PART SIX

'of this marriage there are no sons, but three daughters now existing'
PEOPLE AND PLACE are intertwined. People relate to the land upon which they and others live. This chapter looks at land-owning families and others dwelling in Argyll in the Western Highlands during the late seventeenth and early eighteenth centuries. The subject is the House — not the building in which people live, but the generations of a family who lay legal claim to a piece of ground. The system of land inheritance differs from that of other, moveable property and has an effect upon the organisation of families. Birth order is as important as gender in determining one’s role within the family. Testaments (wills) and marriage contracts provide a large number of the examples utilised because they highlight the transfer of property and people amongst households. All family members are taken care of throughout their lifetime, but the manner in which they receive their upkeep and the social status accorded them varies depending upon their birth order and their gender. As individuals who cannot inherit land, women throw into relief the issues of land, kin and hierarchy. In the Campbell legal documents analysed, 276 women appear. Of these 176 appear alone in a legal document, without any other women. Women appear in fifty-seven marriage contracts, two testaments, nine bonds of provision that are akin to testaments and five liferent documents with similar intents. These seventy-three documents contrast with thirty-nine bonds in which women figure in an active role, sometimes lending money to male kinsmen. Thus, broadly speaking, women figure in 112 out of some 1,500 documents analysed.

In the feudal ideology of landholding, the principle of which was accepted in the Highlands as well as the Lowlands, family land may only be inherited by the first born or oldest surviving male of the prior landholder. Even if this male is a small child, he has right to the land above that of any older male relatives of his father. No Campbell heiresses were found in the abstracts, though technically a female could inherit in the absence of a male heir.

A division of lineage lands would lead to a diminution of the family’s strength. Gender is the first concern in determining eligibility for landholding. The individual must be male. This eliminates half the offspring. If more than one son is available, then the holding’s ownership is passed whole to the eldest. Younger sons frequently farm a portion of the lineage
land during their lifetimes, but at death the disposition of the ground passes back to the eldest male and his personal line.

In the non-feudal landholding system of Early Ireland, females were alienated from lineage lands in a similar way. This system of male inheritance of land is an ancient one throughout Northwest Europe, common to both Celtic and non-Celtic cultures. Land provides the basis of wealth and power. The continued existence of the family takes precedence over any of its individuals. Sons are socially valued in Highland society over daughters. This makes no comment on levels of affection in a family or implies that individuals prefer their boys to their girls. It simply means that, when it comes to the transferral of land and the continuance of the family name, a family hopes to have at least one son. That is the reason for the otherwise unnecessary comment in a bond mentioning that ‘of this marriage there are no sons, but three daughters now existing ...’ It then details the amounts of non-land or moveable property each daughter may inherit.

The above specifics apply only to the inheritance of land. ‘Grund’, as an estate or piece of farmland is still referred to in Scots, is a fixed, immovable commodity known in Scots law as ‘heritable property’ and contrasts with moveable resources such as livestock, furniture, clothing and of course the ultimate in moveable transactions – money. In a rather complicated bond of 1712, John Campbell of Kenmore and his eldest lawful son, Archibald, promise to pay an annual rent or interest of forty-eight merks on 800 merks borrowed from John Campbell, a Dumbarton merchant. That interest is to be drawn off one of Kenmore’s possessions, the farm of Barquile. The example illustrates land resources from which this social class drew its power and the growing desire for additional money primarily controlled by merchants. They did not expect to pay off the debt quickly as the bond contains provisions for monetary interest to be drawn by several generations and several removes of the merchant’s relatives. There is a clear preference here for legitimate or ‘lawfully procreated’ heirs, but their gender is immaterial. Priority is given to any male or female children of the merchant. Interestingly, birth order does not matter here. Specifically noted, however, is the person who is his immediate heir, his sister Helen Campbell in Inveraray. Because a merchant’s wealth rests in money and other moveables, a woman may legally inherit it. A societal preference still exists, however, for closely related males if they are available. Moving down a generation, Helen’s sons or ‘heirs male’ should inherit the annual rent. Only failing them do daughters come into the money. Should all else fail, any other male heirs, such as uncles or cousins, of the merchant brother and sister may receive the interest.

In this monetary bond, one sees a preference for legitimate, male heirs
but an even greater desire to keep the money, moveable though it is, as close as possible to the original line of descent emanating from the merchant. This desire permits closely-related females to inherit money over more distant male relatives. As this merchant died without any male heirs, his sister Helen, widow of a John Campbell in the Horseguards, passed on the income ‘in favour of Margaret Campbell, her only lawful daughter’, in 1716.

Often, a woman received her inheritance at the time of her marriage. This rite of passage marks not only her assumption of adult status, but her movement from her nuclear family – defined by the interests of her father and kin – to her husband’s family. She brought wealth, in the form of tocher or dowry, into this new family to cement her status. She also laid claim to any moveables that might be coming to her from her own family, rather than wait until her parents were advanced in years and she herself a mother. When John Campbell, brother to Alexander Campbell of Sondochan, married Katherine Campbell, daughter of John Campbell of Balliclaven, her tocher was ‘£500 Scots, in satisfaction of all that she might claim by the decease of her said father, or Mary Campbell, his spouse’. This living inheritance is not unusual in Europe as Early Medieval Saxon examples include dowry, direct and indirect, closely linked to the inheritance by females of parental property.

In the early 1700’s, the Kilberry branch of Campbells ran into financial difficulties with no direct male heir. Their legal deeds illustrate how a kindred had more than one option open to them in inheritance. In manipulating family resources and marriage ties to bolster ‘the standing of the house of Kilberry’, personal needs, particularly female ones, took second place to those of the family as a whole. The elder Dugald Campbell of Kilberry must have suspected he was dying in 1713, so he distributed his goods and property among his wife and four daughters.

Goods are tangible objects such as clothing or other furnishings. Property can extend to animate beasts. Wealth on the hoof is as moveable as any piece of goods could be. Scottish society (as with Early Irish) had no trouble extending ownership of livestock to both sexes. The distribution of moveables is up to the individual owner. Dugald wishes his wife to receive half his wealth, while the four daughters are to split the rest, in effect receiving an eighth each.

Lacking a male heir, the Kilberry land was about to pass out of the hands of the immediate, all-female family. In order to keep effective control within the direct line of descent, the Kilberry women effect a union between the closer, female and more distant, male representatives of the family. Elizabeth Campbell, eldest daughter of Dugald Campbell of Kilberry, marries Captain Dugald Campbell, the new heir to Kilberry in
1717. With Kilberry interests safely consolidated, all the women transfer their assets to the new family head, who would deal with their debts. As she surrendered her liferent of ‘Kilberry and Tiretian’, Barbara Campbell, Dugald’s widow was to receive an annuity of 600 merks. The dates indicate that Elizabeth marries at the same time as these legal proceedings. Marriage itself is not just the happy union of two people, it is a product of close negotiations to determine the assets of two families and arrange a transferral of these assets between generations. Whatever their private plans for spending their inheritance, the Kilberry women recognise the claims of family standing to override any immediate, personal needs they may have. They will not be cast off destitute but are definitely expected to pass up an opportunity to exert their legal rights and to take a lesser share of income because of family problems.

A woman brings some of her family’s property, in the form of her tocher, into the relationship with the new husband and his family. That new family, however, then physically supports her in that marriage and in any widowhood afterwards. This is the case with the aforementioned Elizabeth Campbell, ‘boarded and maintained’ by her mother ‘till the time of her marriage in November last’. While a man’s income and well-being throughout life depend upon the resources of his birth family, upon reaching adulthood a woman depends upon the income of her new relations. Perhaps this is the reason why the Kilberry daughters and other Highland women are expected to sacrifice more of their inheritance and other monetary resources than men. Barbara Campbell, the elder Kilberry’s widow, does not give up her share of ‘inheritance’ from her husband because her own birth relatives no longer support her. She needs this spousal income from her marital family to maintain herself and at least one of her daughters.

Campbell landholders and other arbiters of similar social standing who assembled a year after the original agreement to restructure the family finances understand that ‘the circumstances of the family of Kilberry require this as much as any other families in the country’. A shortage of ready cash, coupled with a desire to follow a fancier lifestyle than the Highlands previously pursued, left many families juggling their assets. Other women are on record as passing their monetary and other income rights to their family’s males.

The eldest surviving male most closely associated with the main line of family descent wields the most official power within a lineage. Birth order and gender conspire to place him in this position. Birth order, while most dramatic in its separation of eldest from non-eldest child, subdivided the claims of younger siblings as well. The effect is most pronounced, as before, in inheritances where children are listed in order of birth.

Donald Campbell of Barichbeyan had eight children, six of who are
listed in his will. His eldest son, George, acts as executor for the estate, dividing up some or all of the family’s livestock and monetary moveables amongst his younger siblings; Mr Alexander, Ronald, Mary, Anna, and Janet (who is probably illegitimate). Birth order is recounted solely along gender lines, emphasising the separate roles each sex plays in a family. The testament first lists the inheritance due the males. The second son, Alexander, receives 4000 merks and all equine stock. The third son receives only half that money and any young bullocks useful for ploughing. These animals are of lesser value than horses cited. The eldest and next to eldest daughters are unmentioned. They are likely married and have either received their inheritances as tocher or are deemed not to need additional support. No money is forthcoming for the younger girls. They receive livestock only, the amount varying by birth order. Thus Mary has thirty, Anna twenty and Janet twelve. ‘Old-fashioned’ marriage contracts found elsewhere provide a woman’s tocher in cattle alone. Those with more ‘modern’ features include or substitute money. The girls here receive breeding cows, capable of producing both offspring and dairy products. From this stock, they can increase their personal resources more productively than from interest off a monetary bequest. The numbers of cows are within the range found in tochers and may represent the girls’ dowries.

Margaret Campbell, Barichbeyan’s widow, receives additional money above and beyond that legally called for by her marriage contract. Her inclusion reveals that her husband is not limiting himself to the barest legal minimum he must dole out to his family. He is also moved by a sense of personal responsibility and likely by affection as well. It is the more significant, therefore, that he gradates the inheritance, even within a gender, by birth-order. How to account functionally for the diminution of wealth as birth order increases is unclear. Unlike the category of ‘women’ as a whole, latter born children do not seem to be compensated in other manners for their loss of patrilineal inheritance. This is not a society philosophically based on egalitarian or democratic principals. Such discrimination based on birth order may have been justified as ‘one’s lot in life’.

In some ways, non-eldest sons occupy a similar social position in society to all women. These men do not automatically have access to that most powerful of social resources, land. Tradition and law mandate that a piece of land be handed over intact to one male member of the upcoming generation rather than divided into portions. Only moveable property passes on to a lineage’s remaining, secondary children. Rather than view the issue of property inheritance as one that splits males and females into opposing camps, the divide becomes an uneven one separating the few, eldest males of a generation – to whom control of the land is granted –
against the rest (both male and female) who receive control of lesser, moveable resources. This imbalance reflects a greater, societal imbalance of power and status upon which the hierarchical Highland and Lowland Scottish societies are based. There is one major difference, however. Males of any birth order may play a public role, such as entering into legal deeds. Women are, for the most part, barred from active, public positions. The clearest illustration of this is the complete absence of women from any witness list, itself the least powerful role in a legal action.

Women predominately appear in marriage contracts and testaments. The passing on of property is an important part of both. In marriage, a woman also passes from her birth family to a new family. The inter-generational bond is stressed between a woman and her father in both these legal forms, while the marriage contract adds a new, primary relationship between husband and wife. This marital bond represents the start of a new, nuclear family.

A marriage contract involves several parties and generations, not just the bride and groom, for it legally marks the union of two separate families and not simply two individuals. The more socially prominent and land rich the families, the greater the attention to detail. The preferred form is for the father of the bride to give his consent or actually enter into the contract alongside or even on behalf of his daughter. The groom, particularly if he is the head of his kindred, is the only mandatory person on the other side, but his father may well appear too, signifying that family’s acceptance.

A series of marriage and other contracts exists for a large family, the Campbells of Elister in Islay. Isobel Campbell’s marriage contract to Alexander Stewart, saddler in Coleraine, Ireland, apparently because it documents a woman, sets out the basic family genealogy on her side. Similar genealogies do not appear in her brothers’ contracts. Three brothers, a mother and a sister/daughter appear here, along with deliberate mention of a father and additional brother. The list brings in representatives of both active generations of the Elister family. Because her father is dead, eldest brother Colin as head of the family records his legal consent to the marriage. Somewhat unusually, their mother Elizabeth and two more brothers also place theirs on record. The contract concerns her entire family, which is passing over £35 pounds sterling (rather than pounds Scots) as well as watching a sister leave the family. Representatives of the groom’s family are lacking. While not mandatory, their absence may be explained by the contract’s setting in what was a nearby but still foreign country.

When it comes time for eldest brother Colin to choose a bride and perpetuate the family line, he and his brothers look only a few miles north to old family friends. Margaret Campbell, as the eldest daughter of
Campbell of Sinderland, is an appropriate mate for the head of the house
of Elister. The marriage cements long-term, local connections between
two landowning families in the area. Colin’s brothers and other Islay
power brokers record their witness and satisfaction with the union.15
Oddly, Margaret’s father is not recorded as consenting to the contract,
but his good will comes across in the next Elister marriage when Colin’s
younger brother, William, marries a younger daughter of Sinderland’s,
with the father’s blessing. A final Elister brother, John, marries soon after
to a sister of Ballinaby. Archibald Campbell of Sinderland is a witness to
it.16 Phrased this way, the interconnection between person and place,
generation and kindred becomes explicit: land equals family. A wedding
ties together not just individuals but territory. A web of marriage and
future kinship ties is being cast across the western peninsula of Islay.
From Sinderland to Elister to Ballinaby and smaller points in between,
marrriages and other legal actions link individuals, the families and places
in which all live.

Wives and widows maintain considerable control over the affairs of
land. A wife’s consent in the rental or more permanent alienation of land
is often needed. In fact, if the plot comes from her liferent lands, she may
be the major power here even if a male is given pride of place in the
writing of the document. The amount of land tied to a woman in marriage
could be extensive. Lachlan MacLachlan of Fassifern in marrying Eliza-
beth Campbell, eldest lawful daughter of Mr Dugald Campbell of
Kilmorie, agrees ‘to bestow 30,000 merks in land for her liferent . . .
and promising to infeft her . . . in certain of his lands in fulfillment
thereof, viz. Clachaig, Glenlean, Garrochra, Bernie and others.’17

Within a marriage, a husband may place considerable trust in his wife’s
judgement. Alexander Campbell of Kirnan, writing from London, ap-
points his wife to act as his factor or ‘agent’ to manage his main lineage
lands of Kirnanmore and Kirnanbeg. While she may run the home office,
she does not go into the field herself. Several months later, probably in
time for the autumn rents, Isobel appoints a man, Mr Alexander Camp-
bell, minister at Inveraray, to act as her sub-factor to lift the rents.18 The
choice Kirnan made to invest his wife in a factorship was a personal one,
based on his regard for her as an individual. It does not seem to derive
from a standard set of social expectations as might the appointment of
one’s male heir to this land management. As always, individuals operate
within a broad range of possible actions. They are simply more likely to
follow the general norms of society than operate outside them. Kirnan’s
factory was permissible but somewhat unusual. His wife, in her sub-
factory to a man, returns to the general expectations of society.

A woman gains yet more control after her husband dies and the
provisions of the marriage contract come to fruition. Even though ‘Janet
Campbell, widow of John Campbell of Strachur, and now spouse to Mr John Cunningham in Ardgartan’ has remarried, she continues to tack or rent out the liferent lands which passed to her on her first husband’s death. In this case, she reconfirms ‘the nether half of the lands of Feorline’ to two men already farming there.’

Women can receive an income from land. That income is frequently limited in its source and extent, but how much public power do these women receive along with that income? Kinship terms can carry a denotation of age and a related sense of status. A woman begins life as a daughter, living within the parameters of her own family. A daughter has no public role. She is represented legally by her father (or brother if the father is dead). When she marries, she becomes an adult and moves into a new status in a new family, her husband’s. A wife may operate in public with the consent of her husband. When that spouse dies, however, a woman moves into her strongest, most public position. Jack Goody observes of early, Germanic society that ‘land given as a marriage portion eventually came under the control of the widow if she survived [after her husband].’ The position of Highland and Scottish widows are part of a Northwest European social set-up. Widows operate in their own right, at least in a limited way, in public. They enjoy considerable control over their liferent lands, although they may still be willing, as with Barbara Campbell of Kilberry, to give up much of this control to male relatives for the sake of the greater, family well-being.

The main reason women do not own land in this society stems from the primary system of descent reckoning. It is patrilineal. Membership in a family is determined through the male line. To keep the primary source of power – land – within the lineage, it can only be passed on to those members who remain in and transfer membership in the lineage. These are the men. While present society might view this set-up as chauvinistic and limiting, it provides for the up-keep of all family members and at the same time conserves the landed property. Adult men draw their income from family lands. A woman enjoys the support of her birth family before marriage, receives some of its moveable assets at marriage, and spends most of her life with her husband, jointly drawing upon his family’s resources. Widowhood might see her as no longer integral to that family. To ameliorate that, legal custom specifically sets aside some of her husband’s family lands for her to use in liferent at this time. As a widow, she can manage this land in her own right, rather than rely on the services of male relatives. Upon her death, the land reverts back to its primary owner, the patrilineage. Individuals pass away. Time and generations flow on, land and family intact.
NOTES

5. Paton, Clan Campbell, i, 130.
6. Ibid, i, 172–3
7. Ibid, i, 7.
9. Paton, Clan Campbell, i, 145.
10. Ibid, i, 170–1.
11. Ibid.
12. Ibid.
13. Ibid, i, 94–5. See also D. U. Stiubhart in this volume.
15. Ibid, i, 177.
16. Ibid, i, 182.
17. Ibid, i, 197. See also D. U. Stiubhart in this volume.
18. Ibid, i, 149.
20. Goody, family and marriage, 121.