Family, Finance and Free Will: Marriage Contracts in Scotland, *c.*1380–1500

Heather Parker

This article examines the place of marriage contracts in the family life of late medieval Scotland. Contracts were often drawn up at the betrothal of lairds and nobles, and each one represents an agreement between two families to an exchange of land or money. These arranged marriages were considered important for the success of the bride and groom and were sometimes even crucial to the economic and social power of their wide family networks. Only a few hundred pre-Reformation antenuptial contracts still exist. These documents provide an invaluable window into attitudes towards betrothals and the treatment of marriage in Scottish society before the Reformation.

Over the course of his life, Alexander Seton (d. 1440/1), the second son of Sir William Seton of that Ilk, became the patriarch of what would soon become one of the most powerful families in fifteenth-century Scotland.[1] His family concluded a series of well-chosen marriages to attain this status. Similarly, Alexander Stewart, son of the Wolf of Badenoch and infamous for his violent and territorial pursuit of power, realised marriage to Isabella, countess of Mar, was the most efficient method of gaining the valuable earldom of Mar and Garioch.[2] The ambitions and concerns of these men and others like them can be traced through the antenuptial contracts they used to further their territorial goals and improve their social status. These written contracts preceded and accompanied formal betrothals and nuptials, and spelled out, among other things, the particular financial arrangements that accompanied the marriage. These contracts were enforceable in court, and could redefine the terms of a marriage.

Scotland has a particularly rich collection of antenuptial contracts preserved in its archives. Between 1350 and 1500, twenty-seven marriage contracts of the lairds and nobility have been preserved. In the sixteenth century their popularity skyrocketed, from which time period there are more than two hundred extant documents. This does not include the many dozens of contracts of burgh-dwellers recorded in notaries' protocol books, nor does it count the many contracts from people at every level that have not survived.

High-profile marriages, such as those of Alexander Seton, demonstrate the importance that the upper strata of society placed on marriage bonds

---

[1]   M. Brown, *James I* (East Linton, 1994), 81.
[2]   S. I. Boardman, *The Early Stewart Kings: Robert II and Robert III, 1371–1406* (East Linton, 1996), 261.

as a means to resolve disputes and overcome economic difficulties. These contracts are important sources for social, legal and economic history. These unions were at the crux of secular and ecclesiastical society, and demonstrate the extent to which the theory of beneficial marriages was put into practice. In a society where real and fictive kinship could determine political alliances, marriage arrangements could inform many different aspects of the lives of Scottish nobles. Agreements such as those between Isabella Douglas of Mar and Alexander Stewart show that every marriage raised questions about inheritance rights, and it was always prudent to resolve these legal questions ahead of time. Although legal sources could obscure just as much of social history as they enlighten, there are methods for gleaning elements of social history from such records.[3]

This study is a discussion of the marriage contracts of the Scottish nobility of the long fifteenth century. It examines the process of the creation of a marriage contract and the utility of contracts to noble families, who were struggling to maintain and increase their power in a world filled with uncertainty.[4] Thorough work has been undertaken that looks at the role of marriage contracts in late sixteenth and early seventeenth-century Scotland,[5] but very little work has examined their role in the late medieval period in marriages of the nobility.[6] Marriage contracts have been well used by historians in many fields, especially to provide biographical information in political and family histories.[7] Only a

---

[3]   Similar studies have been done using charters, such as C. Neville, 'Finding the Family in Charters of Medieval Scotland, 1150–1350', in (ed.) E. Ewan and J. Nugent, *Finding the Family in Medieval and Early Modern Scotland* (Aldershot, 2008), 11–21.

[4]   Further discussion of the world of the nobility can be found in J. Wormald, 'Taming the Magnates', in (ed.) K. Stringer, *Essays on the Nobility of Medieval Scotland* (Edinburgh, 1985); M. Brown, 'Scotland Tamed? Kings and Magnates in Late Medieval Scotland: a review of recent work', *Innes Review*, 63.2 (1994), 120–46; A. Grant, *Independence and Nationhood: Scotland, 1306–1469* (Edinburgh, 1998), 171–99.

[5]   For example K. M. Brown, *Noble Society in Scotland: Wealth, Family, and Culture from the Reformation to the Revolution* (Edinburgh, 2000), 113–57. Later material includes: L. Leneman, *Alienated Affections: Divorce and Separation in Scotland 1684–1830* (Edinburgh, 1998); L. Leneman, *Promises, Promises: Marriage Litigation in Scotland 1698–1830* (Edinburgh, 2003).

[6]   B. Seton, 'The Distaff Side: A Study in Matrimonial Adventure in the Fifteenth and Sixteenth Centuries', *Scottish Historical Review*, 17 (1919), 272–82; E. Ewan, 'To the Longer the Liver: Provisions for the Dissolution of the Marital Economy in Scotland, 1470–1550', in (ed.) M. Ågren and A. L. Erickson, *The Marital Economy in Scandinavia and Britain, 1400–1900* (Aldershot, 2005), 191–206.

[7]   All of William Fraser's nineteenth-century family histories use marriage contracts. More recent family histories that use these documents to highlight marriage strategies include: S. I. Boardman, *The Campbells, 1250–1513* (Edinburgh, 2006); J. Cox, 'Lindsay Earls of Crawford: the heads of the Lindsay family in late medieval Scottish politics, 1380–1453' (PhD Thesis, University of Edinburgh, 2009).

handful of studies have examined the content of marriage contracts as a source for economic and social history.

The exact number of medieval marriage contracts available for consultation can be difficult to tally because they are sometimes difficult to define. For instance, the treaty of Birgham in 1290 declared that Edward I of England's son and heir, Edward of Caernarvon, would marry the Maid of Norway, the short-lived heir to the Scottish throne.[8] This treaty had major political implications, such as a possible union between England and Scotland. It was also the oldest Scottish contract of marriage. There are many of these high-profile marriage alliances that have been presented primarily as political documents. Only 272 pre-Reformation antenuptial contracts relating to the lairds and nobility before the year 1600 are extant and accessible to researchers.

The retention and conservation of extant marriage contracts is not arbitrary. Good fortune, good planning and substantial wealth have all been factors in their preservation. Marriage contracts were originally the remit of the nobility, but they soon became popular among lairds and slowly emerged among the rest of the population. Contracts from the lower echelons of society did exist, but have not been preserved. For instance, there is evidence of marriage contracts being used by cottars in the late sixteenth century, but no documents remain extant.[9]

These contracts are nearly all preserved in the original and in copies in families' private charter chests and archives. Most of these families have since donated or loaned their material to the National Records of Scotland; others have registered their collections with the National Register of Archives for Scotland. Wealthy families are overrepresented in extant contracts, especially before marriages began to be systematically recorded in 1561.[10] Notaries' protocol books from the fifteenth and sixteenth centuries include records from a wider range of people, but they rarely offer cohesive collections. These contracts were all preserved and copied to act as evidence in disputes over land claims, and later to illuminate the history of each family.

Scottish marriages were family affairs. Each contract between two land-owning families represents an agreement to a betrothal and the accompanying clauses concern transfers of power, land and money. The contracts and betrothals were often crucial to the economic and social power of kin. Whole families participated in the planning process. The parents of the betrothed had themselves experienced arranged marriages, and so they understood how control over their children's marriage arrangements could be beneficial for the family.[11] Over time, the arrangements became more detailed, and parents

[8]   K. M. Brown *et al.* (eds), *The Records of the Parliaments of Scotland to 1707* (St Andrews, 2007–9), 1290/3/1. http://www.rps.ac.uk/mss/1290/3/1.

[9]   M. H. B. Sanderson, 'Lives of the Scottish Cottars, 1585–1620: The Evidence of Their Testaments', *Review of Scottish Culture*, 20 (2008), 21.

[10] National Records of Scotland (NRS), RD1.

[11] C. Rawcliffe, 'The Politics of Marriage in Later Medieval England: William, Lord

could use contracts to avoid the customary legal framework for marriage to ensure the best outcome for the union.

A contract concluded with a list of witnesses who consented to its contents and could attest to its legitimacy. Witness lists provide detailed information about the people involved in a legal transaction and have been used to reconstitute social networks in late medieval Scotland. It is now clear that contract witnesses were not always present at the signing of the contract but instead were giving their authority to the agreement and the transfer of land or money.[12]

The marriage contract of Jonet of Fentoun and Huchon Fraser is typical for the period. In 1415, William of Fentoun and Huchon Fraser met to settle the terms of the arrangement for Huchon's marriage to William's sister. This was later approved at Baky by the chancellor John of Glasgow; provost and keeper of the privy seal, William Foules; chamberlain John Forstare; and treasurer Walter Ogilvy. Like most contracts, it began by naming the principal parties involved:

> This indentur made at the Baky, the third day of the moneth of Marche the yheir of our Lord a thousand fourhundreth and xv, betuyx thua nobil lordis and mychty, Villiame of Fentoun lord of [that] Ilk on the ta part, and Huchon Fraser lord of Lowet, on the tothir part.[13]

The groom, Huchon, was acting independently, but his bride, Jonet, was represented by her brother. Landowners like William were heavily involved in the formation of marriage of their kin, which gave him opportunities to further his political and economic goals. Families co-opted advisors, lawyers and friends to participate in the process of designing a contract. The systematic use of advisors can be seen in many places in Scotland: the MacDonalds held their famous Council of the Isles, the chief advisors of Clan Chattan's *fine* were consulted by correspondence, and Clan Campbell maintained unity through consultation of its members on important decisions.[14] These traditions existed outside the Highlands; for example, the Douglas family used a council to make important decisions.[15] Family consultation was traditional for these Scottish kin groups, unlike the involvement of lawyers as advisors, which developed

Botreaux, and the Hungerfords', *The Huntington Literary Quarterly*, 51 (1988), 172.

[12] D. Broun, 'The Presence of Witnesses and the Writing of Charters', in (ed.) D. Broun, *The Reality behind Charter Diplomatic in Anglo-Norman Britain* (Glasgow, 2010), 235–90.

[13] J. M. Thomson (ed.), *Registrum Magni Sigilli Regum Scotorum. The Register of the Great Seal of Scotland, A.D. 1306–1424* (RMS) (Edinburgh, 1882), i, no. 178.

[14] J. W. M. Bannerman, 'The Lordship of the Isles', in (ed.) J. M. Brown, *Scottish Society in the Fifteenth Century* (New York, 1977), 221; A. Cathcart, *Kinship and Clientage: Highland Clanship, 1451–1609* (Leiden, 2006), 75; J. 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, 2002), 64.

[15] For a thorough discussion of the earls' retinue, see M. Brown, *The Black Douglases: War and Lordship in Late Medieval Scotland, 1300–1455* (East Linton, 1998), 157–65.

much more slowly in Scotland than it did in England. This growth of the legal profession is mirrored by the use of increasingly specific clauses in the marriage contracts of the fifteenth century.[16]

Brides rarely acted on their own behalf when entering marriage contracts, while grooms, on the other hand, had more power, especially after their parents died, as this gave them control over the family estates. Heiresses could develop substantial control over their legal arrangements if they were unmarried after they reached the age of majority, twenty-one.[17] This had everything to do with their control of the family estates and monies – only the landowner could provide necessary dowries, and when women held control over their own estates, they appeared in the contracts much more frequently.

Young heirs and heiresses were rarely so independent. Guardians had control over the marriages of their wards, and enterprising men used this to their great advantage. 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.[18] The king used these rights of wardship to further his own political goals, giving or selling marriage rights to whomever he wished, such as when James II gave the marriage of his ward, Mariota of Hoppringill, as a gift in 1458 to William, Lord Borthwick, for his son.[19] Gifts such as these demonstrate the attitude that there existed a parental right to control marriage. Legally, there could be no 'force and fear' from the guardians of a ward.[20] Nevertheless, this happened frequently, and the only recourse for ambitious wards was to bring their guardians to the ecclesiastical courts to insist upon their 'reasonable right to refusal.'[21] Despite the clear stance of the Church on the primacy of personal consent, it was the norm for guardians to arrange the marriages of their wards.[22]

This type of careful family planning was seen not only with wardships, but also with the guardian's own children. When the heiress Elizabeth Gordon was a ward of the Seton family, it was clear to her guardians that her marriage could be of crucial advantage. Unlike older heiresses, Elizabeth had little power over whom she married. Elizabeth's father had died in 1402 and, following the death of her brother six years later, her guardian paid the regent, the Duke of Albany, one hundred marks for the right of Elizabeth's marriage.[23] Seton arranged for Elizabeth to be married to his second son, Alexander, creating one

---

[16] J. Finlay, *Men of Law in Pre-Reformation Scotland* (East Linton, 2000), 2–3; W. D. H. Sellar, 'Celtic Law and Scots Law: Survival and Integration', *Scottish Studies*, 29 (1989), 93.

[17] W. Coutts, *The Business of the College of Justice in 1600: How It Reflects the Economic and Social Life of Scots Men and Women* (Edinburgh, 2003), 139.

[18] NRS, GD 124/1/121; NRS, GD 124/1/123; Boardman, *The Early Stewart Kings*, 264.

[19] RMS, ii, no. 650.

[20] C. Donahue, *Law, Marriage, and Society in the Later Middle Ages* (Cambridge, 2007), 21.

[21] N. J. Menuge, *Medieval English Wardship in Romance and Law* (Chippenham, 2001), 86.

[22] Menuge, *Medieval English Wardship*, 98.

[23] RMS, i, no. 898.

of the most powerful dynasties of late medieval Scotland and starting a pattern of advantageous marriages for the Gordon–Seton descendants.

Although political alliances often had immediate repercussions for the whole family, another stimulus for arranged marriages was the long-term benefit for the lineage as a whole.[24] This concentration on the benefits gained by a whole kin group after a marriage accorded closely with the clauses in most late medieval contracts allowing for the substitution of spouses. Scottish noble families defined alliances and power relationships based on blood and marital kinship.[25] The establishment of bonds of marital kinship between particular lineages was crucial to the development and maintenance of clan and aristocratic authority.[26] Marriages were widely exploited by parents as tools of political reconciliation, such as the 1455 contract accompanying the Dunbar–Gordon marriage, which stipulated that the earl of Huntly should 'have delivrance of the castell of Louchindores [Lochindorb].'[27] These marriages could provide crucial opportunities for the social and financial advancement of the families and could establish alliances and diplomatic channels.[28]

This secular model for marriage, where parents and their advisors arranged suitable unions for their children, was not the canonical ideal. In theory, the Church did not consider parental consent necessary for a marriage to take place. William Hay, a professor of theology and later principal of King's College of Aberdeen in the early sixteenth century, described marriage as being defined by three sequential events: betrothal, public demonstration of consent, and consummation.[29] He wrote that all contracts must be free and proceed from the 'free consent of the parties'.[30] This was because the Church was in the business of compelling the fulfilment of contractual agreements. If the betrothal was indeed consensual, then the Church would not risk forcing a non-consensual marriage.

Late medieval marriage contracts did not perfectly reflect Hay's levels of marriage completion, especially when it came to the question of consent. Not a concept that was explicitly addressed in contracts, consent rarely arose as a concern unless the marriage was challenged in court. To understand the position of consent in the formation of marriage, it is necessary to appreciate

---

24   G. Duby, *The Knight, the Lady, and the Priest: The Making of Modern Marriage in Medieval France* (New York, 1983), 81; L. Stone, *The Family, Sex and Marriage in England, 1500–1800* (New York, 1979), 37.

25   Cathcart, *Kinship and Clientage*, 99–112.

26   Cathcart, *Kinship and Clientage*, 100.

27   J. Stuart (ed.), *The Miscellany of the Spalding Club*, IV (Aberdeen, 1849), 128–31.

28   R. A. McDonald, 'Matrimonial Politics and Core-Periphery Interactions in Twelfth- and Early Thirteenth-Century Scotland', *Journal of Medieval History*, 21 (1995), 227–47.

29   J. C. Barry (ed.), *William Hay's Lectures on Marriage* (Edinburgh, 1967), xiii.

30   Barry, *William Hay's Lectures*, 9; T. C. Smout, 'Scottish Marriage, Regular and Irregular 1500–1940', in (ed.) R. B. Outhwaite, *Marriage and Society: Studies in the Social History of Marriage* (London, 1981), 213.

that marriage negotiations were a family affair, and that all but the most unusual of contracts were agreements between male family members of the bride and groom. The dominance of men in these contracts occurred despite the rights of single women to act independently before the law and was instead the result of their authority within the family.[31] There is copious evidence in the sixteenth century of lairds' wives participating in negotiations for their children's marriages, but the presence of signatures in the legal documentation still favoured the husbands.[32] The bride and groom formally gave their consent at the nuptials themselves. The contracts list all sorts of provisions in case of certain circumstances, but do not address the possibility of a refusal to consent. Instead, many of the agreements made clear that the landowning fathers, brothers, and occasionally mothers, were in control.[33]

Certain clauses in these agreements further highlight the lack of concern regarding personal consent. Because marriage could be motivated by the desire to form new bonds of kinship, it was sometimes not important to the parents which child married a given partner, as long as a new link was created between the families and the monetary exchange was appropriate. At least half of the contracts before 1500 included clauses that provided for the substitution of alternate children as bride or groom well after the parties involved had sealed the contract, and organised for money and land to change hands. Although it was loathe to do so, the Scottish Church could then, theoretically, require that these contracted unions take place, even if it involved substitution.[34] These clauses left no room for consent on the part of the bride and groom; an element of marriage that was theoretically essential to form a marriage, yet clearly lacking in some cases. Marriage litigation in contemporary England demonstrates this same phenomenon.[35]

The 1491 contract between George Gordon, earl of Huntly, his son, Alexander, and Patrick Hepburn, earl of Bothwell, showed this attitude clearly. The bride was not mentioned until the contract indicated that Bothwell should 'haue to wife any of the two daughters of the said Erle of Huntly, Margarete or Katherine, quhilk of them that shall best plese the said Erle Boithvile.'[36] Only two contracts suggested that a party might refuse consent. The first was that of Katherine, daughter of the earl of Huntly, and Archibald, son of the earl of Angus, in 1461.[37] The second was an agreement between John Montgomery

[31]   Coutts, *The Business of the College of Justice*, 139.
[32]   J. Dawson, *The Campbell Letters, 1559–1583*, Scottish History Society, 5th series, X (Edinburgh, 1997).
[33]   For example, William Fraser, *The Scotts of Buccleuch*, I (Edinburgh, 1878), 117–19.
[34]   J. Balfour, *Practicks* (Edinburgh, 1754), 97; Barry, *William Hay's Lectures on Marriage*, 9.
[35]   S. M. Butler, '"I will never consent to be wedded with you!": Co-erced marriage in the Courts of Medieval England', *Canadian Journal of History*, 39 (2004), 247–70; R. H. Helmholz, *Marriage Litigation in Medieval England* (London, 1974), 25–73.
[36]   Stuart, *Spalding Club*, IV, 136–7.
[37]   Stuart, *Spalding Club*, IV, 132.

and Besse Edmonston in 1498.[38] Katherine and Archibald's 1461 contract also suggested that the groom might choose his favourite bride from a selection of sisters.[39] To leave such questions as the identity of the bride undetermined until well after a marriage contract had been signed demonstrates the lack of emphasis given to the question of consent by secular parties arranging a marriage, even though Church doctrine stipulated that consent was the central defining characteristic of marriage. Nor was it possible for parents to obtain proper consent from the underage children or 'any dochter lawfully gottin' who were written into these contracts.[40] Legally, a bride had to be twelve years old and a groom fourteen to consent to enter a canonically valid marriage.[41] The proliferation of early betrothal and marriage, especially among heirs and heiresses, was partly a reaction to their vulnerability and that of their inheritance.[42]

The rare conscious acknowledgement of dissent in a marriage contract highlights its conspicuous absence elsewhere. In these contracts, the parents openly acknowledge that their children may not agree, and demonstrate their priorities by pre-emptively addressing this question. The contracts that failed to address this stand out as prioritising family fortune and social status. It must be noted, however, that just because the parents of these brides and grooms were concentrating on unions that would benefit the family at large does not mean that the brides and grooms entering such marriages were not similarly motivated.

A contract was first and foremost a record of the exchange of money and property coinciding with a marriage. Terce was the default property provision for widows and was detailed in many marriage contracts. It was seen not only as customary but also as common sense. Scottish lawyer and judge James Balfour wrote in his sixteenth-century *Practicks* that terce was to consist of a 'ressonabill dowrie' of one third of the husband's land.[43] But contract clauses could follow or override laws governing terce lands.[44] This was effectively completed by adding lands in conjunct infeftment, or shared ownership, which could be held by a widow in addition to her terce. Clauses including conjunct fees were beneficial for women entering marriages who had the assurance of the provision of land in their widowhood, or even after a divorce, when 'a man may not seik restitutioun of the conjunct-fie'.[45] Contracts could also force

---

[38] NRS, GD 3/2/1/16.

[39] Stuart, *Spalding Club*, IV, 131–3.

[40] NRS, GD 45/27/104; NRS, GD 150/136.

[41] Coutts, *The Business of the College of Justice*, 137.

[42] J. C. Holt, 'Presidential Address: Feudal Society and the Family in Early Medieval England: IV. The Heiress and the Alien', *Transactions of the Royal Historical Society*, 35 (1985), 6.

[43] Balfour, *Practicks*, 105.

[44] Coutts, *The Business of the College of Justice*, 150.

[45] Balfour, *Practicks*, 105.

women to renounce their terce. A wife could still, however, try to use the courts to ensure she received her due.[46] It was common for family members to pursue these rights on her behalf.

The complement to the terce was the tocher or dowry, brought by the bride and included in every contract. Tocher clauses are invaluable in understanding power differences between families. Dowry amounts reflected the wealth of the bride's family, as well as the groom's status and vulnerability. Fathers would not always endow daughters marrying wards as well as daughters marrying other men. Heiresses brought very small money dowries and instead used their landholdings to negotiate the content of their marriage contracts. Nevertheless, heiresses often gave a small symbolic dowry, even though the majority of their wealth (and attraction) was in their titles and land.[47] These heiresses could, however, retain rights to governance of their lands in opposition to custom by using specific clauses to address such issues. In her 1455 contracts with George Gordon, Elizabeth Dunbar preserved her right to appoint officers in the earldom and to control much of the day-to-day business.[48]

Many of the earliest medieval contracts were concerned only with defining dowry payments. The tocher of the elite classes of the late 1300s and early 1400s ranged from two hundred marks for an heiress with a sizeable land base to contribute to six hundred marks for daughters without large estates to bring.[49] Monetary tochers in Scotland appeared in 68 per cent of marriage contracts from before 1500 and, although they were originally supplemental to land dowries, they soon gained much more importance in marriage negotiations. Cash tochers increased over time, doubling in value between 1388 and 1436 but increased markedly in the following thirty years to an average closer to two thousand marks. In 1388, John Hamilton wed Janet Douglas, who brought a three hundred mark tocher.[50] In 1530, Elizabeth Keith's brother endowed her with a tocher of five thousand marks. This is consistent with the increase of dowries elsewhere in Europe, where average dowry contracts in Florence, for example, increased by 227 per cent between 1360 and 1436.[51] Although the rise of dotal payments in Scotland corresponded with the rest of the world, its growth must be set in the context of the inflation experienced during the late medieval period. The evidence for Scottish wealth and prices for this period is limited, but average prices of traded products have been established to a certain extent.[52] The mean Scottish dowry in 1500 was about 3.3 times as

[46] Coutts, *The Business of the College of Justice*, 149.
[47] For example, see the discussion of George Gordon and Elizabeth Dunbar's 1455 contract, discussed below. Stuart, *Spalding Club*, IV, 128–31.
[48] Stuart, *Spalding Club*, IV, 129.
[49] RMS, ii, no. 1239; NRS, GD 45/27/116.
[50] NRS, GD 150/55.
[51] M. Botticini and A. Siow, 'Why Dowries?', *The American Economic Review*, 93 (2003), 1392.
[52] N. J. Mayhew, 'Scotland: Economy and Society', in (ed.) S. H. Rigby, *A Companion to Britain in the Later Middle Ages* (Oxford, 2003), 107.

much as it had been a century earlier; average Scottish wheat prices grew in an equivalent amount, from 43 to 141 pence per boll between 1398 and 1500.[53] Dowries were by no means influenced by the same range of factors as wheat, but the economies were linked and the correspondence between the increases is notable.

In his discussion of Scottish coinage, Nick Mayhew writes that although the Scottish economy developed at a different rate from the rest of Europe, many of the problems faced were similar in their shared development.[54] For instance, the shortage of metals for coinage was pan-European.[55] Mayhew is careful to point out that the growth of the economy is not the same as the deflation or inflation of the coinage. He writes that 'the Scottish money supply was enjoying a period of relative plenty in the 1360s, and the behaviour of prices at this time does not support the notion of severe deflation.'[56] Shifting currency values could encourage cross-border trade, thus bolstering the Scottish economy. Nevertheless, in proportion to the real wealth of the family, the portion being assigned to the daughter probably remained consistent. Earlier research has shown that it is possible to discover the relative place of any tocher in Scottish society between the years 1350 and 1600.[57]

Tocher was normally paid according to a scheme of instalments, such as in the 1388 contract between James Douglas of Dalkeith and Janet Hamilton, daughter of John Hamilton of Cadzow, which gave an initial sum to be paid and thenceforth forty marks to be delivered at Pentecost.[58] These yearly Whitsunday payments show that either the tocher offered for daughters were normally too large a proportion of the family's wealth to be paid in one lump sum or that the bride's family were able to negotiate the delaying of the dotal gift to their financial advantage.

Tocher might have evolved from a simple early inheritance for daughters,[59] but by the late Middle Ages, kin groups had developed strategies for maximising their territorial gain by selective adherence to customs surrounding female inheritance. The Campbell clan was perhaps the most successful, collecting lands from brides marrying into the family but maintaining strict male inheritance so as not to lose land through Campbell heiresses.[60] In most cases, it was important that the tocher be relative to the wealth of the groom. A 1469

[53]   E. Gemmill and N. J. Mayhew, *Changing Values in Medieval Scotland: A Study of Prices, Money, and Weights and Measures* (Cambridge, 1995), 145.
[54]   Mayhew, 'Scotland: Economy and Society', 116.
[55]   Mayhew, 'Scotland: Economy and Society', 116.
[56]   Mayhew, 'Scotland: Economy and Society', 115.
[57]   H. Parker, '"In All Gudly Haste": The Formation of Marriage in Scotland, *c*.1350–1600' (PhD dissertation, University of Guelph, 2012).
[58]   NRS, GD 150/55.
[59]   Botticini and Siow, 'Why Dowries?', 1392.
[60]   S. Boardman, 'The Campbells and Charter Lordship', in (ed.) S. Boardman and A. Ross, *The Exercise of Power in Medieval Scotland, c.1200–1500* (Dublin, 2003), 98.

contract between John Edmonstoun of Duntreath and William Prestoune of Cragmelore recorded that if the groom's land were to increase through the return of the lands of his father then the tocher would also be increased in consultation with the abbot of Dunfermline.[61]

Contracts were often designed to confirm arrangements that were supplementary to customary inheritance. James Balfour wrote that the institution of terce was to enable women to remarry more easily with land to their name.[62] Clauses, however, could be included in contracts to remove the right to the dower property upon remarriage. A marriage contract could override secular law by laying out specific terms acknowledging or invalidating the rights of kin, and this could also be done in provisions for the failure of a marriage. The 1530 contract of George Gordon, the fourth earl of Huntly, and Elizabeth Keith, stated that if George failed to renew their marriage when an impediment was discovered, then Elizabeth had rights to a parcel of Huntly's land that was left in trust with her father.[63]

Dissolution clauses could address rights to inheritance and titles of the children born of a marriage. They could also deal with issues concerning consent or could list specific requirements, which, if left incomplete, could nullify the marriage. Many contracts provided conditions for dividing property upon divorce in addition to clauses prohibiting divorce. The contract of the earl of Huntly and Elizabeth Keith noted above provides an example of this:

> George Erll of Huntlie sail als sone as ony sic impedimentis [to the marriage] cumis to his eiris, with all possibill diligence send to the court of Rome for new dispensationis … and in the meyntyme, efter the getting of knawlege of the said causs of diuorce or impediments, quhill the hame cuming of the sadis dispensationis, the said George sail move na caus of diuorce to part fra the said Elizabeth. … And gif it happynis thame to be diuorcit and partit be autorite of the kirk law, the said George sail bring hame dispensationis sufficient, quhairby thai may mary agane.[64]

The earl of Huntly was required to obtain dispensations for his marriage to Elizabeth Keith, and was prevented from seeking divorce before those dispensations arrived. By addressing the question of dispensations in the contract itself, the signatories removed impediment to marriage and thus eliminated the easiest path to an annulment or divorce at a later time. Some of the clauses in the Huntly–Keith contract are specifically aimed at divorce instigated or encouraged by George. Annulments were still rife among couples that had obtained dispensations – grounds could nearly always be found for separation, but a dispensation made it more difficult to seek divorce at will.[65]

---

[61] NRS, AD 1/64.
[62] Ewan, 'To the Longer the Liver', 199.
[63] Stuart, *Spalding Club*, IV, 138–42.
[64] Stuart, *Spalding Club*, IV, 138–42.
[65] Ewan, 'To the Longer the Liver', 196.

Shrewd families, such as the Gordons of Huntly or the Stewarts, could maximise their gains from a first marriage by entering into a second, more profitable union. A complete understanding of clauses favourable to the bride or groom during and after their marriage enabled them to properly develop a contract that would allow them to achieve their goals, whether they be maintaining their social status or trying to climb the social ladder.

The 1455 marriage of George Gordon, master of Huntly, and Elizabeth Dunbar, countess of Moray, highlights many of the issues that families and couples had to face in the creation of marriage contracts. Despite the predominance of contracts designed by parents on the behalf of children, occasional agreements stand out as highlighting the independence of certain noblewomen. The marriage of the widowed countess of Moray is one of these. In her contract of marriage with George Gordon, his parents were the first parties named on the groom's behalf, but the countess of Moray, Elizabeth Dunbar, now in her late twenties or early thirties, was the first person listed from her own family. Her name was followed by six 'men to the said lady'.[66] These men, however, were not placeholders for absent parents. Instead, at the end of the contract, the countess signed her own name, the earl of Huntly set his seal on his son's behalf, and his mother, 'the said Elizabeth [Crichton], countass of Huntlie for herself has sett to her proper sele'.[67] Elizabeth Dunbar stands out as explicitly consenting to her own marriage. Charters were not to be granted ever 'but at her awin free will'.[68] She explicitly retained all rights over the appointment of men to high-level positions and the use of land. George's ambitions allowed Elizabeth to demand a certain degree of autonomy and the recent tradition of Gordon marriages and their desire to gain the territory of Moray influenced that arrangement. George's mother, Elizabeth, was not represented by her husband in the contract, but instead participated directly, showing that her approval of the union was valued. Likewise, the countess of Moray was literate enough to sign the contract with her own hand.

It is not surprising that consent was required from the groom's mother as George's status had been achieved largely through maternal inheritance and kinship. His paternal grandmother had been the heiress to the Gordon lands and ward of the Setons: George took his grandmother's surname along with her lands. His grandmother had then been involved in arranging advantageous marriages for her children including George's father, Alexander Seton, who was heir to the Gordon lands when he married the heiress Egidia Hay of Tullibody, thereby ending a feud and gaining influence with her kin group and lands for his son. In 1438, Alexander and Egidia obtained an annulment upon the insistence of Sir William Crichton, Chancellor during the minority of James II.[69] Alexander then married Crichton's daughter, Elizabeth, in an

---

[66] Stuart, *Spalding Club*, IV, 128–31.
[67] Stuart, *Spalding Club*, IV, 131.
[68] Stuart, *Spalding Club*, IV, 131.
[69] J. B. Paul and R. Douglas (eds), *The Scots Peerage*, IV (Edinburgh, 1882), 529.

effort to subdue the Douglas–Livingston unrest in Scotland. There may have actually been significant pressure from the royal government for this divorce and remarriage.[70] By 1445, George had been granted the title 'earl of Huntly', obtaining a clear acknowledgement directly from the king of his status and gains through marriage. While Alexander's son with Egidia took his father's name, his son by Elizabeth Crichton was named George Gordon, a clear indication that the origins of the family's power came from his grandmother's line.[71] George's uncle, William, also carried his mother's status into the marriage market. He married Elizabeth, heiress of William Meldrum of Meldrum, further expanding the family land base and influence.[72]

The Gordons had pursued a prolonged campaign to acquire the lands of Moray, and with these lands could have become a 'potentially threatening faction' in opposition to James II.[73] The king was directly involved in the annulment of the Gordon–Dunbar marriage and George's subsequent marriage to James' own sister, Anabella Stewart, some time before 1459/60. Politically, this was a shrewd marriage. The couple had a daughter, uniting the families by blood, and George gained the king's favour and support against the rebel Alexander MacDonald, earl of Ross and lord of the Isles, who posed a threat in the western Highlands. In time, this couple sought an annulment. Ironically, George's first marriage had created a bond of affinity, which voided the validity of his second marriage. The grounds for divorce were on the basis of Anabella's consanguinity to Elizabeth Dunbar, but the supplication for divorce was more directly related to a shift in George's goals.[74] His third marriage did not appear to have such baldly strategic aims as his previous unions and would not have been possible had annulments not been easy to obtain. George did, however, submit a supplication to the Pope for a dispensation to marry Elizabeth Hay in 1466, five years before his divorce from Anabella Stewart.[75] In this way, George was ensuring that he did not divorce until he was assured a subsequent marriage. No contracts are extant for the Stewart and Hay marriages. George's efforts to consolidate his power among the upper nobility were not entirely successful.[76]

It was not unusual for the king to involve himself in the marriages of his nobles; James II participated in the annulment of the Gordon–Dunbar marriage and the creation of the Stewart union. This interference was common.

---

[70]   Brown, *James I*, 78.
[71]   Paul and Douglas, *Scots Peerage*, IV, 526.
[72]   Paul and Douglas, *Scots Peerage*, IV, 521.
[73]   C. McGladdery, *James II* (Edinburgh, 1990), 78.
[74]   N. Macdougall, 'Gordon, George, Second Earl of Huntly (1440/41–1501)', in (ed.) H. C. G. Matthew and B. Harrison, *Oxford Dictionary of National Biography* (Oxford, 2004), http://www.oxforddnb.com.subzero.lib.uoguelph.ca/view/article/11033.
[75]   E. R. Lindsay and Annie I. Dunlop (eds), *Calendar of Scottish Supplications to Rome, 1418–1422*, Scottish History Society, 3rd Series, XXIII (Edinburgh, 1934), 338, no. 1132.
[76]   Macdougall, 'Gordon, George, Second Earl of Huntly (1440/41–1501)'.

Previously, in 1404, both the regent duke of Albany and the ailing Robert III were involved in the marriage of Isabella of Mar, who had no clear heir to her title and estates and was at an age when she was unlikely to produce one.[77] Two possible successors emerged: Robert, lord Erskine, who claimed a family link, and Alexander Stewart of Buchan, son of the Wolf of Badenoch. Alexander, however, asserted his power over the territory, attempting to take Mar by a combination of force and legal means, including a marriage contract.[78] The instigation of such politically important marriages went beyond parents and kin to involve all interested and powerful parties.

All three rulers used the marriages of their nobles to consolidate power and to keep the peace. Seven years earlier, in 1397, a contract was drawn up for Mary Stewart, sister of James I, and George Douglas, Lord of Angus. This contract described a marital bond created in part to resolve the growing troubles with Isabella's earldom of Mar:

> ovr Lord the Kyng sail confirme, approve, and ratyfy under his greit seyll all giftys, taliees, settyngys, and condysyoungs mad or to be mad be dame Isabell, Contas of Mar, to the sayd Gorge hir brothir, of all the lanys, rentys, and possessyoungs, the qvylks sche hes or may haf thin the Kynrye of Scoteland[79]

Like the Gordon marriage, the Douglas–Stewart links were important to the balance of power among Scottish magnates.

Other aspects of the Gordon marriages are also revealing. The royal pressure to remarry for political reasons is even more notable because of the presence of contractual clauses attempting to limit mobility between marriages. The contract between Elizabeth Dunbar and George Gordon specifically states that they must seek a dispensation, but despite this George was still able to gain an annulment based on consanguinity.[80] It is clear that secular and ecclesiastical marriage laws posed little obstacle to nobles who knew how to use them to their advantage. Many couples obtained dispensations by claiming to be marrying relatives in full knowledge of bonds of consanguinity and affinity to resolve feuds and settle disputes. In 1380, Pope Clement VII granted the chancellor of Dunblane the authority to dispense ten couples 'that by arranging marriages between contesting families an end may be put to the feuds, murders, and factions existing in those parts'.[81] On occasion, couples treated the church bureaucracy as a *de facto* divorce court, suppressing dispensations and 'discovering' new links between a husband and wife.

George Gordon and Elizabeth Dunbar's contract was far from average and demonstrates the flexibility inherent in the writing of contracts and in their

---

[77] Boardman, *The Early Stewart Kings*, 261.
[78] RMS, ii, no. 1239; Boardman, *The Early Stewart Kings*, 262.
[79] Stuart, *Spalding Club*, V, 252.
[80] Stuart, *Spalding Club*, V, 128–31.
[81] C. Burns (ed.), *Calendar of Papal Letters to Scotland of Clement VII of Avignon, 1378–1394*, Scottish History Society, 4th Series, XII (Edinburgh, 1976), 46.

terms concerning the legalities of the spousal relationship. George's careful, single-minded strategy enabled Elizabeth to demand concessions from him concerning the administration of her estates. His attempt at gaining Moray eventually failed, and his strategy evolved to seek a bride with powerful kin rather than substantial landholdings. Nevertheless, George's personality and the assistance from his advisors are visible in the legal documents drawn up for these arrangements.

Marriage contracts have an enormous untapped potential as sources for political, economic, legal and social history. They can help to explain how and why certain families made decisions about estate management and family legacy. They can also show how whole segments of society – the nobility of the fifteenth century and the lairds and burgesses of the sixteenth century – operated. Understanding the relative importance of individual dowry amounts can enable historians to identify where a family sat financially relative to other families in Scotland. Unique clauses in contracts highlight the gendered attitudes of the parties involved, and their perception of honour, duty, and appropriate roles within their family. These contracts can be viewed as representative of individual events and of overarching strategies of marriage. Careful kin consultation and implementation of marriage strategy facilitated the rise to power of families such as the MacDonalds of the Isles, the Stewarts of Buchan and the Gordons of Huntly, and also allowed some brides to develop powerful roles in their new kin groups. Most importantly, antenuptial contracts were constantly evolving. Tracing patterns over time allows the historian to see the gradual evolution of the late medieval world, including the incorporation of a new legal culture and the changes in religious practices. The appearance of social and cultural change in contracts was always gradual, even when the transformations in society were more abrupt. Scottish families used contracts to highlight their short and long-term goals, and for this reason, they are veritable fonts of information.