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Natural Affection, the Patriarchal Family and the “Strict Settlement” Debate: A Response from the History of Emotions

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Thirty years ago, partly inspired by the 1977 publication of Lawrence Stone’s *The Family, Sex and Marriage in Britain, 1500–1800*, a number of historians engaged in a debate on the reasons and implications for the rise of the “strict settlement” in England from around 1650. In a legal context where long-term entails (restrictions on the use and inheritance of land) were prohibited, the strict settlement was a legal device that allowed landowners to limit their heirs’ control of the family estate. Like an entail, it established the appropriate heir and removed many of her or, typically his, rights to the use and disposal of property, protecting the long-term family interest over that of the individual. It also, as a general rule, set out what a family’s younger children could expect as an inheritance. Stone used the strict settlement to support his claim that across the seventeenth and eighteenth centuries, the English family saw a reduction in patriarchal power due to the rise of the “affective family.”¹

According to Stone, who followed scholars like Philippe Ariès, the early modern family was “low affect,” due to a combination of difficult living conditions and low life expectancy that stopped people from emotionally investing in their families.² Over the seventeenth and eighteenth centuries, demographic and cultural changes provided space, so the argument goes, for people to love, leading to more affective family life. For Stone, affection and patriarchy were incompatible and so, after a short-lived resurgence of formal patriarchy, increased affection brought greater equality within the family. For Stone, the strict settlement, arising during the seventeenth century, evidenced this shift because while it formalized patriarchal descent of property, it showed parental love in the provisions it made for younger children.

The book was immediately controversial. For legal historians interested in the strict settlement, there were two main topics of debate: a) whether the settlement was patriarchal; and b) whether it proved Stone’s thesis. Eileen Spring

brought a feminist perspective, arguing that providing for younger children was not a reduction in patriarchy as it prioritized sons over daughters as the main heir and the device tended to exclude daughters from inheriting the main estate.³ She thought that Stone, and his predecessor John Habbakuk, ignored that the settlement was used as a mechanism to replace wives' dower rights to a third of their husbands' estates with jointure, usually a cash annuity of, she argued, less value.⁴ For Spring, the strict settlement may show that fathers loved their younger children, but it definitely diminished the rights of women and was no reduction in patriarchy.

The other main intervention in this conversation was Lloyd Bonfield, who conducted an empirical study of a large set of strict settlements and gave qualified support to Stone's thesis.⁵ He argued that over time, and with due caution given to the novelty of the strict settlement to the period, fathers' control over their children's inheritance declined, which was a reduction in patriarchal power likely motivated by a rise in affection enabled by a decline in family size. Vivienne Larminie contributed an in-depth study of a small number of families' uses of the strict settlement to suggest that it was one among many strategies to balance a broader patriarchal ideal with the affections of the family towards its younger members.⁶ Historians of the strict settlement went on to explore its role in estate consolidation among aristocratic families.⁷ They did not, however, come back to the question of what these findings meant for the early modern family and their emotional attachments. This was partly due to a concurrent discussion of Stone's work among social historians. Almost from the outset, a number of early modernists rejected the assertion that their period was low affect, an idea borne out in the last thirty years of research.⁸ Moreover, Spring was not alone in querying whether patriarchy precluded affection, with feminist scholars demonstrating their compatibility into the twentieth century and beyond.⁹ This group, however, was less interested in the strict settlement; social historians' main interaction with that entity has been in relation to property ownership and transmission, rather than intimacy within family life.¹⁰

This article looks at the strict settlement anew, locating it against the backdrop of the latest research on the history of the family and the rise of the history of emotions as a methodology. It is no longer appropriate to engage in the same debate as that undertaken by Stone, Spring, and Bonfield. The co-existence of patriarchy and affection across the eighteenth century is no longer in dispute and there is no doubt that the early modern period was not low affect.¹¹ Whether the "affective family," as a specific emotional-family form that is unique to the eighteenth century, can be identified is a more open question, as is the role of the strict settlement in enabling its existence. While earlier studies of the strict settlement focused on the document, trying to use what people did to understand why, this article takes a cultural studies approach, drawing on popular legal commentary, popular culture, and a number of Restoration plays to access why people thought it was a useful legal device. In doing so, it turns

focus from the relationship between fathers and their younger children—so key to Stone, Spring, and Bonfield’s debate—to that between the father and his heir, and between the heir and his siblings. This article begins by providing some legal and cultural context for the strict settlement, before discussing how it was viewed by contemporaries. It argues that, at least for a number of late seventeenth- and early eighteenth-century commentators, the purpose of the strict settlement was to enable affection between family members, while ensuring the continuance of patriarchal family life. Throughout, it contrasts the English with the Scottish experience and argues that Scotland’s adoption of entail was the more “logical” solution to the social problem England tried to solve with the strict settlement. It provides a case study of a legal response to an emotional problem and an example of emotion driving processes of social change.¹² It also feeds into a wider theme across the essays in this special issue on the ways that textual forms, in this case the settlement, were understood to produce or create the conditions for particular emotions in the eighteenth-century public.¹³

TRANSMITTING PROPERTY AND NATURAL AFFECTION: A CONTEXT

The transferral of property after death was subject to significant statute law, as well as the will of the deceased and any entails or restrictions attached to pieces of land. In Scotland and England, there was a difference between “real” or “heritable” property (land, houses, some types of rental and other fixtures related to land) and moveable property (everything else), which affected how property was transferred across generations and the court that had jurisdiction to manage disputes.¹⁴ Strict settlement and entails were legal devices that related mainly to heritable property, so moveable property will not be discussed here. In Scotland and England, if a parent died intestate, heritable property was vested in the eldest male child or, failing a male heir, in all daughters equally (failing which, complex lists of succession came into play). A widow had a life interest in a third of her husband’s heritable property (dower) and a widower a life interest in all of his wife’s heritable property, unless waived by contract or entail. The former was common from the seventeenth century, where wives took jointures, instead of dower, and excluded their property from coverture in England or the *jus mariti* in Scotland. A life interest gave the use and profits of estates during life, but did not allow the interest holder to sell or bequeath property.¹⁵ In Scotland, children could not be disinherited from their rights to real property except in exceptional circumstances such as treason or patricide. They could waive their rights by contract, which usually happened during marriage negotiations and was typically balanced by a settlement of similar value, such as cash or a different estate.¹⁶ In England, the owner of real property was free to dispose of it as he or she wished and could disinherit children

without cause. A spouse could not remove his or her partner's life interest in the property (unless previously waived by contract or entail), but could bequeath it to someone else after the partner died.¹⁷

This situation was complicated by the growing popularity of entails or entail-like devices from the seventeenth century. An entail was a set of conditions attached to heritable property that restricted its usage. Typically, entails ratified primogeniture by giving the estate to the nearest male heir, often to the exclusion of daughters. They placed the land in trust for posterity, so that an heir merely held a life interest, restricting him from selling or burdening it with debt. Entails sometimes excluded dower from attaching to the property to the detriment of wives; they may require the heir of the estate to take a particular family name; they might exclude the subsuming of the estate into a larger one. Entails had existed since the medieval period, but their legality in general, and what they could restrict, was a matter of debate.¹⁸

In Scotland in 1685, the Entail Act ratified the legitimacy of entails as long as they were registered. Scotland's entail law was virtually unrestricted, allowing property owners to convey their estates as they saw fit and for an indefinite period.¹⁹ It was complemented, like in England, by marriage settlements that defined what property the wife brought to the marriage, her jointure (or occasionally dower entitlement), and the younger children's inheritance if not determined by entail.²⁰ England legislated against entails on the grounds that it unfairly encumbered the rights of the heir and unwisely restricted the use of the land. The seventeenth-century legal invention of the strict settlement allowed landowners to place restrictions on property, but only for a term of twenty-one years after the death of the last surviving party to the settlement. The result was that a large number of estates in England operated under a form of entail that was renegotiated in each generation, usually during marriage contract discussions.²¹

The rise of entails in Scotland and the strict settlement in England was accompanied by a growing debate among members of the legislature, judiciary, lawyers, and the general public about how statute and common law should be made and interpreted by individuals and the legal system. As the law was a constantly changing organism responding to new ideas and social values, its shape in both Scotland and England was informed by, among other things, the rise in natural law theory.²² An increasingly popular topic among philosophers and legal theorists during the seventeenth century, natural law theory located the origin of the law in nature, and, not dissimilarly to Common Law in England, argued that it should not overstep the boundaries of "natural" relationships, reason, and common sense. The interest in and influence of natural law on English and Scottish law during the period has been well documented.²³

For natural law theorists, the determining principles for inheritance should be those of "natural affection," an instinctual form of love that parents have for their children, designed to ensure the successful reproduction of the species.

For many thinkers, this affection could extend from children to parents and between siblings, and possibly outward to other family members, depending on the importance they placed on “the family” as a determinant in the survival of humanity. The principles of succession in inheritance law, for natural law theorists, should follow the natural affections of the individual, so children should inherit before siblings, and siblings before wider kin. While some tried to justify primogeniture as a natural institution, most believed that parents instinctively loved all their children, and so wished to provide for all. However, as they were also pragmatic and invested in patriarchal structures, many natural law theorists recognized the importance of primogeniture to the maintenance of family estates and to the stability of a hierarchical social system.²⁴ As a result, the inheritance law in operation in Scotland and England did not cause too many problems.

Despite this, it is worth acknowledging the growing importance of natural affection in legal justifications of inheritance law and in contemporary debates around inheritance practices. This was particularly true in Scotland, where James Dalrymple, Lord Stair, located the duties of children and parents in natural law and used it to justify inheritance practice, in his influential summary of the Scots law in 1681.²⁵ As a result, the language of natural affection became increasingly significant during inheritance disputes and in framing how wider society understood the relationship between different members of the family.²⁶

REPRESENTING THE STRICT SETTLEMENT

Inheritance practices were topics of public debate and entertainment, not least during the rather atypical 1688 “warming-pan” incident that questioned the legitimacy of James Francis Edward Stuart, Prince of Wales.²⁷ Across the sixteenth and seventeenth centuries, there was a long-running public debate over the utility of primogeniture, and particularly its disadvantages for younger sons, who were left penniless and at the mercy of older brothers.²⁸ This debate occasionally came to the fore during particular scandals, such as when Sir George Sondes’s youngest son murdered his elder brother.²⁹ The conversation was rejuvenated in the mid-seventeenth century by Levellers and others attempting to renegotiate the balance of power between the aristocracy and the commonwealth. They believed that the storing up of wealth by a few through primogeniture was inconsistent with rebalancing political power across social groups.³⁰

Joan Thirsk has argued that this public debate fell out of fashion at the end of the seventeenth century with the rising popularity of the strict settlement that included a provision for younger sons.³¹ Yet this was not entirely true; rather the debate evolved to reflect contemporary concerns.³² The Exclusion Crisis, followed by the deposing of James II in 1688, was a stark challenge to the line of succession within common law, although reflecting the wider English practice of freedom of the testator (in this case, in Whig thought, the commonwealth). It

led to a flurry of pamphlets debating the basis of primogeniture and carried this conversation into the eighteenth century as the Stuarts' claim to the throne rumbled on.³³ More broadly, the question of inheritance was taken up by constitutional writers, including Robert Filmer and John Locke, as they explored the nature and basis of patriarchal governance. As Rachel Weil shows, both Tory and Whig writers were relatively ambivalent over the divine origin of primogeniture, preferring to situate their claims in the British laws of succession.³⁴

Given this ambivalence, the fact that so many elite testators reinforced primogeniture through entails and testaments requires some explanation. One of the main justifications was that it ensured social order. John Page, a lawyer and Master in the Chancery Court, argued:

What I pray you can be more reasonable and necessary, then that there should be a chief son or heir, amongst our children: for there must necessarily be an order and subordination in all things otherwise there will be a confusion in all things, and what follows confusion, . . . but an everlasting horror.³⁵

Primogeniture was necessary for the "peace and concord" among brothers, as otherwise they would "malign" and "envy" each other. Similarly, removing that decision from fathers through the legal device of the entail or strict settlement allowed for a more harmonious family relationship.

This point was made by a number of playwrights in the late seventeenth and early eighteenth century, where inheritance disputes were key plot devices.³⁶ Nahum Tate's reworking of William Shakespeare's *King Lear* emphasized the instability that will-making caused to the family, encouraging avarice and greed and ultimately tragedy as family members turned on each other.³⁷ Unlike Shakespeare, the Tory Tate provided a "happy ending," restoring the deposed heirs of Cordelia and Edgar to their estates (they also marry each other). Laura Rosenthal suggests this happy ending is necessary in Restoration Britain, where the instability of the monarchy made the inevitable return to political stability of Shakespeare's *King Lear* less certain.³⁸ But it also played into a more everyday problem where the political machinations of siblings in competition for inheritance were distasteful to an audience who demanded affection within the family and increasingly saw affection as a necessary limit to tyranny. As Weil notes, Whigs like Locke distinguished between "legal fathers" such as the monarch, and biological fathers. The latter had a natural right to absolute power over their children because their natural affection would temper tyranny. The monarch did not have that relationship with the commonwealth and therefore should not hold absolute power.³⁹

The importance of natural affection was raised within the Tory Aphra Behn's comedy *The City Heiress* (1682) and, more explicitly, by the Whig William Congreve in his play *Love for Love* (1695). Both stories focus on a difficult

relationship between an heir and his future benefactor, revolving around the young libertine heir's need for money, with a side plot of love intrigue with women of large fortunes. The plot exists in a number of earlier and later plays.⁴⁰ In Behn's *City Heiress*, the young Tory Wilding attempts to trick his elderly Whig uncle Sir Timothy Treat-all into giving him enough money to enable his extravagant lifestyle.⁴¹ His uncle, as the name Treat-all suggests, is a generous host to his Whig compatriots, but will not support his future heir. A libertine, Wilding is courting both a rich gentry widow and a wealthy city heiress, and has a courtesan, Diana, but has no intention of marrying any of them. Sir Timothy and Wilding argue at the beginning of the play, with Treat-all telling Wilding to live by his wits and threatening to marry and disinherit him with a direct heir. Wilding threatens to cuckold him and so divert the inheritance back to him, if indirectly. Wilding passes off Diana as the wealthy city heiress, suspecting that his uncle would try to marry her, and then robs his uncle of his deeds and some seditious documents. Sir Timothy marries Diana, and so fulfills Wilding's threat to cuckold him—Diana even hinting that any heir she produces might in fact be Wilding's. In a side plot, another character coerces the gentry widow into marriage. The play concludes with Wilding unmasking Diana to his uncle and blackmailing him into reinstating him as the heir. Hinting at redemption from his libertine ways, Wilding marries the city heiress Charlot, the only woman who has remained loyal to him, offering to live off her fortune until his uncle's death.

Ten years later, Congreve's *Love for Love* saw the first-born son and libertine wastrel Valentine attempting to convince his father, Sir Sampson Legend, to support the lavish lifestyle that he requires to court Angelica, a woman with an independent fortune and no title.⁴² His father agrees to pay his debts (and no more), but only if he agrees to sign over his inheritance to his younger brother. Valentine initially concurs but, to avoid signing the bond, pretends to be mad. Angelica resolves the situation by convincing Sir Sampson to propose marriage to her (with the promise of creating a new heir and settling the estates on him) and then gets hold of the bonds. When Valentine hears of this proposed marriage, he agrees to sign the bond in despair, but Angelica turns the tables by destroying the bond and declaring her love for Valentine.

Like in Tate's *King Lear*, social order is disrupted in both stories by the threat to disinherit the rightful heir, and is restored when the heir is once more in place to inherit. This restoration of order is reinforced by the marriage of both libertines, whereby their sexual misbehavior and spending is brought under control. This can be read as a political metaphor due to the association between libertine behavior and political freedom. The young heirs demonstrate their political independence through their lascivious lifestyles (and explicitly through Wilding's rejection of his uncle's politics) but, by bringing the testator back into an orderly relationship with the heir, such overt political freedom is

no longer necessary and benign patriarchy can be restored. In both *The City Heiress* and *Love for Love*, this is done through the creation of strict settlements that restrain the power of the patriarch to disinherit his heir.

This metaphor can be extended to the relationship between the gentry and the city, through the marriage of the heiresses into the social elite. In *The City Heiress*, Charlot's independent fortune is explicitly understood to be commercial money, while Angelica's family is not titled. Angelica's "illiterate" and superstitious uncle Foresight is never given a title, and his wife is referred to as Mrs. Foresight throughout. While the pursuit of the middle-class heiress was a long-lived and popular trope that reflected the shifting balance of financial wealth in early modern Britain (if not actual marriage practice), that both these heiresses marry members of the gentry restores class relationships.⁴³ These plays were not stories that saw the movement of the merchant classes into the elites through upwardly mobile marriages. Charlot's family is conspicuously absent, while Angelica's parents are in the country. Angelica's city family are already good friends with Sir Sampson, and the restoration of the inheritance to Valentine removes the possibility of a marriage between Foresight's own daughter and Sir Sampson's second son, Ben. Rather, it is merchant *wealth* that is absorbed into the gentry through marriage, reinforcing the political status quo.

Through providing heirs with independent fortunes, these tales neatly resolve the financial predicament that many sons, both elder and younger, found themselves in as they waited for their inheritance. More widely, however, people increasingly felt that this was a predicament that should be solved by fathers and other testators' natural affection for their heirs. The seventeenth-century pamphleteer "B.J.," probably Chancery lawyer John Brydall, defended heirs from the "impious practice of some fathers disinheriting their first-begotten sons"; he argued that to leave an heir without "present sustenance" was as "Prodigious and Unnatural" as disinheriting him completely.⁴⁴ The importance of natural affection between testator and heir was made explicit in *Love for Love*, where Angelica lectures Sir Sampson after her trick is revealed: "Learn to be a good Father, or you'll never get a second Wife. I always lov'd your son and hated your unforgiving nature. . . . You have not more Faults than he has Virtues."⁴⁵ For Behn and Congreve, the lack of maintenance provided to the heirs and the unaffectionate desire to disinherit them was set up as equally problematic, if not more so, than the spendthrift and sexually immoral behavior of the heirs. This belief was reinforced by popular "prodigal son" tales that emphasized the importance of paternal or fraternal forgiveness of the spendthrift or greedy child.⁴⁶

While not described as unfatherly, Sir Timothy is called "cruel" and a "hard old man" "mollified" into "good nature" through Wilding's trick. His "unnatural" behavior is reinforced by his desire to remarry and have an heir of his own, a decision rendered unacceptable due to his age. The courtesan, Diana, who

represents the shared estate of uncle and nephew, contrasts the “soft dear Arms of Wilding round my neck, From those cold feeble ones of this old Dotard; When I shall meet, instead of Tom’s warm kisses, A hollow pair of thin blue wither’d Lips, Trembling with Palsie, stinking with Disease.”⁴⁷ Playing on the distaste for May-December marriages during the period, Treat-all’s decision to marry a much younger woman in his dotage stands for his “unnatural” treatment of his nephew.⁴⁸ Treat-all’s desire to retain his estates and his youth, at the expense of his nephew, is solved through the strict settlement suggested by Wilding at the end of the play, where Treat-all retains the estate during life and Wilding has “a Fortune here [in Charlot] that will maintain me, Without so much as wishing for your death.” Treat-all is sent home with Diana as “a Comfort to your Age,” and told not to “trouble your decrepid Age with business of State.”⁴⁹ Within these plays, as suggested by Whig contract theorists, natural affection is a necessary prerequisite for the effective functioning of patriarchal authority. Conversely, and fitting in the case of Behn—who has been viewed as cynic in the tradition of Bernard Mandeville, who locates even parental love as a fragile form of self-love—the strict settlement was the device that ensured natural affection.⁵⁰

CONCLUDING THOUGHTS

The strict settlement provided a contract that allowed fathers and their children, but particularly their eldest sons, to manifest the natural affection that was necessary for the operation of non-tyrannical patriarchy. In doing so, it removed the pernicious effects of greed on family life, where parent was pitted against child and sibling against sibling, and defended against the growing commercialization of the era that threatened what many viewed as the legitimate authority of the aristocracy in society necessary to ensure social order.⁵¹ Perhaps ironically, it did so through the use of contract—a device that acknowledged the socially constructed (rather than natural) character of family life. In this, it was not dissimilar to marriage, a natural and sacred institution whose terms were determined by God—but a relationship where the language of contract that was used to explain it simultaneously threatened its stability by suggesting its terms were available for negotiation.⁵²

The use of contract reinforced the authority of the patriarch, but located his authority in the consent of those under contract. While there were certain benefits of this for the relationship between king and subject, contract was fundamentally more challenging for relationships within the family, which were viewed as natural, or God-ordained, and which were justified by the existence of natural affection that was expected to temper tyranny. As a result, the Scottish solution of the entail was a better solution to the social problem of primogeniture. By freezing the contract, entail removed the negotiation between parent and child, “naturalizing” family relationships. Scotland allowed entail

as they had not historically legislated against them, but also because of the importance of natural affection to the construction of Scots law in the 1680s, which allowed the entail to appear as an effective solution to discord within the family created by disagreements over money. The strict settlement provided a legal solution to an emotional problem. The case study of the strict settlement acts to demonstrate that changing emotional ideals and emotions themselves were drivers of significant social and legal change.

NOTES

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1. Lawrence Stone, *The Family, Sex and Marriage in Britain, 1500–1800* (London, 1977).
2. See Philippe Ariès, *Centuries of Childhood: A Social History of Family Life* (London, 1965).
3. See Eileen Spring, "Law and the Theory of the Affective Family," *Albion* 16, no. 1 (1984): 1–20, and *Law, Land & Family: Aristocratic Inheritance in England, 1300–1800* (London, 1993).
4. Spring, "The Family, Strict Settlement and Historians," *Canadian Journal of History* 18 (1983): 379–98.
5. Lloyd Bonfield, "Marriage, Property, and the 'Affective Family,'" *Law and History Review* 1 (1983): 297–312, and *Marriage Settlements, 1601–1740: The Adoption of the Strict Settlement* (Cambridge, 1983).
6. Vivienne Larminie, "Settlement and Sentiment: Inheritance and Personal Relationships Among Two Midland Gentry Families in the Seventeenth Century," *Midland History* 12 (1987): 27–47.
7. See, for example, Bonfield, "Marriage Settlements and the 'Rise of the Great Estates': A Rejoinder," *Economic History Review* 33 (1980): 559–63, and "Marriage Settlements and the 'Rise of the Great Estates': The Demographic Aspect," *Economic History Review* 32 (1979): 483–93; as well as Barbara English and John Saville, "Family Settlement and the 'Rise of the Great Estates,'" *Economic History Review* 33 (1980): 556–58.
8. See Alan Macfarlane, "Review," *History & Theory* 18, no. 1 (1979): 103–26; and Randolph Trumbach, "Review Essay of Lawrence Stone, *The Family, Sex and Marriage in Britain, 1500–1800*," *Journal of Social History* 13, no. 1 (1979): 137–43.
9. See Elizabeth Foyster, *Marital Violence: An English Family History, 1660–1857* (Cambridge, 2005), 11; Amanda Vickery, *The Gentleman's Daughter: Women's Lives in Georgian England* (New Haven, 1998), 40; Barbara Taylor, "Feminists Versus Gallants: Manners and Morals in Enlightenment Britain," in *Women, Gender and Enlightenment*, ed. Sarah Knott and Barbara Taylor (Houndmills, 2005), 30–52, 38; and Katie Barclay, *Love, Intimacy and Power: Marriage and Patriarchy in Scotland, 1650–1850* (Manchester, 2011).
10. See Amy Erickson, "Common Law Versus Common Practice: The Use of Marriage Settlements in Early Modern England," *Economic History Review* 43 (1990): 21–39.
11. This is a large literature. Key examples include Ralph Houlbrooke, "Death, Church, and Family in England Between the Late Fifteenth and the Early Eighteenth Centuries," in *Death, Ritual and Bereavement*, ed. Houlbrooke (London, 1989), 24–42; Helen Berry and Foyster, eds., *The Family in Early Modern England* (Cambridge, 2008); and Joanne Bailey, *Parenting in England, 1760–1830: Emotion, Identity and Generation* (Oxford, 2013).
12. See Nicole Eustace, *Passion Is the Gale: Emotion, Power and the Coming of the American Revolution* (Chapel Hill, 2009); and William Reddy, *The Navigation of Feeling: A Framework for the History of Emotions* (Cambridge, 2001).

13. See also the essays in this special issue by Michael Edson, Jean McBain and Robert Phiddian, and M. Wade Mahon, which are especially interested in textual relationships to emotions. Kathryn Temple argues for another aspect of the connections between emotion and law.

14. See Erickson, *Women and Property in Early Modern England* (London, 1993), 24–26; James Dalrymple, Viscount Stair, *The Institutions of the Law of Scotland*, 4 vols., 2nd ed. (Edinburgh, 1693), 1:429–51; and Andrew McDouall, Lord Bankton, *An Institute of the Laws of Scotland in Civil Rights*, 4 vols. (Edinburgh, 1752), 2:308.

15. Erickson, *Women and Property*, 24–26; and Stair, 1:429–51.

16. See Bankton, 2:331.

17. See Erickson, *Women and Property*, 24–26.

18. See Spring, *Law, Land and Family*; and Bonfield, “Seeking Connections Between Kinship and the Law in Early Modern England,” *Continuity and Change* 25, no. 1 (2010): 18–22.

19. See A. W. B. Simpson, *Legal Theory and Legal History: Essays on the Common Law* (London, 1987), 143–62.

20. In 1824, legislation was enacted that determined provision for younger children of entailed estates; see Spring, *Law, Land and Family*, 81–82.

21. See Simpson, 143–62; and Bonfield, “Seeking Connections.”

22. See J. Irvine Smith, “The Rise of Modern Scots Law, 1660–1707,” in *Introduction to Scottish Legal History* (Edinburgh, 1958), 44–49; and Julia Rudolph, *Common Law and Enlightenment in England, 1689–1750* (Woodbridge, 2013), esp. 164–200.

23. See, for example, Rudolph, 164.

24. For an extended discussion, see Barclay, “Natural Affection, Children and Family Inheritance Practices in the Long Eighteenth Century,” in *Children and Youth in Medieval and Early Modern Scotland*, ed. Elizabeth Ewan and Janey Nugent (Woodbridge, 2015), 136–51.

25. See Martin Hogg, “Perspectives on Contract Theory from a Mixed Legal System,” *Oxford Journal of Legal Studies* 29, no. 4 (2009): 643–73.

26. See Barclay, “Natural Affection.”

27. See Mary Fissell, *Vernacular Bodies: The Politics of Reproduction in Early Modern England* (Oxford, 2005), 196–243.

28. See Joan Thirsk, “Younger Sons in the Seventeenth Century,” *History* 54 (1969): 358–77; and Berry, *Gender, Society, and Print Culture in Late Stuart England: The Cultural World of the Athenian Mercury* (Aldershot, 2003), 93–94.

29. Sir George Soudes, *His Plaine Narrative to the World of all Passages upon the Death of his Two Sonnes* (London, 1655).

30. See Thirsk, 369–71.

31. Thirsk, 375.

32. See Erin Murphy, *Familial Forms: Politics and Genealogy in Seventeenth-Century English Literature* (Newark, 2011).

33. See, for example, John Page, *A Treatise Discovering the Rights and Privileges of the Elder and Younger Brethren . . .* (London, 1665); B. J., *Jus Primogeniti. Or the Dignity, Right, and Priviledge of the First-Born Son Inquisited . . .* (London, 1699); Well Wisher of Peace and Unity, *The Hereditary Right of Succession: Or, the Happiness of Princes Enjoying their Crown . . .* (London, 1710); *Protest of the Chevalier St. George; with a Poem Concerning Hereditary Right, Annexed* (Edinburgh, 1713); and *The Prerogative of Primogeniture . . .* (London, 1718).

34. Rachel Weil, *Political Passions: Gender, the Family and Political Argument in England 1680–1714* (Manchester, 1999), 38–39.

35. Page, 7.

36. For a broader discussion of Restoration playwrights and their use of the law, see Lauren Caldwell, “‘Drink Up All the Water in the Sea’: Contracting Relationships in Congreve’s *Love for Love* and *The Way of the World*,” *ELH* 82 (2015): 183–210.

37. For the differences between Nahum Tate's and William Shakespeare's *King Lear*, see Sarah McKenzie, "Death, Inheritance and the Family: A Study of Literary Responses to Inheritance in Seventeenth-Century England" (PhD thesis, University of Warwick, 2003), 275–311; for instability, see 289.

38. Laura J. Rosenthal, "(Re)Writing Lear: Literary Property and Dramatic Authorship," in *Early Modern Conceptions of Property*, ed. John Brewer and Susan Staves (London, 1995), 323–38, 329.

39. Weil, 35.

40. For more examples, see McKenzie, 225–74.

41. Aphra Behn, *The City Heiress: or Sir Timothy Treat-all* (London, 1682). For discussion, see J. Douglas Canfield, *Tricksters & Estates: On the Ideology of Restoration Comedy* (Lexington, 1997), 61–63.

42. William Congreve, *Love for Love: A Comedy* [1695] (London, 1704).

43. See Vickery, 41; and David Thomas, "The Social Origins of Marriage Partners of the British Peerage in the Eighteenth and Nineteenth Centuries," *Population Studies* 26 (1972): 99–111.

44. B. J., 2.

45. Congreve, 92.

46. For examples, see *The Extravagant Youth, Or, An Emblem Of Prodigality* (London, 1685–88); *A Looking-Glass for Lascivious Young Men: Or, The Prodigal Son Sifted* (London, 1689–92); and *A Delectable Little History in Metre of a Lord and his Three Sons* (Edinburgh, 1725).

47. Behn, 53.

48. On May–December marriages, see Esther Godfrey, "Gender, Power and the January–May Marriage in Nineteenth-Century British Literature" (PhD thesis, University of Tennessee, 2006).

49. Behn, 61.

50. See Robert Markley, "Aphra Behn's *The City Heiress*: Feminism and the Dynamics of Popular Success on the Late Seventeenth-Century Stage," *Comparative Drama* 41 (2007): 141–66; Derek Hughes, *The Theatre of Aphra Behn* (Houndmills, 2001); and Patricia Sheridan, "Parental Affection and Self-Interest: Mandeville, Hutcheson and the Question of Natural Benevolence," *History of Philosophy Quarterly* 24 (2007): 377–92. See also Caldwell.

51. See Barclay, "Natural Affection."

52. See Barclay, *Love, Intimacy and Power*, 179–80.