineous marriages *within* the Campbell surname.

The first prominent Campbell-Campbell marriage was responsible for strengthening the holdings of the Campbells such that their lordship was eventually formalised by the crown. Mariota Campbell, heiress to Ardscotnish and Glen Orchy, married Colin Campbell in 1366.[37] Unusually for the Campbells at the time, their marriage was dispensed because of their reputed relationship in the fourth degree and because of the value of the marriage and lands to the families involved.[38]

Their eldest child, Duncan, was married to the daughter of Robert Stewart, 1st duke of Albany, and became the first Lord Campbell of Lochawe.[39] Duncan's younger son, Colin of Glenorchy, was the progenitor of the Campbells of Glenorchy and first married Marion Stewart, the great-granddaughter of the first Albany.[40] The couple obtained a belated dispensation for four separate bonds of consanguinity and two additional bonds of affinity in 1439, after living together "in fornication".[41] As a result of the legitimated marriage, the bride's grandmother, Isabella, duchess of Albany, granted the groom substantial lands.[42] Marriages into various branches of

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[36] See the early Campbell genealogical tables in Boardman, *The Campbells, 1250-1513*, xv-xix.
[37] Ibid., 104.
[38] Steve Boardman has supposed that the dispensation may be incorrect and the couple might, instead, have been first cousins. Ibid., xvi.
[39] Ibid., 107.
[40] Ibid., 145.
[41] NRS, GD112/25/1.
[42] NRS, GD112/25/2.

the Stewart family were very common among the Glenorchy Campbells. Marion died young and Colin later married Jonet Borthwick, although the marriage did not last long because Colin had a previous relationship with Alice Lindsay, a relative of Jonet, and an annulment was granted.[43] Arrangements for Colin's next marriage began before his annulment was finalised, and he soon married Jonet Stewart of Lorne.[44] The couple did not obtain a dispensation until five years after the first marriage negotiations had taken place.[45]

The fifteenth-century Campbells had a reputation for paying relatively large tochers to secure good husbands for their daughters.[46] It is clear from comparative analysis of various families that the Campbells' tochers were not significantly higher or lower than those of any other family.[47] This is significant because the Campbells of Glenorchy were a family who were not yet members of the peerage, and yet they were able to provide tochers that were similar to those of other lairds and nobility.

Rather than allow their younger children to enter a disadvantageous marriage, the Campbell families arranged endogamous marriages or special inheritance provisions to prevent loss of their main holdings. Clan Campbell was particularly effective at increasing and retaining its lands by maintaining strict male inheritance of lands and titles within the clan and marrying their sons to heiresses whose lands could either be taken over by their husbands or whose kin could be brought into the Campbell fold as clients.[48]

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[43] NRS, GD112/25/3.
[44] NRS, GD112/75/1.
[45] NRS, GD112/1/8.
[46] Boardman, *The Campbells, 1250-1513*, 291.
[47] See p. 177 for a table comparing the values of tochers across families.
[48] Boardman, "The Campbells and Charter Lordship," 99-100.

Unlike neighbouring families such as the MacDonalds and MacLeans, who had been applying for dispensations consistently since the early fourteenth century, the Campbells did not seem to put much emphasis on applying for dispensations for impediments to marriage until the sixteenth century, because they were unnecessary.[49] The occasional early dispensation was always for a politically important marriage that was valuable enough to protect through canon law. Duncan's three sons succeeded him in turn, and the family's first extant marriage contract was not drawn up until 1558, for the daughter of the late lord John, the second of the three brothers to head the family. Colin Campbell gained early experience negotiating marriages for his niece and the children from his first marriage. Christian Campbell, daughter of the late laird John, was betrothed to James Colqhoun in 1558 and their contract was fairly typical, preserving both their rights to land and income in marriage. John was to infeft his betrothed with liferent in ten pounds worth of land of Garscube "with corn, land and waulk mills thereof", although the lands would revert to John's brother after Christian's death.[50] As the new laird, Colin consented to the contract. Similarly, Colin stepped up in his new role to help his niece, Marion Campbell, relict of Alexander Home, in her pursuit of a new marriage by assisting with the arrangements in her marriage contract.[51] Colin took a prominent role for his older children and his niece, because these women were his personal responsibility. Later, his second wife, Katherine would step into this role, as mother to his younger children.

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[49] For example, see McGurk, *Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419*, 103.
[50] NRS, GD112/25/16.
[51] NRS, GD112/25/26.

The Marriages of Colin and Katherine's Children

Colin negotiated the arrangements for the marriage of his eldest child, Beatrix, to John Campbell of Lawers.[52] Beatrix was the daughter of Colin's first wife, Margaret Stewart, granddaughter of another 1st duke of Albany, Alexander Stewart. There is no indication that Colin's second wife, Katherine, was involved in the marriage arrangements for these daughters. This marriage was technically incestuous, in the fourth degree of consanguinity, and the couple received a dispensation to proceed with the wedding.[53] This was typical of Scottish marriage arrangements and shows the unmistakable reality that both the laity and the Vatican participated equally in allowing Scots to engage in consanguineous marriages. The Church allowed incestuous unions so long as the couple applied for a dispensation. Special circumstances, although useful in a supplication to the pope, appear to not have been a requirement, and the Campbells profited from that approach.

Colin obtained further experience in the negotiation of pre-nuptial contracts when his second daughter, Margaret, entered her betrothal to Allan McDougall of Ragaray in 1570.[54] The union was treated formally, with the marriage contract stipulating, like most contracts of the time, that the wedding take place "in face of haly kirk" and spelling out Margaret's terce as well as provisions for their potential children in detail.[55] If they had children, they would receive one thousand pounds to be split equally among them.

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[52] NRS, GD112/25/22.
[53] NRS, GD112/25/23.
[54] Dawson, *Campbell Letters*, 15.
[55] NRS, GD112/2/116/5.

Despite his experience with the marriages of these three women, Colin of Glenorchy only played a minor role in the marriage negotiations of his children with his second wife. These arrangements are perhaps the most intriguing because of the extant correspondence between the parents and other parties involved in the planning of the unions. The first marriage arrangements that Katherine initiated concerned the union of her eldest son, Duncan, which was a typical priority of lairdly and noble families. Because of delays in finding a suitable spouse for Duncan, Katherine and Colin completed the negotiation for the marriage of their daughter, Annas, first. Duncan would, however, be the first to marry, as Annas was still a child at the time her contract was signed. The letters remaining concern the negotiations of both of these marriages and offer a fascinating window into the process of arranging a marriage.

Duncan's marriage to Jane Stewart, daughter of the earl of Atholl, a neighbouring, powerful magnate, was very advantageous to the Campbells of Glenorchy but was difficult for his parents to obtain. His parents approached William Maitland of Lethington, secretary to the queen and a friend of Katherine Ruthven, and Atholl at least five years before the marriage took place; Atholl declined to proceed with the marriage because it was not advantageous to him at the time. [56] Duncan's first marriage contract was with Margaret Douglas of Lochleven in 1572, although the marriage never took place, and included the consent of Katherine, Duncan's mother, for the gift of her lands.[57] Instead, the
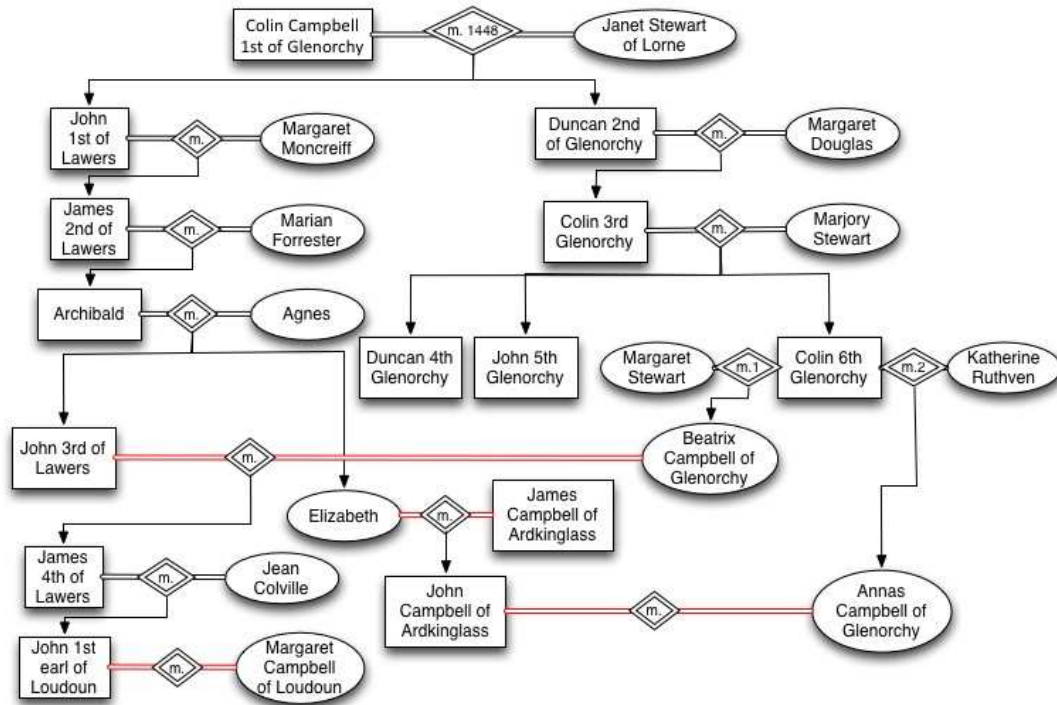
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[56] Dawson, *Campbell Letters*, 32.
[57] NRS, GD150/454 and ibid., no. 137.

Campbell Family Trees

Grey Colin and his progeny
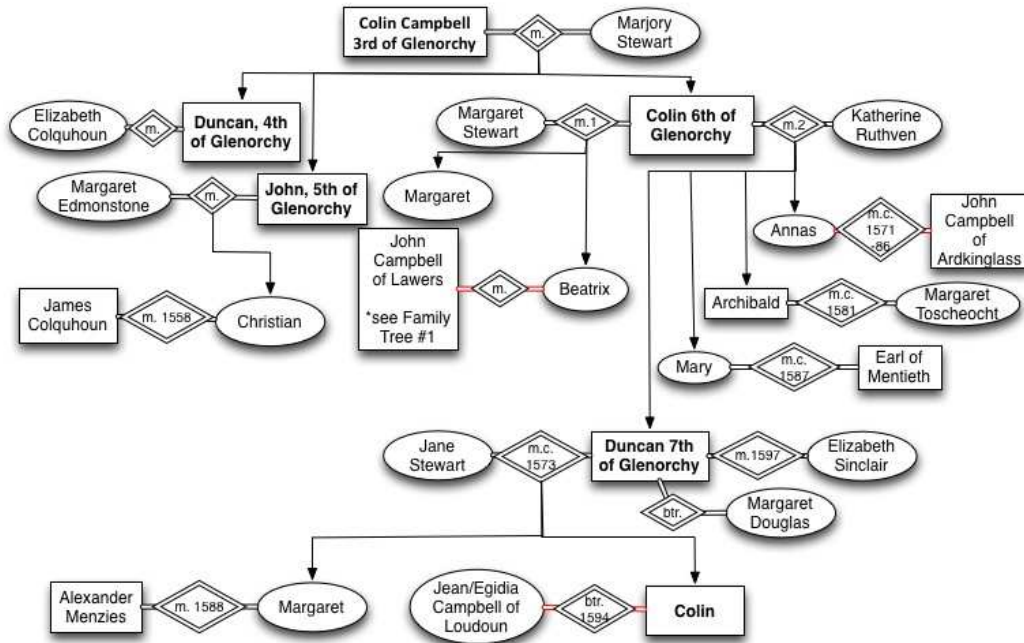
The Campbells of Glenorchy

*Marriages in **red** are endogamous.

Campbell of Glenorchy Marriage Contracts & Related Documents

Reference	Bride	Groom	Money Tocher	Year
NRS, GD112/25/22-3	Beatrix Campbell	John Campbell of Lawers	?	1559
NRAS, 2177/ 447	Jane Stewart	Archibald Campbell	0	1553
NRS, GD112/25/16	Christian Campbell	James Culquhoune	0	1558
NRS, GD112/25/24	Elizabeth Campbell	Charles Campbell	900	1561
NRS, GD112/25/25	Elizabeth Campbell	James Campbell of Ardkinglass	0	1564
NRS, GD112/25/26	Marion Campbell	Donald Campbell	0	1564
NRS, GD112/2/116/4	Margaret Campbell	Allan McDougall of Ragaray	200	1569
NRS, GD112/25/31	Annas Campbell	John Campbell of Ardkinglass	2 000	1571
NRS, GD150/454	Margaret Douglas	Duncan Campbell of Glenorchy	4 000	1572
NRS, GD112/25/34	Jane Stewart	Duncan Campbell	3 000	1573
NRS, GD112/25/40	Margaret Toscheocht	Archibald Campbell	800	1581
NRS, GD112/25/41	Annas Campbell	John Campbell of Ardkinglass	2 000	1583
NRS, GD16/44/10	Agnes Campbell	Robert Porter	500	1585
NRS, GD112/25/45	Annas Campbell	John Campbell of Ardkinglass	4 000	1586
NRS, GD112/2/141/1	Margaret Campbell	Alexander Menzies	0	1588
NRS, GD3/2/12/1	Jean Campbell	Robert master of Eglinton	6 000	1589
NRS, GD112/1/322	Jean Campbell	Colin Campbell	10 000	1594
NRS, GD109/1307	Jean Campbell	Sir John Hammiltoun of Letrick	10 000	1596
NRS, GD112/25/75	Elizabeth Sinclair	Sir Duncan Campbell of Glenorchy	9 500	1597
NRS, GD220/6/2003	Jean Campbell	Ludovic, Duke of Lennox	n/a	1598

contract was abandoned for the much more profitable marriage with Jane Stewart, daughter of the powerful earl of Atholl, one year later. Katherine and Colin had courted the earl for a number of years and so when he finally agreed to a marriage, they quickly reversed their agreement with the Douglases. The success came about partly because of Katherine's friend, Maitland's, interventions with Atholl and partly

because of a spat between Colin and Atholl's men, which both were keen to patch up quickly.[58]

The Breadalbane letters are invaluable in revealing the systems of negotiation used by noble families in the sixteenth century. Katherine employed a strategy of actively seeking out information on potential matches through her friend, Maitland. Maitland had better connections at court and was particularly well placed to intervene with the earl of Atholl to "satisfie his wrath".[59] The earl's wife was the sister of Maitland's wife and she was happy to update her sister on the character of her step-daughter, Jane. [60]

Meanwhile the conflict between Argyll and Jane Stewart had reached its peak as Katherine was investigating leads for potential matches for her eldest son, Duncan and her daughter Annas. Katherine's particular care that Maitland provide her with information about the potential bride's personality shows how Katherine was trying to ensure a good match between Duncan and this woman "of good behavingis".[61] In this way, Katherine avoided the pitfalls of the Campbell chief's unsuitable marriage by arranging a union that not only was advantageous politically and socially but would also result in an amicable union.

The Campbell-Stewart contract was fairly typical in a number of ways, but the Campbells cleverly avoided the possibility of a potentially crippling situation by adding a special clause concerning Jane's terce. If both father and son died, leaving widows, the heir to the lands could have significantly diminished income due to the

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[58] Dawson, *Campbell Letters*, pp. 32, 129, 131.
[59] Ibid., no. 129.
[60] Ibid.
[61] Ibid.

terce lands occupied by each woman. This is a situation that lawyer James Balfour wrote about in his *Practicks.*[62] In this contract, a clause stipulated in particular which terce lands Jane's mother-in-law, Katherine, would retain as her terce lands after Colin died.[63] During the year following their marriage, Duncan received a charter for lands granted in the pre-nuptial contract, and Jane received lands "in her pure virginitie".[64]

Both Colin and Katherine wrote letters to the earl of Argyll and John Carswell, who was both the bishop of the Isles and brother-in-law of the groom, asking that a marriage between the two houses be considered and outlining conditions for Annas's marriage. This proposition was well received and Argyll and Carswell wrote back that it would contribute to the "honorable service of our house and amite and luif betuix the twa houses of Glenurquhay and Ardkinglass by way of allyly".[65] This letter made it clear that the marriage was first intended to be a union of the families, not a union of the bride and groom. It also emphasised the role of marriage in forming alliances. In this case, the marriage was to re-establish close connections between the two branches of the Campbell kindred and this was an important strategy for the Campbells to maintain power in western Scotland. In particular, consanguinity was not an impediment to the marriage but an advantage.

It was ten months after these letters were written that a marriage contract was drawn up for Annas Campbell of Glenorchy and John Campbell of Ardkinglass, with the express consent of Annas's underage brother Duncan (who was about

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[62] Balfour, *Practicks*, 110.
[63] NRS, GD112/25/34.
[64] NRS, GD112/1/851 and GD112/76/33.
[65] Dawson, *Campbell Letters*, no. 170.

twenty years old),[66] promising a 2000-mark dowry for Annas. Both Colin and Katherine had arranged this union before Colin's death, and afterwards Duncan took the place of Colin, signing the documents along with his mother. The contract said that if either of the parties died, their nearest siblings were promised in their stead.[67] Annas was infeft with her lands in liferent from her future father-in-law immediately, despite the fifteen years it would take for the marriage to be completed.[68] Annas and John were both young at the time. Dawson has argued that John must have been five years old at the most during the first negotiations, and that Annas might have been older.[69]

The actual marriage did not take place immediately, since the parties were underage, and it was not until 1583, after the death of Grey Colin, when the contract was confirmed by Duncan Campbell, Annas's brother, and Katherine Ruthven, her mother.[70] Katherine still maintained enough power in the family at this time to be a party in the contract as well as a signatory, ensuring the marriage would continue. The new contract confirmed the same terms as the old contract and listed the terce lands that would be provided to Annas in her widowhood. This confirmation indicated that Annas was no longer a minor and the families wanted to ensure the arrangements were still in place for the marriage to proceed.

Annas's and John's marriage was further delayed, and another confirmation of their contract was arranged by Duncan, since Katherine Ruthven had died two

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[66] Ibid., 24.
[67] NRS, GD112/25/31.
[68] NRS, GD112/25/29.
[69] Dawson, *Campbell Letters*, 30.
[70] NRS, GD112/25/41.

years earlier, in March 1586,[71] as had many of the same witnesses at her 1583 contract.[72] At this point, it had been fifteen years since the initial contract. This re-confirmation took place because the wedding was imminent. It occurred within the following month, before Annas wrote to her brother in April thanking him for the role he played in the wedding.[73]

Duncan took over where his father and mother had left off. He confirmed Annas's antenuptial contract, and when the time came for her marriage he provided Annas with 4000 merks in tocher. He provided this money out of a sense of obligation to his sister and not because he was required to do so legally. In 1586 Annas wrote to her brother, who has "bornt the burden of me and his in all things not as a brodir but as a loving fader".[74] Annas offered in return for this kindness to sponsor his own daughters in marriage to the sum that Duncan had bestowed upon her.

The next extant marriage contract is for Archibald Campbell, the fourth son of Grey Colin, to Margaret Toscheocht on 22 August 1581.[75] Archibald's eldest brother, Duncan, was heavily involved in these arrangements, and is not only a signatory to the contract but also named as one of the parties to provide a payment. This local match held immediate benefit for Colin, providing the Campbell family with more lands in Perthshire, and was followed the next day by a bond of manrent

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[71] Dawson, *Campbell Letters*, 264.
[72] NRS, GD112/25/45.
[73] NRS, GD112/1/271. [see full transcription in Appendix]
[74] NRS, GD112/1/271. [see full transcription in Appendix]
[75] NRS, GD112/25/40.

from Andrew Toscheocht of Monzie to Colin Campbell and his son Duncan.[76] This union resulted in a new cadet branch of the family, the Campbells of Monzie.[77]

Duncan's involvement in marriages only grew and in 1587 he arranged for the very advantageous, exogamous marriage of his sister Mary to the earl of Menteith, a Perthshire noble.[78] This marriage contradicts the oft-mentioned trend of daughters marrying down the social ladder and sons marrying up.[79] This trend does appear elsewhere in Scotland, and has been noted in France as well but relies on the idea that only the eldest son in a family would marry, whereas all of the daughters were encouraged to marry.[80] In the case of Scottish marriages, most families were like the Campbells of Glenorchy and married off at least some of their younger children, significantly mitigating the uneven distribution of marriage partners.

In 1588, Duncan arranged for the marriage of his daughter, Margaret, to Alexander Menzies, who had been a ward of the earl of Huntly. Duncan simultaneously obtained Alexander's wardship and marriage from Huntly for a hefty payment of 7150 merks.[81] The earl of Huntly also agreed to this and also caused the curators of Alexander to sign his contract of marriage with Duncan's daughter.[82] This was followed by the 1594 contract of Duncan's son Colin to Jean (Juliana) Campbell of Loudoun, an endogamous match that included a generous tocher of 10 000 merks and included a unique stipulation providing for the potential

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[76] William Bowie and Cosmo Innes, eds., *The Black Book of Taymouth: With Other Papers from the Breadalbane Charter Room* (Edinburgh: T. Constable, printer to Her Majesty, 1855), 226, no. 75.
[77] See, University of Guelph Archival and Special Collections, Guelph, XS MS A005.
[78] NRS, GD220/1/C/3/4/3.
[79] Dawson, *Campbell Letters*, 31.
[80] Duby, *Love and Marriage in the Middle Ages*, 14-15.
[81] NRS, GD112/2/141/1.
[82] NRS, GD112/25/52.

daughters born from such a match.[83] If Colin were to die with no male heirs, then Duncan was bound to pay the daughters money, presumably to provide for their tochers. The amount was changeable; the first daughter would receive 6000 merks, the second 5000, and the third 4000 merks. However, if there were more than three daughters, the first would receive her 6000 and the rest would split 9000 merks between them. This was incredibly forward-thinking and ensured that any daughters would be taken care of, and that Duncan would single-handedly take the responsibility for paying the amounts listed. The generosity may have been partly due to the fact the Duncan believed he could maintain control over his granddaughters in the event of their parents' deaths, both because he was their paternal grandfather, and because he held influence within the wider Campbell clan, which included the maternal grandparents.

The next year, Duncan and Colin fulfilled their promises when Colin married Egidia Campbell, daughter of Hew Campbell of Loudoun. Charters following the marriage declared that the land was being transferred in fulfillment of the marriage contracts of the previous year; however, the extant 1594 contract between the two families lists Jean, not Egidia, as the bride.[84] Either Egidia and Jean are the same person, which does not seem likely, or Egidia replaced her sister Jean as the bride, and it was not of major note to the families. After arranging these marriages for his eldest children, Duncan married Elizabeth Sinclair in 1597 after the death of his first wife.[85]

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[83] NRS, GD112/1/322
[84] NRS, GD112/25/63 and GD112/1/322.
[85] NRS, GD112/25/75.

One of the unmistakable marriage patterns among all the Campbell branches throughout the sixteenth century was the presence of repeated endogamous unions. Marriages within single kin groups were common in certain Scottish families and can be seen in particular families. Although Duncan, the heir to Glenorchy, received an advantageous marriage outside the kin group, Annas was married to John Campbell of Ardkinglass from another cadet branch of the family. Their marriage was arranged for them when they were still children in order to strengthen the kin group.

The diverging branches of the Campbell clan were consistently being brought together through endogamous unions. Both of John Campbell of Ardkinglass's parents were born into branches of the Campbell family. His mother, Elizabeth, was a Campbell of Lawers and her nephew had married Annas' older sister. The latter couple was granted a dispensation in 1559 for this marriage.[86] This series of Campbell-Campbell matches created complex webs of consanguinity and affinity, which could have spoiled the Campbell marriage market. Instead, the various branches of the Campbell family saw endogamous marriage as strengthening their crucial ties of blood.[87]

Many details have been preserved concerning attitudes toward marriage in the Campbell family, and these attitudes had a fairly distant reach. Just as poetry from court influenced ideas about marriage among the aristocracy, so too did aristocratic families have their own poems about marriage. The Campbells had their own homegrown poet, Isabelle, who was perhaps the daughter of the first earl of

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[86] NRS, GD112/25/23.
[87] Dawson, *Campbell Letters*, 268-74.

Argyll, and may have entered into an uncanonical marriage with Angus Og, Lord of the Isles for diplomatic reasons.[88] There is speculation that she may, instead, have been the wife of Earl Colin, or even that one poem may have been written by a mother and two more by the daughter.[89] In any case, these poems were written in the context of the Campbell world and describe courtly love and marriage in the late fifteenth century from a Campbell perspective. These poems provide a human side to the legal documents surrounding marriages that were primarily arranged for expediency and they shed light on the culture of the Campbell family.

Women's poetry was rare in Scotland, but another female poet, Marion, daughter of Duncan Campbell of Glenlyon, wrote a poem that indirectly addressed the relationship of Grey Colin and Katherine Ruthven. Marion wrote in detail about the circumstances of her own marriage and the murder of her husband by Colin Campbell of Glenorchy.[90] She had eloped rather than marry the man chosen for her by her father and ended up watching the death of her husband at the hands of her father and uncle.[91] Marion wrote about the love she felt for her husband, MacGregor of Glenstrae: "I was sporting with my love, / but before noon came upon us / my heart had been crushed".[92] She continues to write that arranged marriages are far less favourable to her than this romance, "Although the wives of other men are at

[88] Boardman, *The Campbells, 1250-1513*, 228-30.

[89] See also, pp. 136-8. Dorgan, *An Leabhar Mòr - the Great Book of Gaelic*, 271.

[90] For a thorough discussion of the historical relevancy of this poem, see Martin MacGregor, "'Surely One of the Greatest Poems Ever Made in Britain': The Lament Fo Griogair Ruadh Macgregor of Glen Strae and Its Historical Background," in *Polar Twins*, eds. Edward J. Cowan and Douglas Gifford (Edinburgh: John Donald, 1999).

[91] Anne C. Frater, ed. "Women of the Gaidhealtachd and Their Songs to 1750," in *Women in Scotland: c. 1100 - c. 1750*, eds. Elizabeth Ewan and Maureen Meikle (East Linton: Tuckwell Press, 1999), 72.

[92] Anonymous, "Lament for MacGregor of Glenstrae", in Kerrigan and Bateman, *An Anthology of Scottish Women Poets*, 57.

home / Lying and peacefully sleeping, I shall be at the edge of my bed / Beating my two hands. / Far better to be married to Gregor / Roaming the wood and heather, / Than married to the little baron of the river-meadow / In a house of stone and lime."[93] This poem demonstrates the tension between personal choice in marriage and the control of family members over those choices. Although Marion meets with her beloved, in another poem attributed to her she declares, "Do not let yourself be displeased / Although I failed to keep the tryst, [. . .] If it were not for the strength of the castles / and of the great gates, / And the restraint of the locks / Which I cannot escape without hammers!"[94] Marion thus presents the conflict between personal choice and parental control, and shows the extent to which parents were able to physically control their children. Marion even described the Glenorchy couple, Katherine and Colin: "A pity my father was not diseased and Grey Colin stricken with plague, / even though Ruthven's daughter / would wring her hands dismayed."[95] The last line sheds light on the marriage of Katherine and Colin, and perhaps on the sympathy of Marion for another wife.

This tradition of unusual women in the Campbell family also included Katherine Ruthven, whose role in her family was more that of a matriarch than a submissive early modern wife. She took initiative for ensuring the success of the Campbell name and she was laden with significant responsibility in the creation of marriages for her children. This fascinating snapshot of family dynamics in sixteenth-century Scotland raises the question of whether Katherine was typical of

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[93] MacGregor, "'Surely One of the Greatest Poems Ever Made in Britain': The Lament For Griogair Ruadh Macgregor of Glen Strae and Its Historical Background," 143.
[94] Ibid., 140.
[95] Kerrigan and Bateman, *An Anthology of Scottish Women Poets*, 57.

elite Scottish women during Reformation. In fact, while Katherine's education was notable, her connections to the royal family were modest.[96] The results she achieved for her children on the marriage market were successful but fairly typical, as was the fact that these occurred despite significant absences of her husband from family life.[97] Some families would have had male advisors take up this role of finding potential marriage partners for the children of a laird, especially if the nuclear family members, such as the mother, uncles and aunts, were not capable of fulfilling such a demanding role, but it is also clear that savvy women did occasionally take on this role.

The Breadalbane letters are unusual in that they are a large collection of sixteenth-century correspondence. This might imply that Katherine Ruthven was unique in the role she played within her family. This was not the case. Catherine Campbell of Calder seems to have been similarly inclined to take a major role in the family's finances and legal arrangements when she was married to the 9th earl of Crawford.[98] Other women were portrayed as equal to their husbands in certain family discussions. In Maitland's letter to Grey Colin about a potential marriage, he writes that he must discuss the proposal with "Lord and Lady Atholl".[99] Katherine Ruthven was among the more able ladies of her time, but she was also in good company in the Campbell family and across Scotland. However, the Campbells of Glenorchy were unique in the fact that such a wide swathe of their letters *were*

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[96] Dawson, *Campbell Letters*, 24.
[97] Ibid., 23.
[98] Paul and Douglas, *Scots Peerage,* 3:28.
[99] Dawson, *Campbell Letters*, no. 133.

preserved and so much more can be discovered about life within the Glenorchy family than many other contemporary families of similar status.

Conclusion

It is clear from the pattern of marriages that involved the Campbells of Glenorchy, that they executed an explicit strategy of high-status, political marriages for their older children and lower-status, local marriages for their younger children.[100] There was also a conscious effort to promote endogamous marriages within the Campbell surname, as well as consanguineous marriages repeatedly within the same families, such as the Stewarts. The approach of Colin Campbell and Katherine Ruthven towards consanguineous unions did not change with their religious or political affiliations, nor did it change after the Reformation. Instead, they simply no longer needed to apply for dispensations that they had been sure to receive anyway.

The actions of the earls of Argyll as well as the political turmoil of the Reformation had an impact on the political fortunes of the family. Argyll shaped the legal context for Protestant divorce in Scotland, and his struggle to sort through the confusion of post-Reformation marriage law would set the stage for changes in marriage strategy among the aristocracy; however, those changes were by no means immediate.

Marriages within a surname were common among other families, such as the Kennedies and the MacKenzies. Still, the Glenorchy branch of the Campbells retained a unique flavour in their marriage contracts, using tocher and terce carefully, and generally providing their daughters with high tocher amounts to

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[100] Ibid., 28-34.

ensure the best marriages possible. Because of their status in the highlands in the sixteenth century, the Campbells of Glenorchy were not as constricted in their marriage practices as members of the peerage, such as the earl of Argyll. Colin and Katherine's lofty goals for their offspring allowed their children to marry up the social ladder, raising the status of the family to that of very powerful lairds. The marriage strategy of the earlier generations contributed to the Campbell power in the west and the consolidation of their lands; this rise in status was one of the factors that resulted in the rise of a Campbell of Glenorchy to the peerage with the title "Earl of Breadalbane and Holland" given to him by Charles II nearly a century later.

Chapter 6: The Carnegies of Kinnaird: Local Lordship and Marriage

Just as the Campbells of Glenorchy held positions of power in central and western Scotland before they were elevated to their earldom, so the Carnegies of Kinnaird were important landowners on the eastern coast of Scotland. The Carnegies gained power through the sixteenth century and went from being successful lairds in Brechin to become the earls of both Southesk and Northesk in 1633 and 1637. The Carnegie family was fairly typical of other prominent families in the sixteenth century who were not yet members of the peerage. Their increase in wealth and authority came both from their activities at court and the careful management of their properties. Methods of arranging marriages, such as drawing up beneficial marriage contracts and assisting less prosperous family members with tochers allowed the family to enter into a series of beneficial unions. These advantageous marriages continued through the turmoil of the Reformation, which brought great changes to certain aspects of everyday life, but which also seemed to leave some religious institutions intact.

The World of the Carnegies of Kinnaird

In many ways, the Carnegies of Kinnaird were typical of lairds across Scotland. Their identity was rooted in their family's seat, on the eastern coast of Scotland. Various members were also intermittently involved at court in Edinburgh. The men of the family were increasingly versed in law, and the growing trend of producing detailed, written legal agreements. Like most of their contemporaries, they were swept up in

the Reformation, which had a significant impact on the overarching legal framework for marriage but did not change the approaches of families to their marriages in a major way. All of these factors contributed to how they viewed themselves. It also influenced the development of a marriage pattern consisting of local unions, allowing the family to increase its lands over time.

The Carnegie family seat was in Brechin, in Angus, Scotland. They were often based at Kinnaird Castle, a property acquired by Duthac of Carnegie through his marriage with Mariota of Kinnaird between 1401 and 1409. Kinnaird Castle has continued to be strongly linked to the family, and is the seat of the earl of Southesk and the home to many of their sixteenth-century marriage contracts to this day.[1]

The Carnegies rose in prominence during the late sixteenth century, in part because of the success at James V's court of Robert Carnegie, laird until 1565. There he was given numerous diplomatic and legal assignments. Even though he had these external responsibilities, Robert ran the estates and the marriages of his children when he was home in Brechin. He was succeeded by his son, John, who lived until 1595, and John was active in the role of family patriarch until his own death. He kept some distance from the affairs of his brother, David, who was well enough equipped to negotiate the marriages of his own many children and to provide them with adequate land and money to ensure advantageous marriages and protected incomes for life. David's management allowed the strength of the family to grow, especially in the local area, and this regional power paid off when the family was granted the earldoms as part of the expansion of the Scottish peerage.

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[1] William Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 2 vols. (Edinburgh: T. and A. Constable, 1867), 1:xxx.

The upheaval of the Reformation provided the Carnegie family with opportunities to advance their status but also threatened their foothold in eastern Scotland. The Carnegies identified with local power structures, and so they showed some political allegiance to the predominantly Catholic Gordon earls of Huntly.[2] Robert Carnegie was also influenced by Lord Glamis and Lord Gray into rising against the earl of Arran in 1543 and 1544.[3] By 1547, members of the family were still active in the Roman Church; these included Robert, the younger, who was preceptor of the chapel and hospital of Maison Dieu in Brechin.[4] The elder Robert Carnegie, however, joined the reformers in 1560 "possibly with some reluctance" and both he and his son, John, were described as inconsistently active Marians.[5] He signed the Protestant Bond of 1562, but the family then became active in the Queen's Party, the allied families supporting Mary, Queen of Scots. This resulted in the temporary seizure of Castle Kinnaird, and in 1570 the Queen wrote a letter to John sympathising with his plight.[6]

As the political tides turned, the family, much like the earl of Argyll in the west, increased associations with the Protestant factions supporting King James VI. These varied allegiances did not cause any obvious conflict within the Carnegies, but simply allowed them, like many other Scottish families, to attach themselves to different camps throughout the conflict, depending on who held more power and authority at any particular time. This meant that the Carnegies were able to

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[2] Ibid., 35.

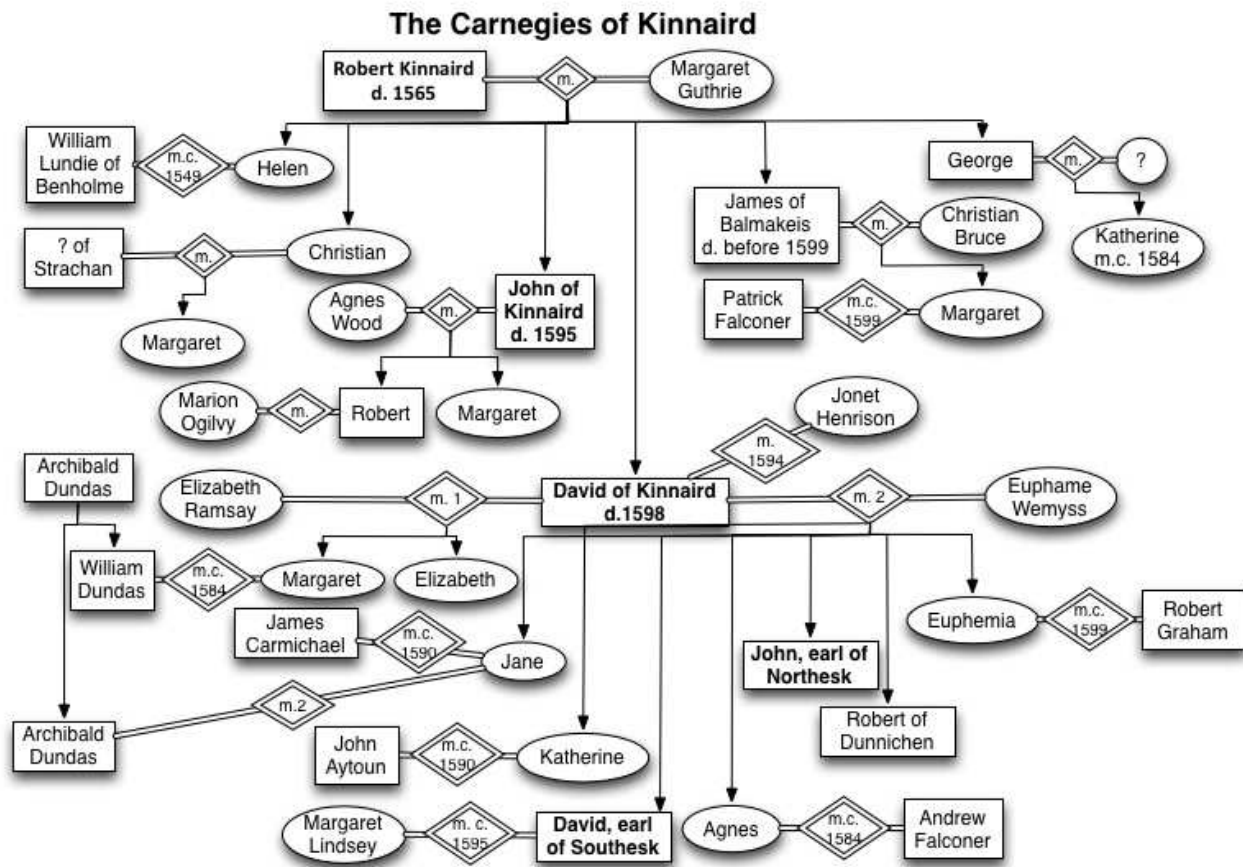[3] Donaldson, *All the Queen's Men: Power and Politics in Mary Stewart's Scotland*, 18.

[4] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:39.; and Andrew Jervise, *Memorials of Angus and the Mearns* (Edinburgh, 1861), 121.

[5] Donaldson, *All the Queen's Men: Power and Politics in Mary Stewart's Scotland*, 110.

[6] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:54.

maintain tradition in their marriage practices, while accommodating certain Protestant reforms. This variety of influences contributed to the fact that the Carnegie family practiced continuity in their marriage practices during this period, which has been traditionally portrayed as one of sudden change.

Carnegie Family Tree

The Carnegies of Kinnaird

Robert Kinnaird d. 1565 — m. — Margaret Guthrie

William Lundie of Benholme — m.c. 1549 — Helen

? of Strachan — m. — Christian

Margaret

George — m. — ?

Katherine m.c. 1584

James of Balmakeis d. before 1599 — m. — Christian Bruce

Patrick Falconer — m.c. 1599 — Margaret

John of Kinnaird d. 1595

Agnes Wood — m. — John of Kinnaird d. 1595

Marion Ogilvy — m. — Robert   Margaret

Jonet Henrison — m. 1594

Archibald Dundas

Elizabeth Ramsay — m. 1 — David of Kinnaird d.1598 — m. 2 — Euphame Wemyss

William Dundas — m.c. 1584 — Margaret   Elizabeth

James Carmichael — m.c. 1590 — Jane

Euphemia — m.c. 1599 — Robert Graham

John, earl of Northesk

m.2

Archibald Dundas

John Aytoun — m.c. 1590 — Katherine

Robert of Dunnichen

Margaret Lindsey — m. c. 1595 — David, earl of Southesk   Agnes — m.c. 1584 — Andrew Falconer

The Pre-Reformation Marriage Contracts

The Carnegies were among the first of the middling families to put their trust in written marriage contracts as a method of protecting their wealth and the wellbeing of their family members. Non-aristocratic families only began to use antenuptial contracts at the turn of the sixteenth century, but by this time, the Carnegies had learned the utility of written agreements. There are sixteen extant antenuptial contracts from the Carnegie family, all between 1549 and 1600. The contract of Margaret Lundy and David Ramsay on 2 February 1509 was one of the earlier contracts in Perthshire.[7] The Lundys were neighbours of the Carnegies, and had an early uptake of marriage contracts, which the Carnegies witnessed when the two families married.

The position of Robert Carnegie of Kinnaird as a lawyer at court greatly influenced the development of skills of negotiation. Robert was sent to England in 1548 to discuss with the English the ransom of the earl of Huntly.[8] He was part of an embassy that included experienced negotiators, and was well integrated in a culture that valued the use of marriage contracts to protect an individual's property in order that the whole kin group might benefit. Robert's return to Kinnaird corresponded with an adoption of marriage contracts for his close relatives, many of which he signed. The following year, he helped to draw up the marriage contract for his daughter Helen and William Lundy, containing all the usual elements such as tocher, terce, and conjunct fee.[9]

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[7] Kinnaird Castle, NRAS792/5/1, no. 66 (1509/1510).
[8] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:32.
[9] Kinnaird Castle, NRAS792/7/7 (8 September 1549).

Helen and William's marriage contract contained a number of unusual elements that shed light on the way that their families operated. Robert Carnegie and Margaret Scrymgeour, William's mother, arranged the contract, since William's father had died two years previous at the Battle of Pinkie. Although women across Scotland were involved in marriage negotiations, it was not common for them to be parties in the contracts in their role as mother of the groom. Only a handful of pre-Reformation contracts included mothers.

Even more unusually, this agreement included a stipulation that addressed a secondary marriage – that of George Lumby of Durcany to Margaret Lundy, William's sister. This is a rare glimpse of a marriage motivated by mutual affection and at the same time, recorded in a marriage contract. It is not that this type of union was unusual, but that there was no need to record these fairly straightforward marriages in any detail at the time. Moreover, while most marriages were to be completed quickly, this secondary union could be finished at "any dait", a clause that was unique. The decision to include this marriage in the contract of Helen and William was made because Helen's father was asked to send away for a dispensation for impediments to the second marriage. There was even a 510-merk penalty for Robert to pay if his petition to Rome was unsuccessful.

A decade later, on 25 May 1559, Robert Carnegie was once again involved in making arrangements for a marriage, this time between his daughter Christian and David Strachan of Carmyle.[10] On this occasion, the couple was, indeed, required to marry "in gudlie haste", a clause that became common across Scotland at the time

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[10] NRS, GD45/16/682.

and would be in line with the Protestant beliefs about marriage that arise after the imminent Reformation. There is no clear indication that the turmoil of the Reformation affected this document, despite the presence of rioters in Dundee and Perth at the time that it was being drawn up.

This was a local match among families who had multiple connections with each other. The Strachans were from Forfar, south of Angus, and were close associates of the Maules of Panmure, who were, in turn, both neighbours and friends of the Carnegie family.[11] This contract fit into a pattern of local matches among the Carnegies. The conjunct fee lands included the "Monquhon Westhillis, Blackhillis, Middilhillis, and east hillis", which would then be inherited by the couple's male heirs. If there were a female heir, she would receive 100 merks instead, in order to provide her with a small tocher.

Marriage strategy also extended to tocher amounts, and in the case of Christian Carnegie, her tocher of 900 merks was more a reflection of her needs in her father's eyes and of his desire to provide for her, than it was a direct acknowledgement of David Strachan's status. Two years previously, Robert drew up a will and testament before he departed on a diplomatic mission. He wrote that if he should die, Christian was to receive 400 merks money and 400 merks worth of goods. This was very near to the amount he later provided as tocher.[12]

There may have been much more to the story of this marriage between these two families. Modern genealogies record Mary Carnegie, Christian's sister, as being

[11] See Alexander Strachan of Carmyle's bond of manrent, dated 8 February 1508 in Charles Rogers, *Memorials of the Scottish Families of Strachan and Wise* (Edinburgh, 1877), 13.
[12] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:50.

married to an "unknown Carmyle of Strachan," and list Christian's husband as unknown.[13] This could be indicative of two marriages, or at least two contracts drawn up between the families. The documentation makes it clear that, at the very least, Christian's marriage did proceed, since she and her husband David appear a generation later in the marriage contract of their daughter, Margaret.[14]

The Post-Reformation Marriages

The Reformation had a direct impact on the Carnegie family. The Carnegies announced their Protestantism in 1560, but then joined the queen, resulting in their castle being seized in 1568.[15] Despite this upheaval, the marriage pattern of the family continued in much the same direction, and their use of marriage contracts continued in the same way. Thirteen Carnegie contracts exist from 1560 to 1599, and they show local marriages with fairly large tochers and comprehensive marriage contracts. The fathers, brothers, or uncles of the parties involved uniformly signed these arrangements, although more family members may have been involved in the initial negotiations. The contracts also reflected a sense of affection and obligation among family members who tried to ensure sufficient resources for their relatives entering marriages.

The Carnegies were steeped in a culture of marriages that were advantageous to their family. Elizabeth, daughter and heiress of Henry Ramsay of

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[13] For instance, ibid., 44.; and Charles Mosley, ed. *Burke's Peerage, Baronetage & Knightage, Clan Chiefs, Scottish Feudal Barons*, 107th ed. ed. (Stokesley: Burke's Peerage & Gentry, 2003), 1:1427.
[14] NRS, GD45/16/763. [see full transcription in appendix]
[15] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:53.

Colluthie, married David Carnegie, the second son of Robert around the year 1560.[16]

This marriage was advantageous to the Carnegie family but had caused a fair

amount of trouble for Robert. In 1554, Robert was made factor for the estates of

Elizabeth. He received custody of the girl, along with instructions that she should

marry whomever he chose.[17] Elizabeth was to pay the archbishop 4500 merks when

she married and Robert was also required to provide money and liferent property

to a noblewoman, Grizell Sempill and her two sons from John Hamilton, the

archbishop of St Andrews, which he had negotiated into the arrangements. This

plan, however, did not go smoothly, and the queen eventually disputed the care of

Elizabeth when Robert refused to give up custody of the girl, an event that would

threaten his control over her marriage.[18] Despite the difficulties faced by the family,

Elizabeth brought significant lands into the Carnegie estates, and these lands

became invaluable in providing for future generations.

There were more opportunities for advantageous unions. David's first wife

died in 1566.[19] In 1568, he married Euphame Wemyss, who brought 2000 merks

into the marriage, a significant amount considering David was a younger son, as well

as a widower with children. Despite the fact that he was not expected to inherit

Kinnaird, David had accumulated significant amounts of land from his first wife, so

that may have influenced Euphame's family in arranging for this match.

David's two daughters from his first marriage were the first of his children to

marry. They were heiresses to Leuchars, through their mother, and were valuable

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[16] Ibid., 61-2.
[17] Ibid., 36-9.
[18] Ibid., 1:38.
[19] Kinnaird Castle, NRAS792/5/1, no. 137 (3 October 1568).

commodities on the marriage market. The eldest daughter, Elizabeth, married John Inglis on 15 November 1579, the day after she turned fourteen.[20] The most recent Carnegie history that has been written reported that an unnamed Carnegie charter contained a note recording the marriage as being of Elizabeth's own choice and to the younger son of a local family, after Elizabeth insisted that both of the marriage candidates her father had selected were unsuitable.[21] The two men were both Ramsays (Elizabeth's mother was also a Ramsay).

This provides a fascinating window into the marriage strategy of the Carnegie family because it shows that David both took an active role in planning the marriages of his children, and listened to them about their own opinions. That David chose two Ramsay men as candidates for Elizabeth demonstrates David's desire and belief that he could use the marriages of his daughters to continue the relationship between the Ramsay and Carnegie families. These plans were clearly not initiated by Elizabeth. That David did, eventually, concede to Elizabeth's wishes also shows a respect for her opinions and her need to consent to her own marriage.

David's actions as a father in this regard show his efforts to provide good, profitable unions for his children, including his daughters. David provided his daughter with a tocher of 6000 merks, despite the marriage being less valuable strategically. Elizabeth's sister Margaret received the same tocher when she married William Dundas in 1584.[22] The tochers for both daughters were partly in exchange

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[20] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:61.
[21] Ibid.
[22] NRAS792/5/1/1585,

for the lands in Leuchars, which both daughters gave to their father, further increasing his properties and wealth on the east coast of Scotland.

The Carnegie men provided tochers not only to their own daughters but also to their nieces and, occasionally, others in need. Katherine Carnegie was the next family member to marry that same year. Katherine was a niece of both David and John, and as head of the family, John took on the role of arranging her marriage. Although the marriage contract is not available, there is an acquittance from Menam Hog of Blerideyn for 800 merks tocher from John Carnegie.[23] While John was alive and head of the family, he took the lead in these marriages, despite the fact that David was wealthy enough to assist. Their father had acted similarly, even providing a loan of 1100 merks to John Hamilton, the archbishop of St Andrews, for his daughter's tocher.[24] After the death of John Carnegie, David assumed this role, helping with the marriage of his niece, Margaret, in 1595, by provided her with a hefty tocher of 3000 merks.[25]

John Carnegie was involved in the marriage negotiations for his son and heir, Robert, to Margaret Ogilvy in 1589.[26] This marriage was especially significant to the family, even though the union was not particularly notable. Instead, the significance is demonstrated by the fact that the contract was written in Latin, rather than in Scots. Scots was increasingly used for marriage contracts as they became a legal document distinct from charters. It was nearly unheard of for a late-sixteenth-century marriage contract to be in Latin. Even some of the antenuptial agreements

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[23] NRAS792/6/3, 1584,

[24] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:51.

[25] Kinnaird Castle, NRAS792/6/5 (26 May 1599).

[26] Kinnaird Castle, NRAS792/6/3 (26 March 1589).

involving members of the royalty were in Scots, such as the contract of Mary, Queen of Scots, and James Bothwell.[27] Latin was normally used for international diplomatic marriages because it used universally understood legal terminology that would be acceptable to both realms, as in the case of the marriage contract of Anna of Denmark and James VI.[28] This further marks the marriage contract of Robert Carnegie and Margaret Ogilvy as unique.

Despite the normal role that wealthy uncles took in the marriage arrangements of their nieces and nephews, John was not involved in the arrangements made for the children of his brother, David. David was wealthy in his own right, as well as a skilled lawyer, and so he managed those aspects of his family life without John's express consent. David's knowledge was recognised even beyond his nuclear family, when kin asking for advice on estate management contacted him. David's brother-in-law, the laird of Wemyss, consulted him before parcelling out land for each of his children, who were David's nieces and nephews. David replied in a letter that he agreed with the laird's idea. He also sent greetings to his sister when he wrote: "I purpes, God willing, to se yow on Fryday or Setterday at the farrest . . . eftir my hartly commendationis to the Lady, your bedfallow, I commit yow to the protectione of God."[29] David provided advice to his family members both by correspondence and in person.

The skill and creativity that David possessed in the management of his family and estates is demonstrated by a number of marriages that he arranged. On 25 April

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[27] NRS, GD26/7/392.
[28] NRS, SP8/7.
[29] Fraser, History of the Carnegies, 1:59.

1590, his two daughters were entered into marriage contracts for unions that were particularly advantageous to the family.[30] Both sisters were betrothed to wards of the Carnegies: Jane was marrying James Carmichael and Katherine was betrothed to John Aytoun. James' wardship was a gift to the Carnegies from Dame Jane Lyon, countess of Angus, and James had a moderate inheritance. John Aytoun did not have significant lands, but he was in line to inherit even more. His marriage contract declares that John would inherit lands immediately north of his property from his relative, Robert, who was "ideot".[31] Although David Carnegie did not seek out these wardships himself (they were inherited from his brother, John), he was able to use them judiciously to augment the status of his family.[32]

The contracts are nearly identical, with a few exceptions. These differences are, therefore, crucial to understanding how contracts could be altered to suit different circumstances. Much like their half sisters, who gave up their inheritance in Leuchars upon receipt of their tocher, these two sisters also ceded lands in Kynninmonth, quite near Leuchars, to their siblings upon their marriage. This was fairly typical of a family that was always trying to provide adequately for each and every child. Jane's lands went to John, her second-oldest brother, and Katherine's lands went to her sister, Euphame.

It was not unusual for the negotiations concerning Carnegie land and money to provide for all family members. In the marriage contracts of both Katherine and Jane, both couples are provided with conjunct fees, a relatively equal form of land

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[30] NRAS792/6/3, 1590, April 25, no. 162 and no. 163.
[31] Kinnaird Castle, NRAS792/6/3, no. 162 (25 April 1590).
[32] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:50.

tenure, which would better provide for them in their widowhood than if they relied on terce alone. Both sisters were also provided with tochers of 1500 merks. This was significantly less than the tochers of their other sisters; however, the fact that these two women married wards of their father meant that large tochers were not required to find suitable husbands. In the end, David saved thousands of merks by marrying his daughters to his wards compared to the situation that would have arisen if he had needed to enter into negotiations with another family for a marriage on equal terms.

In large families, it was not unusual to have marriages negotiated in pairs to maximise the benefit to the family. Not only were similar unions on the same day, but multiple marriages between families could also take place in order to build up stable links between two kin groups. This was common across Scotland, and was certainly seen in the Carnegie family. In her second marriage, Jane Carnegie was also part of this type of double union. After the death of her first husband, Jane Carnegie married Archibald Dundas of Fingask, who came from a family in neighbouring Perthshire. It was advantageous for the families to intermarry and Jane's half sister, Margaret, was married to Archibald's brother. Despite political divisions – the Dundases were Protestants and adamant supports of James VI[33] – the families looked to create links with each other. Margaret had resigned her lands to her father, with William's consent, and the two instead received new lands in conjunct

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[33] Margaret Isabella Dundas, *Dundas of Fingask, Some Memorials of the Family* (Edinburgh: T. and A. Constable, 1891), 33.

fee.[34] William became laird in 1588, but died soon after.[35] The widowed Jane was soon married to the second Dundas son, who was heir to the lairdship of Fingask.

These multiple unions between families were common among other branches of the Carnegie family. In his role as patriarch of the family, David arranged a similar tocher of his niece, Margaret. Margaret and her cousin Agnes were both married to brothers in the Falconer family of Halkerton. This was yet another local middling family. The Falconers had been the keepers of the king's falconers and hawks, and both their surname and their hometown, Halkerton, were named for that connection.[36] The earliest mention of the Falconers places them in a small village on the River North Esk, which was very much within the Carnegies' area of influence.[37] By forging ties with other families in their region, the Falconers strengthened their power locally.

An example of these endogamous marriage patterns is the union of Agnes Carnegie and Alexander Falconer. Agnes and Alexander were contracted to wed on 18 November 1594 "in face of halykirk"; they were married by the following January.[38] Although the Carnegies were involved in the politics of the Reformation, this was not reflected in any major changes in the way that marriages were handled or in the pattern of marriages. Even a generation after the Reformation, in 1594, their marriage contracts still insisted on solemnization *in facie ecclesiae,* or "in face

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[34] John Maitland Thomson, ed. *Registrum Magni Sigilli Regum Scotorum: The Register of the Great Seal of Scotland, A.D. 1580-1593*, 11 vols., vol. v (Edinburgh: General Register House, 1888), 5: no. 502, 16 and 1577.

[35] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:62.

[36] Jervise, *Memorials of Angus and the Mearns*, 360.

[37] Ibid.

[38] John Maitland Thomson, *Registrum Magni Sigilli Regum Scotorum: The Register of the Great Seal of Scotland, A.D. 1593-1608*, 11 vols., vol. vi (Edinburgh: General Register House, 1890), 6: no. 208.; and NRAS792/6/5 (26 May 1599).

of halie kirk".[39] Other families, who were keen to show their commitment to their newfound faith, began to use "in face of Christis congregatione" instead.[40]

Although the tochers of the Carnegie women tended to be relatively similar, it is clear that there was a significant difference between marrying the eldest and the second oldest sons in a family. Agnes' tocher was 8800 merks, and Margaret's was 3000 merks. There was also a difference between the tocher David provided to his own daughters and what he provided to his nieces. Margaret's tocher was paid out after David's death, but on terms that David had included in his will and testament. He included the 3000-merk tocher, on the condition that Margaret follow his counsel and the advice of his friends.[41] David demonstrated both the involvement of family in each other's affairs, and the reality that there were other options. Margaret was permitted to marry whomever she pleased, but she would lose the valuable support of her kin and her financial security.

David Carnegie's third marriage was in 1594 to Jonet Henrison, a widow. In this case, David Carnegie negotiated his own marriage contract, and it was relatively similar to other contemporary marriage contracts that were made later in life. David wanted to ensure that this third marriage would not interfere with the inheritance of his children from his earlier unions and so, although David agreed to provide Jonet with an annual rent of £100, three chalderis (approximately 100 bushels)

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[39] Kinnaird Castle, NRAS792/6/4 (18 November 1594)
[40] NRS, GD8/352.
[41] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:69.

victual, including wheat, beer, and oats, and a fourth of his lands in Leuchars, she renounced her rights to terce and instead would live on a 500-merk allowance.[42]

It is clear that Jonet personally agreed to these terms, because she signed the contract herself. By agreeing to a fixed income in her widowhood, Jonet sacrificed a larger terce for stability in her widowhood, and within the Carnegie family. The marriage was unlikely to produce children because of Jonet's age, and so there was no need for her to receive a large parcel of land that would otherwise go to David's children. An inventory of David's moveable property alone totalled 21,760 merks when he died,[43] and her terce could have come from a third of the lands that David owned in addition to that.

When the time came for David Carnegie to enter negotiations concerning his eldest son, also called David, in 1595, the older man was very experienced in marital arrangements. The younger David was contracted to marry Margaret Lindsay, daughter of Sir David Linsday of Edzell, a Lord of Session, a wealthy local landowner, and the son of the earl of Crawford.[44] The fathers of the bride and groom arranged for the union, negotiated the conditions, and signed the contract. These two men were both experts in Scottish law, and so their direct participation was appropriate. It is not surprising that two men with such prestigious backgrounds in law would compose the longest of all Carnegie marriage contracts from the sixteenth century.

The explicit consent provided by John Carnegie, patriarch of the family, to this marriage demonstrates how important the union was to the Carnegie kindred

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[42] Kinnaird Castle, NRAS792/6/4, no. 171 (26 April 1594).
[43] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:68.
[44] Kinnaird Castle, NRAS792/6/4 (8 October 1595).

as a whole. While the other marriages of the elder David's children had not required John's involvement, it is clear that he was still involved in the marriage that was most important to the dynasty. By 1595, John must have known that his brother David and his sons would succeed to his title and estates, and so it was important for John to ensure the security of those lands by vetting the terms of the marriage contract. This would have been the standard among families of similar status, but David's independence had kept the marriages of his older children at an arm's length from John.

John faced a fair amount of turmoil looking after the affairs of his daughter Catherine. According to the account of David Calderwood, in 1592 Catherine was kidnapped from a house in Edinburgh, where she was visiting with her father, by James Gray, son of Patrick, Lord Gray.[45] James was denounced as a rebel on 21 June 1593 for failing to appear to answer the charge. Catherine eventually married John Hamilton of Lettrick, but died in 1597, two years after the death of her father.[46]

David became laird in 1595 and took over John's extensive lands. David completed negotiations for marriages through a variety of means. He travelled back and forth from Edinburgh to Brechin, and was able to visit his friends and family along the way to discuss land and marriage arrangements with them. He also used correspondence to complete negotiations regarding contracts. In September 1597, he wrote a letter to his neighbour, Patrick Maule of Panmure, concerning a reversion (a document acknowledging receipt of money in temporary exchange for land) that

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[45] David Calderwood, Thomas Thomson, and David Laing, *The History of the Kirk of Scotland*, 8 vols. (Edinburgh,1842), 5:252.
[46] Fraser, *History of the Carnegies, Earls of Southesk, and of Their Kindred*, 1:50.

had been mentioned in a contract between the two.[47] In his letter, David mentioned that an error had been included in the contract, and because the error had been repeated four times, he was not able to modify it himself. He would normally have had his secretary rewrite the document for him, but the secretary was absent. David, instead, returned the document to Patrick so that it could be corrected.

David maintained a friendly relationship with Patrick Maule throughout the negotiations about the reversion. The contract was delayed while they waited for Patrick's uncle to return to resolve outstanding debts and it needed to be rewritten because of errors; however, David wrote to Patrick, "my corn is almaist schorn, therfor ye may cum est ye pleis and chais pertikis [partridges], and ye sail get yowr reversione than and silver."[48]

Marriage Patterns

The two generations of Carnegie matches in the late sixteenth century demonstrate a number of characteristics of the family, in particular, as well as showcasing marriage practices typical throughout Scotland. While Scottish marriages have most often been examined for their political potential, a result of the study of political history in Scotland and a focus on the actions of the royalty and upper nobility, the marriages of Scottish lairds' families were motivated instead by economic and social factors. These motivations were similar throughout the late medieval and early modern period.

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[47] Ibid., 60.
[48] Fraser, *History of the Carnegies*, 1:60.

One of the central factors behind the choice of a spouse was knowledge that the potential partner was yet unmarried. For this reason, communication networks were crucial to marriage patterns. Families such as the Carnegies, whose strongest ties were with other families in the region, were most likely to marry locally. Local unions enhanced status in a region, and in a nation of decentralised authority such as Scotland, regional power was crucial to success.

Even though the two families were very similar, the Campbells of Glenorchy used a different strategy from the Carnegies of Kinnaird. The two families are ideal comparators, because they both were families of successful lairds on their way up the social ladder. The Campbells and Carnegies both experienced a similar pattern of inheritance – through brothers who slowly took over control of family affairs. Both families also received earldoms (Southesk, Northesk, and Breadalbane and Holland) during the seventeenth century. Both lordships were nearly equidistant from the royal court, just over one hundred kilometres from Edinburgh, so that the lairds were able to travel to court as necessary, but not able to complete the journey too frequently.

Although the two families sought high-status marriages for their eldest sons, the Campbells were more likely to seek partners for their heirs from across Scotland, while the other children married locally.[49] In this way, the Campbells of Glenorchy enhanced their status and networks throughout the realm, while maintaining power at home. Conversely, the sixteenth-century Carnegies did not marry partners who lived beyond the eastern coast of central Scotland.

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[49] Dawson, *Campbell Letters*, 28-34.

The Glenorchy matriarch, Katherine Ruthven also arranged, negotiated, and sometimes signed the marriage contracts of the Campbells of Glenorchy.[50] She used letter-writing to communicate through most of this process.[51] While this was not a unique situation in Scotland, much of her correspondence is a reflection of her individual qualities and skills. There is no remaining evidence that the Carnegie mothers played the same role in running their families. Instead, all extant correspondence of the Carnegies is among the men of the family. David exchanged letters with Patrick Maule of Panmure, and when the question of his sister's children's inheritance arose, David communicated directly with her husband.

An examination of all of the contracts, regardless of whether they included a cash tocher shows that the Carnegies, an up-and-coming family of lairds, lawyers, and court officials, were more likely to bestow a large cash tocher than other families, who relied solely on land for some of their tochers, and supplemented other cash tochers with land.[52] In contrast, when the numbers from contracts with only cash tochers were included, the Carnegies were on an equal footing with other families. This suggests that the Carnegies were able to facilitate a climb up the social ladder with the use of tochers that were larger than those of other lairdly families, and on par with the nobility. This is to be expected and represents their ascent up the social ladder.

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[50] Ibid., 29.
[51] Ibid.
[52] See p. 177 for a table comparing the values of tochers across families.

Conclusion

It is not clear if lairds Robert, John, and David Carnegie engaged in a conscious, long-term strategy of marriages intended to increase their wealth. What is more likely is that the pattern of Carnegie marriage during the late sixteenth century was only partially caused by conscious planning, but nevertheless resulted in an increase in their status locally. This combined with Robert's diplomatic posts and David's position as a legal advisor at court to allow them to rise through the social hierarchy and be granted two earldoms.

The Carnegies showed a unique combination of values in their marriage negotiations. Robert's and John's negotiations showed conscientiousness in their method of contract negotiation resulting in good protections for their children, nieces, and nephews. David demonstrated this same use of protective measures, combined with innovative ways of providing for his ten children. He ensured that his eldest daughters were provided for through land from their mother, and then, once the daughters had suitable husbands, David used land transfers agreed upon in their marriage contracts to combine their lands with his estates. This provided more wealth for the younger children. This tactic was more explicit in the marriages of his middle children, who named the younger siblings who would be the recipients of their reverted lands. Along with the carefully written clauses of the marriage contracts, this shows David's ability to ensure the well-being of his children, both in the marriages and in their widowhood.

The increase in regional status increased the marital prospects of the Carnegie family over the long term. Eventually the strategy of the earls of Southesk

became one of wide-ranging, aristocratic marriages. The elevation in status was partly the result of endogamous and local matches, providing the family with vast lands in Angus and beyond. The Reformation did not cause major changes in the marriage pattern of the Carnegie family in the generation that followed the Reformation. This consistency and continuity demonstrate the practicality and tradition that were part of the Carnegie practice.

It is only through the study of individual families that historians can track the marriage patterns in late medieval Scotland and their changes during the Reformation. Detailed study of families like the Campbells of Glenorchy can showcase geographical trends and religious changes in the treatment of marriage and family life in Scotland. Both the Campbell and Carnegie families were heavily involved in the planning and negotiation of arranged marriages. This experience also extended to matters of national significance; a Carnegie laird was one of Queen Mary's diplomats to Queen Elizabeth to discuss the potential marriage of Mary in 1548 and the earl of Argyll was the first man to test the divorce laws of a Reformed Scotland in 1573. [53] Their attitudes towards the usefulness of marriage for enhancing status were perhaps stronger than the rest of Scotland, but their practices still stand as an example of Scottish marriage customs.[54] These families shared certain methods in their marital traditions, but displayed different patterns of marriage from each other. All of the families were successful at court and were raised in status partly as a result of their astute marriage decisions.

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[53] Fraser, *History of the Carnegies*, 1:32; and Dawson, *The Politics of Religion*, 33.
[54] Boardman, "The Campbells and Charter Lordship," 98.

Despite many political factors pulling the two families into different camps, they stayed relatively closely aligned throughout the troubles of the Reformation. Both religion and politics influenced this, and men such as the earl of Argyll were able to influence their less powerful kin into following the same causes. Both the Campbells and Carnegies were members of the Protestant Party of Revolution in 1559-60 and by 1568 both had defected to the Queen's Party.[55] Religious affiliation did not always play a part, such as when the Protestant-leaning Carnegies fought alongside the Catholic Gordon earls of Huntly. Likewise, the Campbells of Glenorchy were pressured by the earl of Argyll to defect to the Protestants.[56] Ties of kinship were just as likely to bind the rebels, as were religious leanings. [57]

The Campbell and Carnegie families shared many qualities, but differed in their approach to marriage. A close-knit marriage strategy defined the Carnegie family, who married family members of neighbouring lairds, and this concentration of power lent them their authority on the eastern coast. Even though the Carnegie men had connections at court, they did not use them to find partners for their children. Instead, they concentrated on endogamous unions and marriages with families in the east, ranging from Aberdeen to Edinburgh. Conversely, the Campbells of Glenorchy had a more far-reaching marriage pattern, in which the older children were used to forge new, long-distance relationships, and the marriages of the younger children renewed bonds at home. In this way, they were similar to Clan Chattan who engaged in both internal and external clientage through marriage locally and outside their clan.[58] By carefully guarding their

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[55] Donaldson, *All the Queen's Men: Power and Politics in Mary Stewart's Scotland*, 41, 161, and 64.
[56] Dawson, *Campbell Letters*, 6, 50 and no. 128.
[57] Donaldson, *All the Queen's Men: Power and Politics in Mary Stewart's Scotland*, 3.
[58] Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609*, 100-1.

tocher lands, they reinforced the careful work of finding advantageous marriages for their children.[59] Both families had successful strategies and rose in status; however, this is a reflection of the documents that have been preserved in wealthy families, rather than proof of the inevitability of success. Just as many families were able to rise in status, equally, other disappeared.

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[59] Boardman, "The Campbells and Charter Lordship," 98.

Conclusions

The marriages of the lairds and nobles of Scotland were governed by two parallel traditions. The pattern of unions among these families rested on secular conventions that prioritised prosperity for the couple and their relatives. This model included both an acceptance that marriage was not always a life-long union and an effort on the part of the marriage negotiators to protect the legacy of the union as much as possible. The ecclesiastical model of marriage placed a greater emphasis on affection, on permanence, and on exogamy. The Church still tried to maintain control over secular marriages by officially recognising them as legitimate and subject to canon law. In contrast, many of the secular practices, such as the use of wardships to influence marriage, did not contravene canon law, but they did break the spirit of laws that were intended to promote individual consent and to prohibit coercion in marriage.

The legal framework was also two-fold and mirrored the conflict between the secular and ecclesiastical agendas. Marriage was solely under the jurisdiction of canon law, although some related cases were tried in secular courts. Scottish custom and secular laws officially governed land arrangements, although tocher and terce disputes were sometimes referred to ecclesiastical courts, because they involved marriage. Both systems accommodated each other to a certain extent, but conflict arose when cases relating to custom came before ecclesiastical courts.

Landholding people defined marriage primarily through the involvement of family. This did not preclude secret love matches, but did make them the exception in a society heavily influenced by kin. Families carefully considered unions, which they hoped would be successful. The advice of others, especially stakeholders in the land and money that was about to change hands, was considered essential. Legal advisors, relatives, and clan councils might be consulted about high profile unions.

Generally, marital affection was mingled with pragmatism. The themes of lust and love were not addressed in marriage contracts, but other sources provide a glimpse at the ideal of loving marriages. Even patriotic poems, like Barbour's *Brus* make passing mention of these marriages: "And other ladyis faur and farand / Ilkane for luff of thar husband / That for leyle luff and leawte / Wald partenerys off thr paynys be".[1] Most arranged marriages were cordial and productive, although it is also clear that some marriages were full of distrust and animosity. This appears not only in court records but also in contemporary literature describing marriages motivated by profit.

Remarriages were sometimes handled in a different way, because the contracting parties were older and more experienced when they negotiated and entered the union. The parties were more likely to have secured their finances and lands, and were able to make their own decisions. They were less likely to have relatives pulling the strings. This was not universally the case. Many older spouses were just as practical about their own marital fortunes as they were in planning those of others. When entering a second or third marriage, the older party could still

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[1] Priscilla Bawcutt, "Love in Late Medieval Scotland," in *Writings on Love in the English Middle Ages*, ed. Helen Cooney (Basingstoke: Palgrave Macmillan, 2006), 183.

marry a younger spouse, especially if it was important to provide a male heir to the lineage. Companionate marriages were, however, more common later in life than they were in first marriages.

When single people allowed their parents to organise their marriages, pragmatic concerns took priority. In many cases, the bride and groom agreed with this tactic. The nearest male landowner in the family did much of the planning for these types of unions. Only a small number of men had formal training in law, which was important for a judiciously prepared marriage contract. Other lairdly and noble men did, however, have sufficient experience of the motivations surrounding many marriages to orchestrate their own plans for the marriages of their children and dependents. Legal advisors and secretaries were on hand to draw up contracts.

Women, too, had opportunities to play a major role in planning and carrying out marriage plans. A small number of women played key roles in finding marriage partners for their children and preparing their children for marriage. Educated mothers, like Katherine Ruthven and Anabella Murray, corresponded with other families to search out spouses for their children or to manage the outcomes of major events in their family. Even if women were disinclined to write letters, they still participated in the transmission of information about potential spouses. Landed mothers often contributed money and parcels of land to their sons and daughters to encourage a marriage. These contributions were a boon to the well-managed family.

Parents were, nevertheless, concerned about the wellbeing of their children and relatives. David Carnegie put care into ensuring that his daughters were provided for during his life and after his death. Duncan Campbell assisted his sister,

Annas in the formation of her marriage by providing her with money and advice and other goods.[2] A sense of duty to one's kin existed, which drove these types of protective assistance. Single children of lairds were often provided assistance by paternal relatives, those with shared surnames, although close maternal kin felt the same sense of obligation to help.

There were many aspects to consider when choosing a suitable spouse. While more distant kin would allow a family to strengthen their ties, members of the nuclear family were forbidden as marriage partners. This did not align with the teachings of the Church concerning consanguinity, affinity, and spiritual affinity, but Scots did not put much credence in this view, beyond partially complying with the Church's requirement for dispensations, which Rome made comparatively easily available.

Another way to choose a potential partner for one's child was to search within the region, thereby strengthening the family's power locally. This choice could be made with varying levels of forethought. Obtaining the wardship of a local heir or heiress provided a family with perfect opportunities to extend their lands. Marriage to the child of a local noble also provided opportunities to gain power, if the event was executed judiciously. The decision to marry locally could allow for marriages of affection, unions between bride and groom who knew each other, but they also had the drawback of limiting the marriage market.

The opposite strategy, marrying one's children farther afield, could also be a method for extending the reach of one's kinship network. This sometimes increased

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[2] NRS, GD112/1/271. [see full transcription in Appendix]

the amount of land under their control, but strained the ties between different branches of the family. In such case, the advantage depended on either maintaining some control over the marriage, which was difficult if the couple had moved far away, or in marrying up the social ladder so significantly that control was no longer as important. When families married their children into the royal family, they lost control of the match, but gained valuable contacts and communication networks.

Another motivator for marriage that was commonly cited by couples was a desire to end feuds, violence, and bloodshed. This regularly appeared in supplications to the Church, both for dispensations and annulments, in order to sway the decisions of the papal court. The nobility displayed a certain amount of ambivalence to this theory by arranging marriages to end disputes and then proceeding to engage in the same disputes. This was no different from royal marriages, such as that between James IV and Margaret Tudor, that were intended to signify peace but were followed soon after by renewed warfare. Although it is not clear that the cause of violence was necessary for dispensation supplications – many couples obtained dispensations without resorting to this – it is very likely that these reports were exaggerated. Other documentation does exist, however, of couples marrying to signal the end of a feud. While this was not common, it was understood to unite the two parties, much like diplomatic marriages were nominally to end war. It is not clear that this strategy was successful.

Whatever the motivations behind a marriage, once it was in negotiation, the individuals or families involved would decide if a marriage contract was needed. If it was determined that a contract was necessary to protect the investment in the

marriage, and this was increasingly common, the families selected terms that best represented their agreement. The contracts circumvented custom and law to allow for certain aspects of the marriage to go according to the terms mutually agreed upon. The shift in provisions for widowhood is one example of how marriage contracts circumvented the law. Despite the fact that lawmakers insisted that women could receive no more than a third of their husband's lands at the time of marriage as terce, the practice of joint infeftment allowed families and husbands to ensure that the bride would continue to prosper after the death of her husband.

Marriage practices naturally varied throughout Scotland. Norse, Irish, English, and French influences were inevitable, as were rules from the Vatican, and geographic and cultural divides ensured that different parts of Scotland had many different traditions surrounding their marriages. There was no dramatic gulf in marriage patterns between the highlands and lowlands. By the mid-fourteenth century, when marriage documents became abundant, families across Scotland formed their marriages in similar ways. Both parts of the realm had a similar disregard for consanguinity laws. In the earlier period, couples in both regions struggled to ensure that their marriages were canonically valid when the question grew important, such as with the marriage of Robert II and Elizabeth Mure.

Even though these overarching patterns were similar, there were subtle differences. For instance, clans had more formal structures that included methods of consulting distant kin and clients on myriad events, including important marriages. Lowland families, such as the Black Douglases, also maintained important communications networks, although they appeared to be less formal than those of

the highland clans. Many ambitious families, such as the Campbells, married their eldest sons to brides from farther afield, and their younger children locally. Patterns of marriage crossed geographical boundaries. Like the Carnegies, all of the children of the Grants of Freuchy, from the central highlands, married locally.[3] Families such as the Mackintoshes used their most important marriages to either build up internal clan links by marrying within their kin and clientage groups, or to strengthen external relationships by marrying into other clans, especially from the western highlands. Very few marriages occurred between highland and lowland families, but this was the result of less interaction between the two groups. Most families did occasionally have a member who married into a different region of the realm.

These patterns were distinct to the strata of nobles and lairds, and differed significantly from the late medieval royal families. Before the Great Cause, Scottish royalty heavily intermarried with the noble and royal families of England and continental Europe; however, as the English and Scottish thrones grew further alienated the nature of their intermarriage changed. Although the Bruces continued this trend of marrying English women, the early Stewart dynasties turned inward, marrying Scottish nobles rather than foreigners. This changed with the marriage of James I to Joan Beaufort, after his lengthy imprisonment and education among the English. James' siblings had all married Scots, but James and Joan's children married internationally, including James II, who married Mary of Gueldres. In fact, many requests were sent to James for his sisters' hands, and his sister Joanna was even

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[3] Cathcart, *Kinship and Clientage: Highland Clanship, 1451-1609*, 230-1.

sent to court in France uninvited while a husband was found for her.[4] The subsequent Scottish monarchs did not have enough legitimate children to identify patterns; however, their illegitimate children normally married within the Scottish nobility. Scottish noble marriage was, conversely, more reflective of the fourteenth-century royal marriage patterns than of the Jacobean Stewarts. They placed emphasis on the unions of their eldest sons, but married their younger children as well as they could.

Marriage in late medieval Scotland was defined by continuity. In many cases, there were small changes in attitudes towards the role of marriage in the middling and noble family. The role of literature in the lives of nobility changed, as did the content of literature addressing marriage. The role of the courts also developed through this period, most notably in the sixteenth century. The Reformation brought stark changes in the law governing marriage; however, these laws reflected existing Scottish practice rather than altering it. As the Protestant doctrine became more ingrained in the culture, glimpses of reformed families emerged in the documents. The method for solemnising marriage "in the face of Christis congregation" reflected new ideals, but did not change the idea of solemnization.[5] Although there were gradual changes in all aspects of marriage through the fourteenth, fifteenth, and sixteenth centuries, the evidence for arranged marriages remained fairly constant.

Most notably, changes that resulted from the Reformation appear to have had a delayed impact on marriages in Scotland. The largest change that accompanied the Reformation was a shift in power structures governing marriage.

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[4] Downie, *She is but a Woman*, 58.

[5] NRS, GD8/352.

With the downfall of the bishops' courts and the system of papal supplications, the new Kirk and secular courts were forced to find alternative means of governing marriage. This can be seen most spectacularly in the divorce case of Archibald Campbell, earl of Argyll, and Jane Stewart. This played out on a smaller level, as well, where the Kirk Sessions doled out divorces in the early years alongside prohibitions of certain activities. The jurisdiction of these decisions was dubious, and it was not until a generation after the Reformation that the Kirk was more vocal about changing practices surrounding the formation of marriage. This resulted in social control on a local level.

The cases of the Carnegies and Campbells provide interesting measures of the effects of the Reformation in actual families, since, as Protestants, their marriages strategies might have changed. It is clear, however, that their methods of finding marriage partners and drawing up marriage contracts stayed the same throughout the late sixteenth century. Most of the changes in marriage and family life occurred during the long transition from the late medieval to early modern worlds. The post-Reformation marriage practices described by Keith Brown reflect early sixteenth-century practice as well. The shift towards early modern society began with the increased use of marriage contracts at the end of the fifteenth century, and the reliance on these written methods of safeguarding marriage.

Appendix: Transcribed Documents

Ante-Nuptial Contract of Anne Montgomery and Robert Cunningham, laird of Ardrossan[1]

16 June 1425

This marriage contract was drawn up by the lord of Ardrossan, who was the groom, and Robert Cunningham, lord of Kilmaurs, the bride's father. This is one of the earlier marriage contracts that has been preserved, and it outlines payment schemes for tochers, the provisions for the parties involved and any hiers.

Thir endenturis made at Irwyne, the sextende day of Junii, the zer of our Lorde a thousande four hundreth tuenty and fyve, betuyx worschipful lordis, Schir Jone of Mungumry, Lorde of Ardrossane, on the ta part, and Schir Robert of Conyngham, Lorde of Kylmawrys, on the tothir part, proportis and beris witnas as eftyr folowis, that is to say ; that the said Schir Robert of Coningham is oblist to wed Anny of Mungumry, the dochtyr of Schir Jone of Mungumry, and to gyfe to the said Anny joyntfeftment of tuenty markis worth of his Mudir landis ' And gife it hapynnys the said Schir Robert and Anny hafand sonnys of lyfe, the joyntfeftment beande of na walwe : And for his mariage and joyntfeftment, the said Schir Jone of Mungumry is oblist to gyfe to the said Schir Robert thre hundreth markis and fourty pounde ; the quuhilkis sal be payt zerly fourty pounde quuhil the hale sowme be fullily payt ; and in the begynnyng, tuenty pounde at Martymes[2] [sic] next eftir the makyng of thir letris ; and at Wytsonday next thaireftir folowande, the said Schir Jone of Mungumry

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[1] William Fraser, ed. *Memorials of Montgomeries, earls of Eglinton.* (Edinburgh, 1859), 8-9.

[2] Martynmes

sal make his Witsonday of fourty poundis worth of lande, and he sal mak the malaris dettouris to the said Schir Robert, entrande to the male of the said landis at that ilk Wytsonday ; the quuhilk landis sal be the Estwode and Loychlebokside, and at the likyng of thesaid Schir Jone of Mungumry mar inwart landis gyfe hym likys, ilk zer to tak vp fourty pounde of tha said landis, quuhil he be fullily payt at vsuale termys as is befor said: Als it is acordit at the said Schir Robert sal joyse and browk ther Balzery of Coningham, with al the profytis pertenande til it, for the terme of his lyfe ; and the said Schir Robert is oblist at he sal nocht mak na ger mak the said Balzery sekirar til him, na til his ayris, in to the mentyme, na he was in to the entra of the said Balzery eftir the dede of the said Schir Robert, in the samyn forme and effect as it was in the tyme of the makyng of thir euidentys : Als, because of kynrend thar behufys to be a purchas; and gife it may be gotyn in Scotlande, the said Schir Jone of Mungumbry sal pay tharfor, and gife it be outwyth, it sal be gotyn on bath thair costys: And gyfe it hapynnys the said Schir Jone of Mungumry nocht to ga in hostage for the Kyng, he sal hald the said Anny his dochtir, and a damysale with hir, and Schir Robertis resonabyl repayr, for twa zer in met and drynk, and buch of court, with sex horssis fyndyng at the liking of the said Schir Robert ; and gife he gais in hostage, the said Schir Robert sal se for his wyfe hymself: Als, it is acordit at the said Schir Robert sal nocht enter in the said Balzery quuhil the said Anny and he be maryit: Als, it is acordyt at gife ony of thai twa, Schir Robert or Anny, decessis or thai be maryit, the said Schir Robert or his ayris sal restor it that he has tane vp of the said mariage, in the samyn tyme, at the Marynmes[3] [sic] and the Wytsonday next

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[3] Martynmes

folowande, to the said Schir Jone of Mungumry or his ayris : And til al and syndry

thir poyntis lelily and trewly to be kepyt, but frawde or gyle, athir of the said lordis

tyl athir has gyfyn the fayth of thair bodyis: In the wytnas of the quuhilkis, and to the

mar sekyrnas, entirchangiablly had set to thair selis, yher, day, and place before

wrytyn. Sequitur tenor vltime litere.

Ante-Nuptial Contract of Alexander Strachan of Brigton and Margaret Strachan of Carmyle[4]

12 April 1584

This is a marriage contract between Alexander Strachan of Brigton, who was the groom and the son of the late David Strachan of Ingliston, Kinnettles, and James Strachan of Carmyle, representing his sister Margaret, the bride. This is an excellent example of a later marriage contract, and details the complex arrangements that were typical of this sort of document. It also describes the process of composing a contract, including the parties involved, the notaries, and the witnesses.

At Dundie the twelf day of apryle the yeir of god im v ffourscoir foir yeirs It is

apyntit concordit and finallie agreit betwix honnorabill parties Thomas grey James

Strauchone of carmyle ffor him sellff and takand the birduyn upone him for

margarett strauthauchone lauthfull sister laufullie gottin betwix umquhile david

strathauchone his father and umquhile Christane carnegy sumtyme spouse to the

said umquhile david upon that ane part And Alexander strauthauchone sone

lauthfull to umqhuile david strathauchone sumtyme In Inglestonne of kynntellis

upon the uthir part in maner & effect following That is to say the said Alexander

Strathauchan sall god willing spous mary And in faice of godis congregationn

solempnizat the band of matrimoney with the said margarett strathauchone betwix

the dait of thir presentes and the tweff day of the monethe of maii nixt tocum In the

yeir of god im vc fourscoir four yeris FFor the quhilk solempnizationn and

completing of the said matremoniall foirsaid and for the causs perticularlie wrytin

the said James Strachowne master of carmyle bindis and obleisses him his airis

executoris succeissoris assignayis and Intromeiteris with my guidis and geir

---

quhatsumever fayfullie and be the tennor heiroff to thankefullie content pay and

delyver to the said alexander strachone and to margaret strathauchone now his

spous futuir and to the langer levand of them and to thair aris lauthfullie to be gottin

betwix them Quhilk failyng to thair airis quhatsumever equalie and proportionalie

betwix them all and haill the sowme of sex hundred merks guid and usuale money of

this realme in the name of tochirguid with the said margarett his lauthfull sister At

termes following viz. fyve hundrit merkis betwix the dait heiroff and the laist day of

the moneth of Maii the yeir of god above wrytin im vc fourscoir four yeirs and ane

uther hundred merks in haill and compleit payment of the said puinde sowme of sex

hundred merkis betwix that and witsonday in the yeir of god etc fourscoir fyve yeris

Attor that forsamekill as ane honnorabill man Sir John of carnegy of Kynnerd knyght

is bund and oblest be virtew of ane contract to content pay and delyver to umquhile

david strachone of carmylle and his airis ane certane sowme of guid and usuall

money of this realme expressit in the said contract of quhatsumevere day or dait it

be and it is of vertie that the said James now of carmyle is sone and air to the said

umqhuile david his father and thairfoir hes just claime richt tytill and enteres to the

said sowme contenit in the contract above wrettin And thairfoir and for the caussis

above expremit and under wrettin he hes maid constitutes and ordainis And be thir

presentis he makis constetuttis and ordainis the saidis alexander and margarett

now his spous futuir and thair airis foirsaidis hes very lauthfull undutit and

irrevocabill donatoris cessioneris and assignayis in and to the said sowme of money

specefiett in the said contract now being in the handis of the said Sir John of carnegy

of kynnerd knyght as he is ane successor and intrometer with the guidis and geir of

Sir umquhile Robert carnegy of kynnerd knyght his father acquittainis and

dischargis to giff thairupon quhilk salbe als guid and valiable to the said Sir Jone

knyght as the said James strauchone of carmyle haid gevin the samyn and his awn

hand wretten befoir and lang sittand In Jugment and befoir famous notary And giff

neid beis to summand call follow and persew for the samyn to the uttermaist force

and rigor of the law and the sowmes quhilk thay reseves obtainis and gettes to

compeir to thar own utiletie and proffeitt And the said James sall satisfie support

help and mantene the said alexander and margarett now his spous futuir and thair

airis foirsaidis to the persut reseving and obteining of the said sowme of money fra

the handis of the said Sir Jhone knyght and fro all utheris personis detbound for the

samyn To thir utter power and the said James now of carmyle in respect that he is

presentlie minor and hes lauthfull curatoris electit and scosone viz. Patrick Master

of gray alexander strauchane of brigtonne and Robert Strachone fear of balumbie

and that the poynttis above expremit al to his utiletie and proffeitt Thairfore he sall

caiss his saidis curatoris with ane consession and consent subscryve this present

contract matremoniall in signe and takin of thair assent consentt ratefecationn and

actoratie herto Ffor the quhilk dyvers and sundrie caussis perticularlie and retine

above wrytin the said margarett strachone and alexander thair hir lauthfull spous

with ane assent and consent sall at the resaitt of the firstsaid sowme of fyve hundred

merkis frelie remmit re[nounce] and resigne or giff queytclame discharge and frelie

delyver fra them thar airis and assinis all maner of guidis geir sowmes of money

dettis actis contractis obliganis wretings landis annelrenttis and utheris clames

quhatsumevir Quhilk that evir the said margarett or hir said spous for his Enteres

may or can ask clame or requyer of the said umquhile cristane carnegy mother to

the said margarett or umquhile david strachone of carmyle hir father or be ony of

thair ancessoris testamentoris last willis or legacies or be quhatsumevir uther

caussis occasionn brigane unto the day and daitt of thir presentes to the said James

Strachone now of carmyle his airis and assignies [illegible] as the said James and his

[illegible] can denyss Excepand and reservand to the said margarett and alexander

hir spous foirsaid for his enteres the sowmes perticularlie above wrytin and all

bairnis part of guidis geir pertening to the said margarett be raissoone of the deceiss

last will and legacce of the said umquhile david hir father for fulfilling observing and

irrevocablie keping of the premissis and ilk poynt above wrytin bayth the saidis

parties for thame selffis and thair foirsaidis al faythfull bundin oblisit and sworne

Ilkane to utheris in safar as constrenis ather of them for thair awin partis and as

contentit and assentis that this present appoyntment be insert and registratt in the

buikis of our soverene lordis counsall conmessaris of sanct androis sheriff forfar

And the saidis lordis comessaris [illegible] to interpone thair decrettis and

actoreties herintill ffor fulfilling of the premissis ilk ane for thair awn partis under

the painis of poynding warding and horning with god entarrally etc And to that

effect Bayth the saidis parties be thir presentis makis constetutis and ordainis

honnorabill men Masters Jon scharp Richard strang thomas craig William cock

andro greiff andro willson alexander wedderburne william thomsone and ilkane of

them coniunctie and severalie thair procuratoris with full power to thame to

consent to insert and registrat thir presentis in the buiks retin above expremit and

to actitat bayth the said parties and thair foirsaidis thair for fulfilling of the

premissis under the painis above specefiett with executorial to be rasit hereupon

and put to executionne Ass oft as neid beis in forme as efferis cum clasulis de rata et

grata etc. And for the mair securitie Bayth the saidis parties with ane assent and

consent hes subscryvit this present apoyntment with thair handis In maner under

writin day yeir and plaic forsaidis befoir thir witnessis patrik strachone in auchlair

Jone strauchone servitor to alexander strachone of brigtone robert yowng and

thomas irland notary publict

Thomas Irland in asof [illegible]   James Strachauchin off Carmyle
 testis in premiss [illegible]   Alexander strauchin with my hand

Robert yowng witnes   Alexander strachauchin
        of brigtounn curator

        Patrick Strachanon witness

Agreement between Annas Campbell to Duncan Campbell, laird of Glenorchy[5]

28 April 1586

This contract between Annas Campbell and Duncan Campbell of Glenorchy, her brother, states that in return for supplies and tocher for her wedding and marriage to James Campbell of Ardkinglass that Annas and James will provide Duncan with the lands of Balmoir and Ardchaylie Wester. This is a practical document that ensures Duncan will continue to have adequate estates to provide for his own family, but also acknowledges aspects of family responsibility and the 'burdene' that marriage can bring to family members. This is one of the few documents that mention marriage festivities.

Be it kend till all men be thir present letteris me, annas campbell sister germane to the richt honorabill duncane campbell of glenurquhay To be bundin and oblist and be thir presentis And the fayth and treuth in my bodie lewlie and treulie bindis and oblissis me To the said duncane that fforsamekill as he sen the deceiss of umquhile my fader and mother hes borne the burdene of me and hes in all thingis not as ane broder bot as ane loving fader to me honorablie intertenyit me And laitlie for forther declaratiounn of his greit kyndnes to me ane sufficient provisiounn of me in mariage hes contractit with James campbell of ardkinglass and his oblisit him in name of tocher for accomplischtment of mariage betwixt Johne campbell sone to the said James and me the soumm of ffoure thousand markis money The quhilk soumm by and attour the said Duncanis greit chargis and expenssis upone my claithing and bancat the tyme of my marriage will extend to mair in doubill avale Nor any gudis and geir quhilk appertenit to me throw deceis of my saidis umquhile fader and mother And I having greit respect to the said Duncanis gude intentiounn to this my honorabill provisiounn in mariage And greit burdene quhilk he hes borne of me in

tyme past as alsua of the sowmes of money to be pait be him be occasiounn of my

mariage and uther chargis forsaidis And being alwyis myndit according to my

dewtie that his barnis suld be rememberit be me quhenever god providit me to that

honorabill stait whereunto he has alwyis cont his endevair I bind and obleis me be

thir presentis and the faith and treuth in my bodie That I sall gif grant and frelie

deliver in remembrance of the premissis To the said Duncane in name and be half of

ony of his lauthfull dochteris for helping to hir mariage alsmekill geir and sowmes of

money as he hes bestowit upone me specifiit in the said contract or uther wyis And

in caiss of the said Duncanis deceis be for me (as god forbid) sall declair my

benevolence and furtherance in helping and advanceing hir honorablie as the said

Duncane hes done to me in maner foirsaid Without impediment or contradictiounn

quhatsumevir ffor thir becaus the landis and forest of balmoir and ardchalyie wester

lyis within the said Duncane my brothir boundis and hes bene of auldin

possessiounn of his forberis And that be ovirsicht of umquhile colene campbell of

glenurquhay my fader the same wes neglectit And I bering ane gudwill to the

present grant of the hous of quhame I am discendit and that the same sall in

abovewryt in the auld possessiounn of quhaisumevir thing I may allyar be moyane

or uther dress quhatsumevir that lyis in me or in my consale or power I bind and

obleis me thairfor and for the said Duncanis honorbill dealins folwandis my

[illegible] in maner above expremit To do my uttir diligence at all tymis to persuad

the said James my future spous To grant the said landis and forest of balmoir and

ardchalyie Wester To be brecht to the said Duncane and his airis possessiounnis

agane And that I sall uss all travails that may ly in me and moyane pessabill to bring

the samis to perfection for thaw securiteis of the same And heivin to I bind and

obleis me faithfullie and be the faith and treuth in my body the halie evangelistis

tuchit without fraude or gile In witnis of the quhilk thing I have subscrivist thar

presentis with my hand. At balloch the twentie aught day of aprile the yeir of god jm

vc fourscoir and sex yeris Befoir thir witnes gavine hamiltoun notar publict

Annas campbell
with my hand

Gavine hamiltounn notar publict
Witnes to the premisses

Letter from James VI to laird of Abercairny, Halyrudhous[6]

11 Jul 1588

This document is a letter requesting venison, wildfowl, fed capons other goods for the wedding banquet of George, earl of Huntlie, and Henrietta Stewart, the sister of duke of Lennox in ten days' time. This letter is unique in detailing the food that would appear at the wedding of the upper nobility in the later sixteenth century.

Traist freind. We greit yow weill, because the xxj of this instant is appoyntit for the solemnizing of this mareage betwix our richt traist cousing and counsalour George Erle of Huntlie and dame Henriette Stewart, sister to our darest cousing the Duik of Lennox and that our intention is and haif it anserabill in all solemnities baith to our honour and the parteis awin estates quhairunto the want of sindrie things quhilk can not weill be had in ony commoun marcat salve sum hinder except the same be uther wyis suppleit. We haif thairof ane occasioun to desyre you richt affectuoslie to help ws with sic vennysoun, wylt foulis, fed caponis and sic utheris as the, Eather haif or may recover betwix and then and caus the same be at ws in convenient tyme to serve that erand as yow will do ws speciall plesour and report thairfoir our hartieast thanks. This we commit yow to God frome Haliruidhous the xj day of July 1588

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[6] NRS, GD24/5/57/15

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