

Marital incest during the late Middle Ages  
in England and Scotland

by

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## CHAPTER 1. INTRODUCTION

In the early part of the fifteenth century, Thomas and Alice Beset married and raised a family; then disaster struck in the form of an affair that Thomas had (before his marriage) with a woman named Jenneta, who was related to Alice. Because of this affair, Thomas had become related (according to the Church laws of incest) not only to Jenneta, but to all of Jenneta's kin by blood, marriage, betrothal, sexual relationships, and godparenthood. Whether Thomas had not been fully aware of the laws when he married Alice or he had not been aware of the relationship between Alice and Jenneta--the record does not say; however, when the facts came to light, Thomas and Alice discovered that their marriage was invalid and their children illegitimate. And so, "in order to avoid scandals, etc., and that Alice may not remain perpetually defamed," the embarrassed couple applied to the pope for permission to remain married (called a dispensation) and to ask the pope to declare their children legitimate.<sup>1</sup>

There were many couples like the Besets in the Middle Ages. Using mainly family genealogies, marital dispensations, and Scottish letters of supplication to the pope, this thesis will discuss the reasons English and Scottish families

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<sup>1</sup>Matrimonial dispensation dated 25 April 1428. Annie I. Dunlop, ed., Calendar of Scottish Supplications to Rome, 1423-1428 (Edinburgh: Scottish History Society, 1956), 213-214.

married within their kinship groups. Although the cultures seem to be similar, a distinct difference in their reasons for marrying appears when the dispensations and letters to the pope are examined. Both cultures value financial and political gain in marriage, but the aforementioned Church documents reveal the difference because the reasons for marrying are sometimes stated explicitly in these letters; therefore, it is not necessary to make assumptions about motivations--we have clear statements made by the parties, first-hand evidence which we will examine in the next chapters.

It is both necessary and efficient to examine intra-familial marriages to determine cultural marriage practices. It is efficient because these marriages were more difficult to arrange since they were illegal. The couple could send a letter to the pope requesting special permission to marry despite the prohibition against incest, but the process was time-consuming and often expensive. Since incestuous marriages were so difficult to arrange, the reasons for the arrangement must have been of relatively greater importance than for marriages that were comparatively easier to arrange. Therefore, the couples often made certain that the pope knew how important those reasons were, and so we have the documentation which otherwise would be lacking.

The existence of this documentation means that it is necessary to examine it, for it contains information that has been heretofore ignored by historians, information which has not been duplicated elsewhere. Historians have assumed from the lines of inheritance as well as from evidence that exists in correspondence such as the letters of the fifteenth-century English gentry family names Paston that English properties classes married for worldly gain. However, Scottish marriage patterns have been assumed to have a form identical to the English. This is not the case. Although some evidence shows that the Scots sometimes married for power or wealth, these Church records demonstrate a definite difference between Anglo-Norman and Celtic cultures in the level of violence tolerated in their societies, which in turn influences their marriage patterns and creates a disparity between the English and the Scots.

Besides looking particularly at intrafamilial marriage, we will also discuss the general marriage practices of the English especially, and the Scots to a degree. The English secular court records have been studied to a large extent and therefore provide a large body of information about the reasons for marriage among the general populace. This information gives us an overview of the cultural practices and values of the time as a base on which to build the framework for the practice of intrafamilial marriage. For the most

part, incestuous marriages occurred for the same reasons as any other marriage; often the couple would have married whether they were related or not. The relationship was a secondary circumstance to be resolved, not a reason to marry in itself. Although occasionally great families intermarried with their relatives in order to consolidate estates, the point of the marriage was still to increase the wealth and power of the inheriting line. If the family could have arranged a nonincestuous marriage of equal greatness, it would have saved a great deal of trouble to do so. However, as we shall see in the following pages, the limits of the number of great families would rapidly create incestuous degrees of relationships among them when they began to marry between the families.

Church records<sup>2</sup> show that in England and Scotland, people contracted incestuous marriages in every stratus of society, for many reasons. These reasons generally fall into four categories: (1) they loved each other; (2) they had a sexual relationship from which children had been born; (3) their families were feuding and they wanted to become peace-makers; (4) the woman had property which the man wanted.

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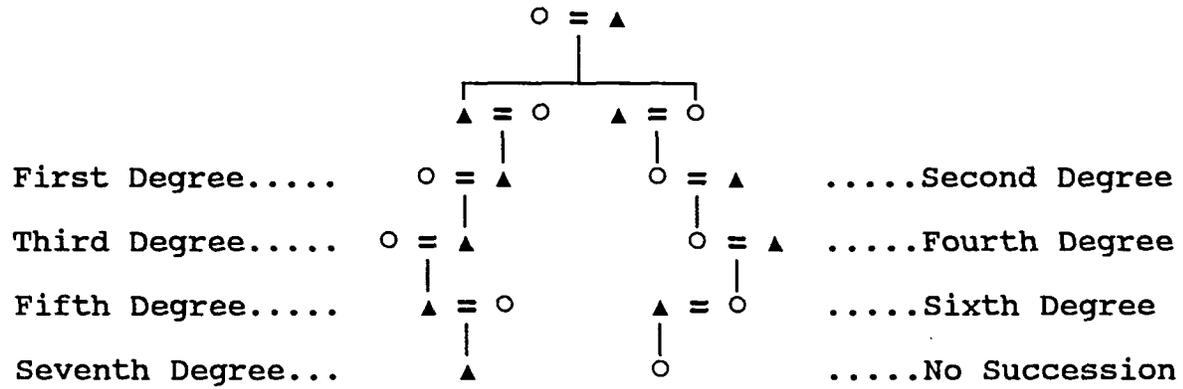
<sup>2</sup>England, Ireland, Scotland, Flanders, and several dioceses in France were served by the same papal nuncio. See W. H. Bliss and A. J. Tremlow, eds., Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland: Papal Letters Vol. IV A.D. 1362-1404 (London: His Majesty's Treasury, 1902), 229.

Papal dispensations were necessary in all cases of marital incest, even for marriages of long standing. Ignorance of the incest did not constitute an automatic excuse, as the above example illustrates, but all couples who wished to contract or maintain a marriage which the Church considered incestuous needed to supplicate the pope for permission. These supplications and the resulting dispensations for incestuous marriage are the main sources of the information given here.

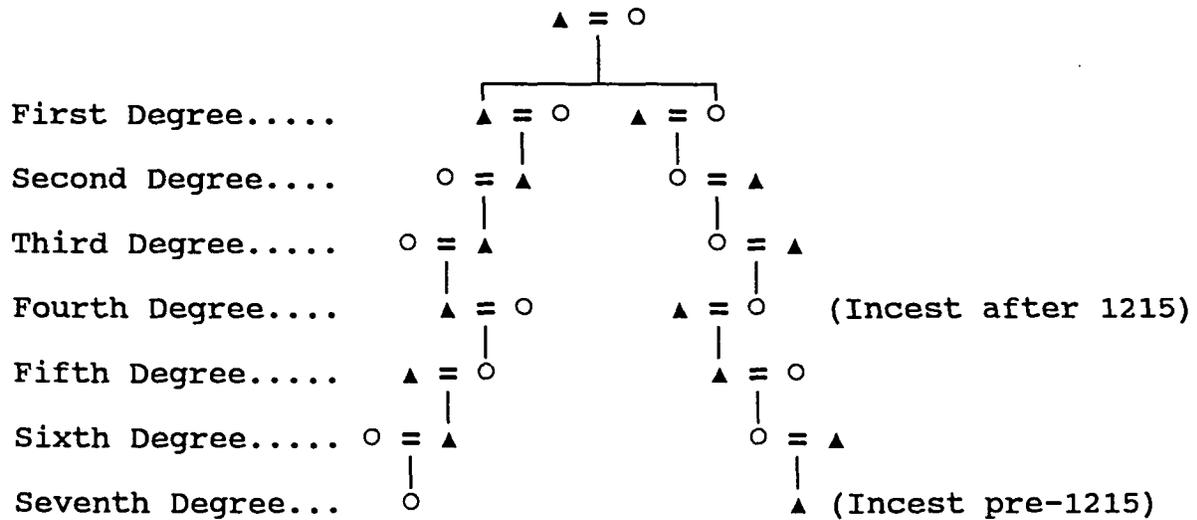
Incest, however, is not defined in the same way today as it was in the Middle Ages. When we think of incest today, we generally imagine an illicit relationship between immediate family members. In the Middle Ages, however, incest included not only blood kindred, but also relations by marriage, betrothal, godparenting, or fornication, all as far distant as third cousins--and this leniency occurred only after 1215. Before that, one could not marry another person connected by any of the above ways if the proposed spouses shared even a great-great-great-great-great-grandparent (see Diagrams 1 and 2).

When the Church first began to calculate degrees of relationship between two people, it used Roman law concerning the succession of inheritance. This method provided that each generation constituted two degrees, beginning with the grandchildren of one father and mother; the grandchildren

**DIAGRAM 1. ROMAN LINE OF INHERITANCE (JUSTINIAN)**



**DIAGRAM 2. CHURCH LAW OF CONSANGUINITY**



Source: Charles Edward Smith, Papal Enforcement of Some Medieval Marriage Laws (Louisiana: Louisiana State University Press, 1940), 24-25.

would constitute the first and second degrees, the great-grandchildren the third and fourth degrees, and so on up to the seventh degree. Thus, two first cousins would be related in the second degree, since each cousin would be related to the grandparents in the first degree and each degree of both parties was counted.<sup>3</sup>

Although Roman law only used this method in determining the succession of inheritance, the church applied it to the determination of incest (Roman law permitted marriage between the children of first cousins). Moreover, under Church law, a man could not marry a woman related to any of his great-great-great-great-grandparents, because some Church fathers went so far as to count each generation as one degree, each degree counting only once for two people rather than twice as in Roman law.<sup>4</sup>

Burchard of Worms, in the Decretum, stated that the lines of kinship should be counted by generations--a grandson of one brother and the granddaughter of another brother would be related in the second degree because they were both descended two generations from a common great-grandparent.<sup>5</sup>

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<sup>3</sup>Charles Edward Smith, Papal Enforcement of Some Medieval Marriage Laws (Louisiana: Louisiana State University Press, 1940), 24.

<sup>4</sup>Medieval Marriage Laws, 24-25.

<sup>5</sup>Medieval Marriage Laws, 26.

The Church confused the Roman laws of inheritance with the laws of incest in its eagerness to observe the tradition of the past. In 874, the Synod of Douci illustrated the problem clearly when it declared that children of parents who were related within seven degrees had been barred from marrying under Roman law. Roman law, however, allowed marriages between anyone related beyond first cousin; the Church fathers, having confused the laws of inheritance with the laws of incest, wrongly believed that the Romans had prohibited marriages within seven degrees.<sup>6</sup> Attempting to imitate the customs of their cultural forefathers, the canonists produced a regulation which went far beyond that of the Romans, one that would prove nearly impossible to follow.<sup>7</sup>

The problem of unequal lines of descent remained. Bernard of Pavia stated the doctrine which the Church came to accept in determining which degree of kinship would be used as the deciding factor when the parties were descended unequally from the common ancestor. Bernard declared that if one person were descended in the sixth degree and the other in the seventh degree, the relationship would be declared

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<sup>6</sup>Medieval Marriage Laws, 26-27.

<sup>7</sup>Ibid.

seven degrees removed. The more distant degree should be the deciding one.<sup>8</sup>

By 1280 John de Deo developed a "Tree of Consanguinity" (relationship by blood) which illustrated the full doctrine. At this time the Church had ruled that the degree would be counted as "the number of generations and the common ancestor, who was not counted as a degree."<sup>9</sup> If the lines of descent were unequal, the longer line was to determine the degree "only up to and including the fourth degree"<sup>10</sup> because the Fourth Lateran Council had changed the restrictions on marriage from seven degrees to four.

In 1215, the Fourth Lateran Council reduced the number of degrees from seven to four because the prohibition of seven degrees caused "grave damage" according to one of the canons.<sup>11</sup> No doubt it referred to the difficulty of finding a marriage partner outside of seven degrees, especially considering that much more than blood kinship had come to constitute a relationship. For F. W. Maitland, the great constitutional and legal historian of the late nineteenth century, wrote that the "incalculable harm" caused by the

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<sup>8</sup>Medieval Marriage Laws, 33.

<sup>9</sup>Medieval Marriage Laws, 34.

<sup>10</sup>Ibid.

<sup>11</sup>Medieval Marriage Laws, 21.

rules of consanguinity (blood kinship) and affinity (relationship by marriage, sexual intercourse, betrothal [called public honesty], and godparenthood) were written by men to whom these rules were not a result of true religious convictions, but a "game of skill" created for their amusement.<sup>12</sup> These rules were immensely complicated, since they involved not only blood relationships, but also the four relationships of affinity; anyone related to the intended spouse through any of these means found that the Church prohibited the marriage. If the couple married in spite of the prohibition, the children of the marriage would be illegitimate. Maitland has claimed that most medieval marriages would have been prohibited if every relationship could have been investigated to four degrees.<sup>13</sup>

Marriage, by Church doctrine, spiritually joined two bodies into one; the same was true for copulation, whether the people were married or not. Therefore, a spiritual or physical union created a permanent bond of kinship between the families of the couple. For instance, if one brother had sexual relations with a woman who was the widow of another brother, the Church considered this act to be incestuous. If the widow married her late husband's brother, the marriage

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<sup>12</sup>R. H. Helmholz, Marriage Litigation in Medieval England (London: Cambridge University Press, 1974), 77.

<sup>13</sup>Marriage Litigation, 78-79.

was considered invalid and the children were illegitimate. The impediment held even if a couple had exchanged a promise to marry but had not married.<sup>14</sup> These impediments are known as affinity by marriage and by public honesty (betrothal). The latter impediment does not seem to have been a serious problem in the minds of the people, since although people sometimes took a betrothal claim to court for enforcement<sup>15</sup> there are few, if any, divorce cases based on the impediment of public honesty.<sup>16</sup> Perhaps the laity found such a regulation difficult to reconcile with the rules for affinity which stated that although sexual relations created affinity between the two parties, coitus interruptus did not, nor did "unnatural" forms of intercourse during which semen was ejaculated into the vagina.<sup>17</sup> The question must have arisen as to whether the act of copulation without betrothal or marriage could be equal to a betrothal without copulation. There is ample evidence to show that the laity in general treated betrothals lightly relative to marriage, often choos-

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<sup>14</sup>Marriage Litigation, 78.

<sup>15</sup>Marriage Litigation, 25-73.

<sup>16</sup>Marriage Litigation, 78. Helmoltz had found no divorce cases concerning public honesty in the English records (see note 14 on p. 78).

<sup>17</sup>James A. Brundage, Law, Sex, and Christian Society in Medieval Europe (Chicago: University of Chicago Press, 1987), 356. Perhaps the possibility of pregnancy was the deciding factor in determining whether an act of intercourse created affinity.

ing to ignore the betrothal when feelings cooled and one of the partners wished to marry someone else; often a new love was related to the first one.<sup>18</sup> Even the Church fathers did not always agree that betrothal created affinity. Although Pope Gregory I (590-604) anathemized a man who married a woman who had been betrothed to one of his relatives because the pope believed betrothal created a family relationship, Benedict I (574-578), Benedict VI (972-974), and Bernard of Pavia believed that betrothal created no affinity unless the relationship had been consummated by a sexual union, thereby forming a marriage in the judgement of the Church.<sup>19</sup> As late as the sixteenth century, popes disagreed on the question of what created affinity: Catherine of Aragon married Arthur, prince of Wales, who died only a few months later. She received a dispensation from Pope Julius II (1503-1513) to marry Arthur's brother Henry (who would become Henry VIII) because of the impediment of affinity caused by her marriage to Arthur.<sup>20</sup> In spite of the dispensation, Henry later tried to use this impediment to obtain a divorce from Catherine.

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<sup>18</sup>Law, Sex, and Christian Society, 512.

<sup>19</sup>Medieval Marriage Laws, 45-48.

<sup>20</sup>Albert DuBoys, Catherine of Aragon (New York: Burt Franklin, 1968), 75-76. For a discussion of the canon law regarding this particular dispensation, see J. J. Scarisbrick, Henry VIII (Berkeley: University of California Press, 1968), 163-197.

Catherine resisted the divorce with tremendous force of will, not only because she believed her marriage to have been a true marriage, sanctioned by God, but also because if the marriage were to be annulled, Catherine and Henry's daughter, Mary, would be considered illegitimate (and so it proved).<sup>21</sup> Many medieval couples were concerned over the legitimacy of their children, as can be seen in the requests for dispensations to the pope. Such concern was especially important in England, where English common law (confirmed by the Statute of Merton in 1236) held that once a person was recognized legally as a bastard, that person would remain a bastard, regardless of any recognition of legitimacy by the Church.<sup>22</sup> According to James Brundage, illegitimate children suffered limitations of their legal rights, such as inheritance rights,<sup>23</sup> so naturally parents would wish to secure their children as their heirs. For example, in letters from the Calendar of Papal Registers Relating to Great Britain and Ireland for the years 1431-1447, Pope Eugenius IV granted at least eighteen English dispensations dating from 1443 to 1446 for the marriages of people related by blood or

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<sup>21</sup>Paul L. Hughes and James F. Larkin, eds., Tudor Royal Proclamations Vol. I (London: Yale University Press, 1964), 209-210, and Scarisbrick, Henry VIII, 198-240.

<sup>22</sup>Law, Sex and Christian Society, 544. This law did not change until the Legitimacy Act of 1926 (ibid.).

<sup>23</sup>Ibid.

marriage within the fourth degree--nearly all of these marriages had produced children for whom the pope also granted legitimacy. In the dispensations in which doubt was expressed concerning whether offspring had already been born, the pope granted legitimacy to the children in case there happened to be any.<sup>24</sup> Most dispensations mention that the couples had either already exchanged marriage vows ("per verba legitime de presenti" according to the custom),<sup>25</sup> or had "committed fornication with one another,"<sup>26</sup> and so the possibility of offspring was taken into account by the Church seemingly as a matter of course. The letter to the bishop of Kildare in Ireland dated 1445 illustrated the wording typical of the dispensations:

Mandate, after imposing penance for incest, to dispense Cornelius Oconcubair, layman, and Moorina Inymora, of his diocese, to marry notwithstanding the impediments arising out of their being related in the double fourth degree of kindred and the double third and the quadruple fourth degree of

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<sup>24</sup>J.A. Tremlow, ed., Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland: Papal Letters Vol. IX A.D. 1431-1447 (London: His Majesty's Stationary Office, 1912), 327, 336, 483, 484, 491, 492, 511 521, 523, 559-560, 561, 562, 563, 573, 579, 580.

<sup>25</sup>C.f. Papal Letters Vol. IX, 492. The church considered words in the present tense such as "I have you as my wife" to be a binding contract of marriage. For a fuller discussion of marriage contracts see Law, Sex, and Christian Society, 494-516.

<sup>26</sup>C.f. Papal Letters Vol. IX, 490.

affinity, aware of which relationship they formerly committed fornication with one another and had offspring, which, with the offspring to be born of the marriage, is to be decreed legitimate....<sup>27</sup>

Two outstanding features of the relationship described above show up in the great majority of the other papal letters: (1) the man and woman were related through kinship and/or affinity several times over and (2) the couple knew that they were related when they entered into a sexual relationship.

The question arises from this information--why, if the couple knew of the impediments to their marriage, did they proceed with an involvement likely to lead to marriage? R. H. Helmolz believed that the laity respected the prohibitions against marrying within the forbidden four degrees, citing the example of a man who entreated on his death-bed that his son and his son's wife reveal the consanguinity between them. Even though the couple had been married for eighteen years, the old man declared, "...I know in my conscience that they will never flourish or live together in good fortune because of the consanguinity between them."<sup>28</sup> According to Helmolz, this man's deathbed wish reflects the sentiments of most ordinary people during the Middle Ages. He cites as

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<sup>27</sup>Ibid.

<sup>28</sup>Marriage Litigation, 79-80.

support for his theory the relatively few English divorce cases based on the grounds of consanguinity of affinity; Helmoltz believed that few people married at all if they knew that such an impediment existed between them.<sup>29</sup> His supposition is supported by Scottish records of supplications to the pope, as an indication that both cultures observed the prohibition. For instance, the Calendar of Scottish Supplications to Rome, 1428-1432 contains only thirteen supplications for matrimonial dispensations.<sup>30</sup> This evidence alone could mean that the people in England and Scotland did not care if their marriages and their children were legitimate, but if such were the case, they need not have married at all.

Also, the combination of evidence--the personal testimony, the Church records of divorce cases, and the records of supplications for dispensations--provides weight for Helmoltz's opinion. For instance, sometimes the supplications mention the fear of scandal as one of the reasons why the couple wished their marriage to be legitimate beyond question.<sup>31</sup> In a supplication dated April 29, 1422, Alexander

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<sup>29</sup>Ibid.

<sup>30</sup>Annie I. Dunlop and Ian B. Cowan, eds., Calendar of Scottish Supplications to Rome, 1428-1432 (Edinburgh: Scottish History Society, 1970), 3, 18, 68, 70, 74, 161, 170, 197, 209, 228, 230, 246, 270.

<sup>31</sup>See for instance Scottish Supplications, 1423-1428, 94-95, 187, 213-214.

Steuart and Egidia de Douglas, both of noble Scottish families, applied for a dispensation to marry despite being related in the second and third degrees of affinity.<sup>32</sup> The couple did not wait until the bishop had received the dispensation, however, but "trusting in the mandate and believing that they were sufficiently dispensed thereby ... contracted matrimony before the letters were presented to the Bishop and consummated the same" (supplication dated June 26, 1425).<sup>33</sup> So this couple was forced to reapply for a dispensation "Lest therefore scandals should arise and discords break out between them and their friends. . . ." <sup>34</sup> At least some of the couples cared very much about the opinions of their neighbors--letters such as these show that a stigma was attached to relationships which proved "irregular." (Certainly, in the case of a noble couple, they may have been mainly concerned with the question of their children's ability to inherit; however, this would not be true for the majority of lower-class couples who had little or no property.)

An additional argument in Helmoltz's favor lies in the penance enforced for committing incest as well as "excommuni-

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<sup>32</sup>E. R. Lindsay and A. I. Cameron, eds., Calendar of Scottish Supplications to Rome, 1418-1422 (Edinburgh: Scottish History Society, 1934), 304.

<sup>33</sup>Scottish Supplications 1423-1428, 94.

<sup>34</sup>Ibid.

cation incurred"<sup>35</sup> for knowingly entering into a prohibited relationship. If the couple did not believe it necessary to confess and make things right in the opinion of the Church (therefore in the opinion of God), it would have been far less traumatic and humiliating for them to keep silent.

For the Church held a central position in medieval life; excommunication cut the offender off from much of the community life, as well as denying the person participation in the sacraments and therefore possible entrance into Heaven. As Helmoltz pointed out in the passages noted above, we cannot impose twentieth-century skepticism on our view of the Middle Ages. The Church was the highest authority in that world, higher (by its own assertion) than any secular sovereign, governing not only much of earthly life, but also holding the hope of life beyond the grave. To the medieval person, the Church was God's voice on Earth, the only hope of Heaven, and so the people felt the power of the Church--not yet subject to the challenge to its power by Martin Luther--to an enormously greater extent than we of the modern West feel the power of our various denominational sects. Perhaps the best comparison we can make is to today's fundamentalist countries where the people do not question the religion or the religious leaders, but believe absolutely.

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<sup>35</sup>Papal Letters Vol. IX, 8.

Conscience is therefore a reasonable explanation for many of these confessions, especially in the cases of couples who were only distantly related, such as in the case of the couple whose husband's dying father was evidently the only person who was concerned about the consanguinity between them (according to Helmolz, four degrees),<sup>36</sup> or couples such as the couple from the diocese of Lichfield and Coventry who "were related in the third degree of kindred;"<sup>37</sup> that is, they had great-grandparents in common. Although this peasant couple knew that they were related before they contracted marriage, the chances are that few others would have known. One clue to the lack of common knowledge lies in the fact that if Church officials suspected and could prove the relationship, they would have divorced the couple whether the couple wished it or not.<sup>38</sup> Cases of consanguinity, though, were difficult to prove, as ecclesiastical court records show, because witnesses played an important part in proving that the impediment existed; since witnesses relied on memory for their testimonies, they needed to have extensive and intimate knowledge of the families involved. Even when the

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<sup>36</sup>Marriage Litigation, 80.

<sup>37</sup>Papal Letters Vol. IX, 8.

<sup>38</sup>Marriage Litigation, 71-72, 84, 214-219.

Church officials suspected the relationship and brought suit against the couple, calling their own witnesses, they often could not prove their case.<sup>39</sup>

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<sup>39</sup>Ibid. Even in the twentieth century, few people live long enough to know their great-grandchildren, and few people know the names of their great-grandparents.

## CHAPTER 2. MARRIAGE PRACTICES AMONG THE PROPRTIED CLASSES

The records show that differences in marriage practices existed. For instance, peasants did not seem to marry often if a relationship of blood or marriage existed within the second degree; however, the nobility and the gentry sometimes did marry within two degrees--and for stated reasons that differed from those of the rest of society. For instance, a papal dispensation dated 5 Id. April, 1446 to the bishop of Durham reads:

. . . Mandate to dispense John Neville, knight, of his diocese, and Margaret, relict of John, duke of Somersed [sic] (who, induced by the ardor of a singular affection, and for the conserving of the divers domains which the said Margaret holds by right of dower in several dioceses, and for other reasonable causes, desire to marry) to do so, not withstanding that they are related in the second degree of affinity.<sup>40</sup>

The letter above provides an example of several differences between the marital practices of the upper and lower classes: (1) the upper classes claim affection or "other reasons" to explain the desire to marry; (2) they more often seek dispensations before they contract marriage and/or have children; (3) they often marry within a closer degree than the lower class; and (4) the woman's land is one of the reasons for the marriage. In John Neville's case, his desire

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<sup>40</sup>Papal Letters Vol. IX, 579.

to secure Margaret's land is stated almost as an after-thought. Nevertheless, the fact that such a reason appears in writing (Neville obviously did not think it necessary to be discreet about his greed) shows that Margaret's property provided a powerful attraction.

This same John Neville received a dispensation dated 1452 to marry Anne, daughter of the duke of Exeter. The reasons for the marriage were, again, "the ardor of mutual affection, and also in order that the said John Neville might acquire certain manors belonging to the said Anne by right of dower. . . ."<sup>41</sup> Anne had been married to John's nephew, and although according to the dispensation the marriage had never been consummated, John and Anne contracted marriage in spite of Anne's first marriage and consummated it, having offspring.<sup>42</sup> In this case, John evidently did not want to wait for a dispensation before he married Anne, but the stated reasons--affection and John's desire to acquire the woman's land--are the same.

A great number of upper-class couples, however, stated that they wish to marry "in order to procure peace between

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<sup>41</sup>J. A. Tremlow, ed., Calendar of the Entries in the Papal Registers Relating to Great Britain and Ireland: Papal Letters Vol. X A.D. 1447-1455 (London: His Majesty's Stationary Office, 1915), 607-608.

<sup>42</sup>Ibid.

their kinsmen and friends. . . ,"<sup>43</sup> especially in Scotland. For instance, the quote above occurs in a supplication mentioned on page 14 on behalf of Alexander Steuart and Egidia de Douglas, widow of the Knight Henry Synclar (Glasgow and St. Andrews dioceses).<sup>44</sup> Another couple, Robert de Erth and Mariot de Fyf (of the Dunkeld diocese) wished to marry in order to "compose discords lately arisen between their kindred and friends. . . ." (dated June 2, 1421).<sup>45</sup> Only six months earlier, Margaret de Bothwyk (St. Andrews diocese) and William de Douglas (Dalkeith), son of the knight James de Douglas, applied for a dispensation (dated Dec. 9, 1420) in the hope that their marriage would "put an end to discords among their friends. . . ." <sup>46</sup>

While the Scots allegedly married to stop feuds, the English, like John Neville, married for money, and the closest degree of consanguinity or affinity occurred usually when a man married both a mother and a daughter (first degree)<sup>47</sup> or when a brother married a sister (siblings either by birth

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<sup>43</sup>Scottish Supplications 1418-1422, 304.

<sup>44</sup>Ibid. This same couple is referred to above on page 12.

<sup>45</sup>Scottish Supplications 1418-1422, 257.

<sup>46</sup>Ibid. For other examples of couples wishing to marry for the sake of making peace, see Papal Letters Vol. X, 654 (Tuam; Glasgow), 608-609 (Cork; Durham).

<sup>47</sup>Papal Letters Vol. IX, 559-560.

or marriage, first degree). One example of brother-sister marriage occurred in the Markham family of Nottinghamshire. Sir John Markham (d. 1409) married Elizabeth, of which union Sir Robert was born. Sir John later married Milicent, who had a daughter by a first marriage, Elizabeth, heiress of Maplebeck. Then Sir Robert married his step-sister Elizabeth--and after seeing the blatant parsimony of John Neville, it is not difficult to attribute the marriage to materialistic motives.<sup>48</sup>

Similar relationships by marriage, however near, were conveniently overlooked by those eager to increase their wealth. For instance, the Yorkshire Mauleys, Peter, Lord Mauley, and his eldest son, simultaneously married two sisters, the daughters and heiresses of Sir Thomas de Sutton. In doing so, the Mauleys received possession of Branholme Castle and the manor Sutton-in-Holderness, along with various smaller holdings. These marriages crowned a series of Mauley marriages to Yorkshire heiresses throughout the thirteenth and fourteenth centuries, each one making the Mauleys richer than before.<sup>49</sup>

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<sup>48</sup>Simon Payling, Political Society in Lancastrian England (Oxford: Clarendon Press, 1991), 236.

<sup>49</sup>Chris Given-Wilson, The English Nobility in the Late Middle Ages (London: Routledge & Kegan Paul, 1987), 131.

In another instance, brother and sister John and Blanche de Mowbray married another brother and sister, Elizabeth and John de Segrave, in the fourteenth century. These marriages consolidated the Mowbray, Segrave, and Brotherton estates when Blanche and John de Segrave died without offspring.<sup>50</sup>

As we have seen, the medieval concept of incest entailed a much wider range of relationships than we include today, from the marriage of third cousins, to the marriage of a former spouse of a third cousin, to the marriage of a godparent of a third cousin, or even the marriage of a third cousin's former fiance. Even though such delicacy generally prevailed (at least if discovered), some couples chose to flout the rules. The reasons were many: to increase one's wealth (and probably social standing as well), to resolve conflicts between the families, because the couple had children resulting from a sexual relationship, or simply because the couple's feelings were stronger than their virtue. It should not be surprising that the first two reasons belong almost exclusively to the gentry and nobility; throughout the Middle Ages, propertied families fought among themselves over land, castles, and manors, striving continually by every means possible--buying, taking, or marrying--to acquire more.

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<sup>50</sup>Rowena E. Archer, "Rich Old Ladies: The Problem of Late Medieval Dowagers," in Property and Politics, Tony Pollard, ed., (Gloucester: Allan Sutton, 1984), 28-31.

As for the rest, men and women, given the chance, always prove themselves fallible. Although most of the supplications and dispensations mention that the couples committed fornication, an act for which there was often no proof, these couples chose to stay together despite the tremendous inconveniences caused by the penances and (often) excommunication resulting from the relationship.

In the 1300s, relatively few dispensations were requested or granted, compared with the 1400s. In 1362, only one dispensation was granted, that for Edward, Prince of Aquitaine and Wales, and Joan, Countess of Kent. In 1363, Pope Urban V (1362-1370) granted two dispensations, one for Hugh de Eglynton, a knight, and Egidia de Lyndesay, who is listed as a damsel; the other dispensation allows the papal legate to grant any twenty-five men and twenty-five women leave to remain in marriages already made if the relationship does not encompass a violation of the incest rules to more than a fourth degree relationship or consanguinity (kindred) or fourth degree affinity. This latter document covers all of England and any other territory for which the papal legate holds authority.

The first two of these dispensations just mentioned are for members of the gentry and peerage as benefactors of the pope's charity. During the fourteenth century, most of the dispensations requested came from prominent members of soci-

ety with titles alongside their names, such as damsel, donsel, knight, or some title of royalty or nobility. Since the families were prominent, one could speculate that the family members kept more detailed records of marriages, godparenting, and even sexual affairs than peasants would have. Prominent men requested dispensations for cohabiting with the perspective wife's relative before marriage four times between 1363 and 1374, only once after marriage; a couple without title appears for the same reason between the same years, and had requested the dispensation after the marriage had taken place.

Altogether, of dispensations dated between 1364 and 1374, twenty-two prominent couples received dispensations, but only two couples without title or known importance received dispensations during the same time period. There are several possible explanations for the dearth of lower-class couples in the records: (1) influential families had a better chance of receiving the pope's favor, (2) clerics paid more attention to the social and private doings of the influential and cared little for the intricacies of non-nobles' lives, or (3) peasants themselves paid little attention to details of church law or did not understand church law. These reasons are by no means mutually exclusive; therefore the circumstances of any particular instance could entail any or all of them. For instance, if rank made no difference to the pope,

there would be no reason to mention it in either the requests or in the replies. Also, the ease with which some peasants entered into and broke promises of marriage implies that many peasants disregarded the finer points of law when they proved inconvenient.<sup>51</sup>

For instance, to show how seriously the Church viewed an engagement to marry, one may cite the case dated 1366 of Thomas Conestabularii and Mariota de Weyd, who had married without realizing that Thomas's previous engagement to Mariota's niece constituted an impediment to their marriage, even though the niece had died before the marriage took place. Even death, then, did not break the tie in the eyes of the Church.

This particular example shows another point: gentry as well as peasant could be confused concerning Church law. Thomas Conestabularii is listed in the entry as a donsel, meaning that he was above the peasant class. As a member of a family of at least the gentry class, Thomas' marriage held greater import than would be true for most of the lower classes: wealth, power, status, and influence all played roles in the union of two families when they could be lost or gained by a marriage. When the stakes were high, the legiti-

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<sup>51</sup>See Barbara Hanawalt, The Ties that Bound (New York: Oxford University Press, 1986) and Brundage's Law, Sex, and Christian Society for information about clandestine marriages.

macy of the marriage became more important accordingly. The letters of the Paston family in the fifteenth century illustrate the sometimes great efforts both families took when arranging the marriage. In the case of Elizabeth Paston, for example, her parents spent about a decade (1449-1458) negotiating with various suitors, searching for a husband, suitable regarding wealth and status but not personal compatibility. Royalty throughout history married for worldly alliances; the more an individual or a family had to gain or lose by a marriage, the more likely that worldly interest would take precedence. For instance, between Edward the Confessor (1042-1066) and Edward IV (1461-1483), no English king married an Englishwoman during his reign; they married foreign princesses instead. Therefore, upper-class families took a far greater risk materially and so could be expected to take a proportionally greater interest in ensuring the security of the financial and/or political benefits than peasant families. If members of the gentry, with so much at stake, could make such an error as Thomas Conestabularii's, then peasants with relatively little at stake would be far more likely to ignore possible irregularities.

Another piece of evidence to promote the theory that the common people were ignorant of the technicalities of the

rules comes from the writings of Philippe de Beaumanoir<sup>52</sup> (c. 1250-1296) who testified that this was so. Brundage claims that court records indicate that, contrarily, peasants may have observed the regulations more cautiously than the nobility.<sup>53</sup> However, he presents no evidence for this theory, except to say that marriage litigation for consanguinity and affinity was uncommon. Certainly the Papal Registers show that the nobility asked to be dispensed for consanguinity and affinity far more often than peasants, but the causes stated previously, including the simple explanation of ignorance of either the rules or ancestry, would suffice to explain the difference. Indeed, the Cerisy court records of Normandy show that couples whose betrothals turned out badly often arranged to create an impediment to the marriage, "for example by becoming co-godparents of a child,"<sup>54</sup> so that they could be released from the betrothal. And surely the inhabitants of Cerisy were no more creative than their peers elsewhere, the English and Scottish couples no doubt used the same tactics when the need arose.

Evidence survives to indicate that the common people chose to regulate their own marital dealings without the aid

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<sup>52</sup>Law, Sex, and Christian Society, 435.

<sup>53</sup>Ibid.

<sup>54</sup>Law, Sex, and Christian Society, 437.

of the Church in any case, not only in the case of consanguinity and affinity. R.H. Helmoltz asserts that the tradition of independent action by the laity regarding marriage contracts and dissolutions required centuries to dispel.<sup>55</sup> Although the medieval Church required the publication of banns and a ceremonial blessing by a priest, the lack of the banns and blessing did not invalidate the marriage; the marriage contract between the man and the woman made the marriage binding.

In the case of Lochlan Johannis Maguilleon and Mary de Insulis, the daughter of the Lord of the Isles, the Church excommunicated them when they married without banns.<sup>56</sup> This particular case was uncomplicated by any other circumstances of impediment or wrongdoing, so it shows clearly the severity with which the Church viewed and treated the sin when the sinners were upper class. By the 1190s, common law required nothing but the consent of the couple involved to make a valid marriage, but the Church insisted as well that marriages without banns were illegal (illegal did not mean invalid, therefore). The Fourth Lateran Council (1215) declared that a couple must announce the forthcoming marriage

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<sup>55</sup>Marriage Litigation, 31.

<sup>56</sup>Papal Letters Vol. IV, 63.

so that the populace could raise objections if necessary.<sup>57</sup> Brundage states that the upper classes wished their marriages to be as public as possible so that the property transactions involved in the marriage settlements would not be compromised by a possible invalid marriage--a very natural wish--but the lower classes had little or no property to settle on a son or daughter; therefore the couple did not have the financial incentive to observe all of the rituals.<sup>58</sup> The lack of Church records for the peasantry on this subject convinces this author that the Church generally ignored such lapses, also, when the peasantry was involved. One could assume that the Church's motives, then, were not the welfare of the soul, but the purses of its parishioners. This impression gathers support from such dispensations as that of John de Hastings, earl of Pembroke, and Ann, daughter of Walter de Many (a knight), whom the pope gave permission to marry with the stipulation that they "give 1000 gold florins towards the repair of the church of the monastery of St. Paul, Rome."<sup>59</sup>

Records show that only three percent or so of all recorded births were illegitimate.<sup>60</sup> Since there are enough

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<sup>57</sup>Law, Sex, and Christian Society, 362.

<sup>58</sup>Law, Sex, and Christian Society, 363.

<sup>59</sup>Papal Letters Vol. IV, 67.

<sup>60</sup>Ties that Bound, 103.

cases in constitory court records of contested clandestine marriages to demonstrate that persons of all classes had sexual relations without the benefit of a public marriage,<sup>61</sup> one may conclude that the low illegitimacy rate does not proceed from sexual abstinence but from marriages contracted when the bride was pregnant. Many of the papal letters include dispensations for marriages between people who had already had a child or children together, sometimes without an explanation for the time lag between the birth of the child and the wedding. The letters also include many unmarried men and/or unmarried women. Indeed, eight dispensations for clergy of illegitimate birth appear between March 1371 and October 1371.<sup>62</sup> The letter on page 170 dealt not with an individual case, as did the other seven, but dispensed any twenty men "of illegitimate birth . . . whether sons of priest or married persons or monks or nuns" for ordination.<sup>63</sup> Therefore, one cannot assume that an illegitimate child would have been abandoned, since the evidence shows so many were not. Nor can one assume from the evidence that marriage automatically followed a pregnancy. The explanation may lie, however, in the regulations regarding promis-

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<sup>61</sup>For a discussion about clandestine marriage, see Law, Sex, and Christian Society, 500-502.

<sup>62</sup>Papal Letters Vol. IV, 161-170.

<sup>63</sup>Papal Letters Vol. IV, 170.

es to marry; that is, canonical law provided that if a couple agreed to marry in the future, that promise became a marriage if sexual intercourse followed. Even if the promise was conditioned, say if their friends approved, for instance, the Church declared that those conditions became null once the couple had sexual relations. Therefore either most couples considered themselves married at that point and lived together from then on as husband and wife, or once that point had been reached the couple soon went through the marriage ceremony, whether or not the bride were pregnant. Sixteenth-century parish registers show that in thirteen to twenty-six percent of all marriages, the bride was pregnant at the time of the marriage;<sup>64</sup> while premarital sexual intercourse did occur with some frequency, according to this evidence, the vast majority of couples did not wait to marry until they knew they were expecting a child. Many of the pregnant brides probably did not know they were pregnant at the time. And so for the larger percentage of cases, pregnancy was not a reason to marry. Indeed, Barbara Hanawalt suggests that illegitimacy was not strongly stigmatized in peasant society.<sup>65</sup>

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<sup>64</sup>Ties that Bound, 196. Hanawalt could not find enough earlier records to talk about medieval premarital pregnancies, but there is no reason to believe that fifteenth-century social practices were vastly different.

<sup>65</sup>Ties that Bound, 196.

Although Hanawalt says that she had difficulty finding out who married whom, since manorial court rolls show only the merchant<sup>66</sup> paid toward the peasant woman's marriage and rarely list the prospective bridegroom's name, she found some evidence in ecclesiastical records. She cites Ramsey Abbey's Liber Gersumarum which lists the husband's name in marriage arrangements. In 194 cases, the husband and his place of residence is listed; of these, 41 percent came from outside the manor or village. Also, ecclesiastical court records list both the husband and wife's names in disputed marriage litigations; these records indicate that perhaps two-thirds of the couples married within the same village.<sup>67</sup> However, she does not take into account the number of cases appearing in court for consanguinity or affinity; therefore, a more detailed study of the court records would be necessary to subtract out those cases in order to know how many cases were in dispute for other reasons. If a large percentage appeared for consanguinity or affinity, it would imply that peasants intermarried frequently. In turn, this would imply that men and women had difficulties marrying outside their social circle of the village.

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<sup>66</sup>Merchant = Fine paid to the manorial lord for a woman's marriage. Ties that Bound, 197.

<sup>67</sup>Ties that Bound, 197.

David Herlihy notes an interesting divergence in the instance of Lichfield diocese: 20 out of 33 cases recorded from 1465 through 1467 are outside marriages, a far greater percentage (60.6 percent) than the other examples.<sup>68</sup> Lichfield also has a high rate of couple-granted dispensations for consanguinity or affinity compared with other parishes. For instance, from 1390 through 1396, there are five dispensations for Lichfield out of a total of twenty for all of England, Ireland, and parts of France. The bishopric of Lincoln, which borders the diocese of Lichfield, also totals five dispensations. Therefore, 50 percent of the dispensations granted during those years went to couples from Lincoln and Lichfield.<sup>69</sup> The trend continued into the fifteenth century: from June through October of 1403, three dispensations for incest were granted to people from Lichfield, one from Lincoln, one from London, and none at all for the rest of England, Ireland and Wales.<sup>70</sup>

As time went on, fewer dispensations appeared for Lincoln and Lichfield. For example, in 1465-1467 only one out

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<sup>68</sup>Marriage Litigation, 80.

<sup>69</sup>W. H. Bliss and A. J. Tremlow, eds., Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland: Papal Letters Vol. V A.D. 1396-1404 (London: Her Majesties Treasury, 1971), 532-542

<sup>70</sup>Papal Letters Vol. V, 532-542. There are no dispensations registered for November or December.

of four English dispensations were for couples from Lichfield.<sup>71</sup> Therefore, the numerous outside marriages reduced the number of intrafamilial marriages. Between 1468 and 1470, only one out of six English dispensations were for couples from Lichfield.<sup>72</sup> The practice of marrying outside the parish helped the inhabitants of Lichfield to reduce their need for intrafamilial marriage, which shows that incestuous marriage in Lichfield had, at least for the most part, had resulted from a lack of nonfamilial marriageable young people and eventually the inhabitants figured out how to avoid it. Since Lichfield and Lincoln had far higher rates of intrafamilial marriage from the beginning of the Church records, however, we cannot assume that other dioceses suffered from the same lack of nonfamilial marriage partners.

Herlihy also cites Church records regarding outside marriages; York records of the fifteenth century identify 40 out of 78 cases as marriages where the man and the woman came from different parishes, the Canterbury deposition book of 1411-1420 lists 21 out of 42 cases as "outside" marriages, and the Act book for November 1372 through 1375 lists 45 out

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<sup>71</sup>J. A. Tremlow, ed., Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland: Papal Letters Vol. XI A.D. 1455-1464 (London: His Majesty's Treasury, 1921), 442, 493 (Lichfield) 519, 533.

<sup>72</sup>Papal Letters Vol. XI, 608, 643, 715, 753, 761, 782 (Lichfield).

of 118 cases as "outside" marriages. In the latter case, the percentage of marriages within the parish is 62 percent, illustrating that many people evidently would not or could not marry outside of their own parish.<sup>73</sup> Herlihy uses these numbers to support a theory that outside marriages were common;<sup>74</sup> however, considering the consequences of marrying blood or spiritual kin, which was divorce no matter how long the couple had been married or how many children they had, one would think most couples would avoid consanguineous or affinitous marriage if at all possible. This could best be assured by marrying outside the immediate vicinity. Therefore, the numbers prove that couples probably married kin not by choice, but by necessity. The only other conclusion would be that many people purposely set out to provide impediments in case they wanted to get out of the marriage at some point in the future.

The fate of widows proves the importance of wealth in English marriage choices. Upon My Husband's Death<sup>75</sup> is a series of essays dealing with the circumstances of medieval widowhood in Europe. The essays cover the lives of such

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<sup>73</sup>Marriage Litigation, 80.

<sup>74</sup>Marriage Litigation, 79-81.

<sup>75</sup>Barbara Hanawalt, "Widow's Mite: Provisions for Medieval London Widow," in Upon My Husband's Death, ed. Louise Mirrer (Ann Arbor: University of Michigan Press, 1992).

diverse groups as English rural widows, London widows, war widows of the English peerage; they also cite widows' rights under English, French, Spanish, Florentine, and common law and social attitudes toward widows as shown in contemporary manners books and fiction.

In Barbara Hanawalt's essay, "Widow's Mite: Provisions for Medieval London Widows,"<sup>76</sup> she states that to the royal Court of Common Pleas, the most common widow's dower was one messuage<sup>77</sup> along with whatever property left to her by her husband; including shops, wharves, or gardens, for instance. Some of the dowers were as large as 20 messuages with shops, cellars, and solons or 16 messuages and 24 shops. As real property, these and much smaller dowers would make a widow economically desirable as a marriage partner.<sup>78</sup> Ms. Hanawalt explains that fourteenth- and fifteenth-century London law allowed widows to take her dower into her new marriage, meaning that the new husband would gain control of her wealth, as the law severely restricted the activities of wives.<sup>79</sup> Indeed, widows with property found it so easy to

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<sup>76</sup>"Widow's Mite," 21-45.

<sup>77</sup>"Widow's Mite," 30. Ms. Hanawalt affirms that one messuage was enough land for a house and a yard.

<sup>78</sup>"Widow's Mite," 30-31.

<sup>79</sup>"Widow's Mite," 39. English law provided that wives, unlike unmarried women, could not control personal property independent of a man's authority. In other words, women lost their property

remarry that according to the records awarding guardianship of London's orphaned children, roughly two-thirds of the widows with minor children had already remarried by the time the children's guardianship was registered.<sup>80</sup>

The widows certainly had reasons enough to remarry even if their dowers were large enough to supply their wants. For instance, one Chancery case reveals that in a dispute over rent, the widow's opponent charged her in the ward moot (court) of Faringdon Without with being a "common woman;" the men actually arrested the widow at church during high mass and took her to prison with ignominious haste.<sup>81</sup> A woman alone--without the protection of a husband's greater legal rights to help her out of such difficulties--also often found herself disrespected and taken advantage of in business. For example, an apprentice of a chandler's widow refused to obey her so stubbornly that she was forced to have him committed to Newgate.<sup>82</sup> Another woman claimed that a certain ser-

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rights when they married, and regained them when the husband died (Judith Bennett, "Widows in the Medieval English Countryside," in Upon My Husband's Death, ed. Louise Mirrer (Ann Arbor: University of Michigan Press, 1992), 89, 91.

<sup>80</sup>"Widow's Mite," 36. The period Hanawalt mentions is 1309 to 1458; more widows remarried after the Black Death (1348-1349) than before.

<sup>81</sup>"Widow's Mite," 38.

<sup>82</sup>Ibid. The case involved Roger, the son of Richard Grosse of Thame, and William Hatfeld's widow.

geant of London had placed a false seal on a debt obligation requiring her to pay 40s.<sup>83</sup>

For reasons on both the man's and the woman's side, therefore, London widows remarried often when they had the means. London law allowed these women, by giving them control over their dower, great freedom in decisions about whether and whom to marry; in this way, patrilineal control was not nearly so important to London widow's remarriages as for English women's remarriages as a whole. Rather than family alliances predominating in London, therefore, guild and craft alliances grew in importance, for widows tended to marry men of the same trade as the late husband's.<sup>84</sup> Thus the widows of London helped shape the social structure of their city.

In less urban areas, as well, the possession of desirable property affected a widow's likelihood of remarriage. On the manor of Brigstock in Rockingham Forest in the English Midland, the local market for land provided easy access to property and so the comparatively lower value of a widow's dower made marriage to a widow less attractive than it would

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<sup>83</sup>Ibid. The two people involved were Isabel Donton and Richard Weste.

<sup>84</sup>"Widow's Mite," 39. A woman left with a business to run would naturally wish to marry a man who would understand and be able to help run the business. Hanawalt mentions that peer pressure also influenced the widow's decision to marry within her late husband's guild.

have been if land were scarce. Therefore, only one out of every thirteen widows married a second time.<sup>85</sup> During the same period (between 1287 and 1348<sup>86</sup>), on the other hand in other locations the scarcity of land heightened the value of the widow's dower and so widows remarried with much greater frequency. For example in Halesowen, during the early fourteenth century, six out of every ten widows remarried.<sup>87</sup> Bennett found the correlation between the percentage of widows' remarriage and the value of the land to be consistent: the more scarce the land was (and so the greater the desirability of the widow's dower) the higher the percentage of remarriages.<sup>88</sup>

So the nature of medieval marriage, whether among those of royal blood, or merely the propertied, untitled classes, were arranged for the material benefit of the parties, and sometimes for their political benefit. In England, the records are far more extensive than in Scotland and so we have the documentation from personal correspondence like the

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<sup>85</sup>"Widows," 74.

<sup>86</sup>"Widows," 70.

<sup>87</sup>"Widows," 74.

<sup>88</sup>In Brigstock, the relationship is especially clear because of the lack of commercial endeavor on the part of widows; most widows did not have businesses. Therefore, their dowers consisted of land to a far greater extent than commercial enterprises ("Widows," 89), so that the value of the dower remain relatively undiluted by other assets.

Pastons's letters, which shows that at least the Paston family married strictly out of concern for wealth and position. We have the evidence as well from court records to show that widows and heiresses with desirable property married more quickly and more frequently than those without desirable property, and also that women married to acquire the protection of a man because society often treated lone, single women harshly.

Also, we have the records of the church courts, which show us the reasons for marriages in both the English and the Scottish societies. We see some divergence in these records between the English and Scots; for although many couples from both countries married for political and financial gain, the Scots sometimes married for the purpose of creating or keeping peace within the families. It will be shown later that even when couples in England married to solve a family conflict, the people involved were usually close to Celtic society either because they lived near or within a Celtic border (Wales or Scotland) or because they married among the Celts.

## CHAPTER 3. ENGLAND

The English records demonstrate a tendency in English society to marry for wealth and status, as shown by both family genealogies and the dispensations. Since obtaining a papal dispensation could be both time-consuming and expensive, the reasons for doing so must have been important enough to justify the trouble involved. Therefore, when people chose to marry within the prohibited degrees, they did not do so casually, but with great thought and care.

Some dispensations make clear that love was not the reason for the marriage. For instance, in 1391, Thomas, the earl of Nottingham, and John de Holand, the earl of Huntingdon (whose brother was King Richard II), arranged the marriage of their children, Thomas and Constance. Thomas (son of the earl of Nottingham) and Constance (daughter of the earl of Huntingdon) were only four and five years old, respectively. The boy and girl had no say in this matter; their fathers petitioned the pope for permission to espouse the children and make them marry on their coming to "full age."<sup>89</sup> Since full age for marriage was only twelve years old for girls and fourteen years old for boys, at those ages the children could hardly be considered fully functional, independent adults capable of defying their parents, with the

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<sup>89</sup>Papal Letters Vol. IV, 396.

accompanying consequences, if the arrangements didn't suit them.<sup>90</sup>

Then there are the dispensations granted to Sir John Neville. In 1446, Sir John received a dispensation to marry Margaret, the widow of John, the duke of Somerset, because "induced by the ardour of a singular affection, and for the conserving of the divers domains which the said Margaret holds by right of dower" they wanted to marry in spite of being related in the second degree of affinity.<sup>91</sup> Why Sir John chose to state that he wanted Margaret's land remains a mystery, because the statement sounds as though his affection is an invented excuse and the avarice is his real reason for wanting to marry Margaret. Since the pope gave him the dispensation without qualification, however, Sir John evidently thought he had used a good format for his request, because in 1452 he received another dispensation, this time to remain in marriage to Anne, the daughter of John Holland, the duke of Exeter. John's request had been stated in a way almost identical to the first, saying that "induced by the ardour of mutual affection, and also in order that the said John Neville might acquire certain manors belonging to the

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<sup>90</sup>For a similar contract involving Scottish nobles' children, see the dispensation 1366 in the Papal Letters Vol. IV, 58. For a discussion of age requirements for marriage, see Law, Sex, and Christian Society, 357.

<sup>91</sup>Papal Letters Vol. XI, 579.

said Anne by right of dower" they had contracted marriage even though Anne had been married to John's nephew.<sup>92</sup> Again, the pope granted the dispensation without qualification.

John Neville was not alone in blatantly stating his interest in acquiring wealth by marriage. In the same year, William Raket and his wife Agnes received a dispensation, having married despite an impediment in order to avoid "the great scandals, contentious and discords which had arisen about certain conterminous lands and possessions;" however, in this case, the pope imposed penance for having married without a dispensation.<sup>93</sup> Why the Rakets received a punishment and the Nevilles did not may have been due to a difference in rank, for the impediment between the Rakets was created because their former spouses had stood as godparents to one another's children, not because of a relationship of blood or marriage. The Nevilles, however, were a powerful and influential family, prestigious enough to marry into a duke's family. On the other hand, the Rakets were untitled and relatively obscure. As further evidence that the Rakets were not more guilty than the Nevilles and were treated ineq-

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<sup>92</sup>Papal Letters Vol. X, 608. Anne's first marriage had not been consummated, which created an impediment of quasi-affinity or public honesty, as though there had been an engagement but no marriage.

<sup>93</sup>Papal Letters Vol. X, 609.

uitably by the pope, one may consider two dispensations from 1401. In the first, a John Segrym of the diocese of Norwich married a woman who was his mother's godchild. In the second, a man from the diocese of Lichfield married a woman he was related to in the fourth degree of affinity, perhaps the least serious of the impediments.<sup>94</sup> Both couples received the same sentence from their local clergy, excommunication, and received absolution and the dispensation: Segrym with a "salutary penance" and Twinok a "separation for a time, to contract marriage anew and remain therein."<sup>95</sup> The more serious offenders received a sentence of penance, while the lesser offenders received none except a short separation.

An unusual instance of marriage for affection appears in a document that strikes a contrast to the Neville letters. In a dispensation dated 2 Id. March, 1402, John Colvyle of Ely diocese, named as a knight and a nobleman, receives a dispensation including an elaborate and unusual explanation of the impediments to his marriage. The dispensation states that John had kept a certain Emma Gedeneye as his concubine. For some reason not stated, John did not at first wish to marry Emma. He nevertheless married her to a member of his household, William Talmage, not knowing that there was an

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<sup>94</sup>The Pope allowed mass dispensations for couples related in the fourth degree affinity. See, i.e., Papal Letters Vol. IV, 87.

<sup>95</sup>Papal Letters Vol. V, 386-388.

impediment to the marriage. Meanwhile, John found that he could not live without Emma and continued to sleep with her after she married William. It was discovered sometime later that John and William were related in the third and fourth degree of consanguinity, which meant that since Emma had committed fornication first with John, an impediment of affinity existed between Emma and William. Therefore, the church divorced them. At this point John decided that he wanted to marry Emma after all, and so had requested the dispensation.<sup>96</sup>

Whether John would have preferred the marriage to William to stand is unknown; however, the dispensation states that "even after the marriage, unable to abstain from his earlier incontinence, he [John] carnally knew Emma many times,"<sup>97</sup> a statement which suggests that John regretted his former relinquishment of Emma. This dispensation is ambiguous on this point, though, because it says that the divorce occurred because the impediment of John's and William's relationship had been not only "brought to their knowledge," but that also it had been "published before the church."<sup>98</sup> Left unanswered are the following questions:

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<sup>96</sup>Papal Letters Vol. V, 499.

<sup>97</sup>Ibid.

<sup>98</sup>Ibid.

Did John, William, or Emma bring the impediment to the Church's attention, or did someone else decide to interfere so that the matter was put wholly into the hands of the Church? If one of the three did bring the matter to the Church's attention, who was it and why? If John did it, was he sorry he had given her to another? If Emma did it, was she trying to force John to marry her by undoing the marriage he had made for her with William? Or was she merely tired of being the virtual property of two men? If William did it, on the other hand, one can easily imagine the jealousy he felt if he had discovered that John and Emma were still having sexual relations together. Indeed, someone must have known that Emma had been John's lover either before or after her marriage, or why would the matter of John's and William's relationships have arisen as a subject of comment since even John and William did not know of it? And certainly, if William found out about John and Emma's relationships after the wedding, he would have felt used and very probably publicly humiliated.<sup>99</sup>

This example of John and Emma illustrates that couples sometimes married for love against their better interests, whether material or social although John's case proves that

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<sup>99</sup>Cuckolded husbands were a subject for ribaldry. For example, Chaucer (c. 1340-1400) wrote "The Miller's Tale," a story about a carpenter whose wife plotted to circumvent her husband's watchfulness in order to have an affair.

the upper class avoided marrying only for love, if for love at all. If Emma had been a satisfactory marriage candidate regarding wealth or political advantage, John would have married her in the first place, rather than give her to a member of his household.<sup>100</sup> John could not resist the draw of Emma's charm, however, and he ultimately followed his heart where his brain had been reluctant to make him go.

The power that came with the ownership of large estates contributed to materialistic marriages. This power, which heiresses (whether never-married or widowed) possessed and passed on to their husbands at marriage, was assured to the man by law. For the purpose of discussing medieval law, historians divide the law into two categories: feudal (or public) law and customary (or private) law. Feudal law includes law which dealt with the system of military and political obligation between a lord and his vassals (those who owe military service to the lord in return for the land he has given them to use). The highest-ranking lord, of course, was the king. Thus, ultimately, all who held possession of king's land owe military obligation to the king. When the Normans conquered England, they blended customary law with the feudal law to create English common law, which

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<sup>100</sup>That John had the power to marry Emma to one of his men shows that Emma was in a dependent position to John and, therefore, would be either his ward or his inferior.

covered all free Anglo-Normans who lived in England, Ireland, Scotland, and Wales. Since all land holders in England held land from the king even if intermediary landholders were involved, even so did common law deal with the relationship between the monarch and all the people. The sovereignty of the monarch over all the land of the kingdom meant that all interactions of land tenure, whether public or private, fell under the Crown's jurisdiction.<sup>101</sup> Therefore, when a woman inherited land, she also inherited the obligations of a landholder according to both feudal and common law. Although the common law protected the widows' and heiresses' rights to property above feudal military service to the lord, yet women were required to pay all fees (not excluding scutage, which was a substitute for military service) owed to the Crown and to perform all other duties of a landholder. Such duties included maintaining the property, defending it against attack, and managing the business affairs.<sup>102</sup>

The Mortimer family produced at least two powerful widows in the thirteenth century. The family held its principal lands along the border of England and Wales, but held lands as well throughout England. Thus, the Mortimer widows

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<sup>101</sup>Linda E. Mitchell, "Noble Widowhood in the Thirteenth Century: Three Generations of Mortimer Widows, 1246-1334," in Upon My Husband's Death, ed. Louise Mirrer (Ann Arbor: University of Michigan Press, 1992), 169.

<sup>102</sup>"Noble Widows," 170-171.

were subject to the same requirements, obligations, and social pressures as other English baronial widows and may be considered typical of their class regarding their legal affairs.

The Mortimer family of the Welsh marches, also used an incestuous marriage to increase the prestige and wealth of the family. In 1215, Gladys Du (the Dark-Eyed), daughter of the Prince of Wales and Joan, the illegitimate daughter of King John, married Reginald de Breouse. Reginald was the lord of Abergavenny, Gower, and Bramber in Wales. Reginald had children from a previous marriage, but died leaving Gladys childless in 1227. Gladys married Ralph Mortimer, the lord of Wigmore, three years later, a marriage which united the royal house of Wales with both the de Breouse and the Mortimer houses.<sup>103</sup> Gladys and Ralph are known to have had three children: Roger, Hugh, and Ivan. Roger married Maud de Breouse, a granddaughter of Reginald, and so the granddaughter-in-law of his mother, Gladys. Although they were related by marriage rather than by blood, the Church did not recognize the difference; thus, legally speaking Roger mar-

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<sup>103</sup>In canon law, Gladys's marriage to Reginald de Breouse created affinity kinship ties between her family and his. When she married Mortimer, all three families became united by affinity. Thus, Reginald's children by his first marriage became Gladys's children when she married Reginald. When Gladys then married Ralph, Reginald's children also became Ralph's children according to Church law, so Ralph's natural children and Reginald's natural children were brothers and sisters by affinity.

ried his niece. Roger more than doubled the wealth and prestige of the mortimer family by marrying Maud. When Roger died, even though Maud survived him by nineteen years, she never remarried. Having nearly doubled her wealth by marrying Roger, she evidently felt no inclination to give up the power over her vast estates by marrying again.<sup>104</sup>

Gladys and Maud represent a type of mutually advantageous alliance often made by the baronage: Llewellyn, the head of the Welsh royal house, had married all of his daughters to Marcher barons. Gladys, as a member of the Welsh royal house, was but another pawn in the attempt to keep peace between the Welsh and the English baronage. Maud formed another link in the diplomatic chain between the Welsh and the baronage. Her considerable wealth and influence made the marriage well worthwhile for the Mortimers, who were willing to overlook any difficulties the Church might raise in objection to the closeness of the relationship.<sup>105</sup>

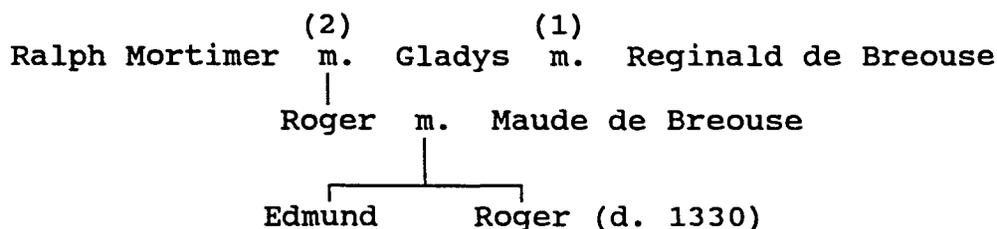
There is no reason to believe that Maud's marriage was a love match any more than Gladys's had been. If any doubt remained regarding the Mortimers' overriding ambitions, one might

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<sup>104</sup>"Noble Widows," 174. Her great wealth prevented her from having to marry to facilitate the recovery of her dower, even though she contended with her son Edmund for years in court. She was more fortunate in this respect than other widows such as those mentioned from London in Chapter One of this thesis.

<sup>105</sup>"Noble Widows," 175.

remember that Isabella, the wife of Edward II, joined forces with Roger Mortimer, the grandson of Maud's husband, to force Edward to abdicate and then murdered him in 1327. Considering the history of the family, no wonder that neither Gladys nor Maude chose to place themselves under the authority of another husband or suffer the machinations of another ambitious family.



More instances exist of the Moritmer family intermarrying. For example, in 1307, Edmund's daughter, Eleanor, received a dispensation to remain married to William, the son of Philip de Kima, who was related to Eleanor in the fourth degree consanguinity. No reason for the marriage appears in the dispensation; however, since the dispensation states that they had "contracted marriage but not consummated" it,<sup>106</sup> the chances are that the marriage was either financially or politically motivated. If the marriage had been motivated by passion, the couple (if opportunity occurred) might have

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<sup>106</sup>W. H. Bliss, ed., Calendar of Papal Registers Relating to Great Britain and Ireland: Papal Letters Vol. II A.D. 1305-1342 (London: Her Majesty's Treasury, 1971), 33.

consummated the relationship even before the marriage took place. Many dispensations include the information that the couple had committed fornication; therefore, Eleanor and William would not have been very unusual if they had.<sup>107</sup>

Since they did not consummate the relationship even after the marriage, then, either they suffered doubts as to the pope's willingness to give them a dispensation, in which case they should not have married until after they had received the dispensation, or else they married for impersonal reasons and therefore were in no hurry to begin living truly as husband and wife.

The next Mortimer dispensation which occurs in the papal registers appears in 1319, when Roger Mortimer, then the Lord of Wigomore, received a dispensation to marry "one of his daughters" to Thomas, son of Guy, earl of Warwick, in order to "extinguish the dissension caused by Thomas's occupation of land in the borders of Wales called 'Ebuel'."<sup>108</sup> The dispensation mentions that the king had been consulted and consented to the union between the two families, a highly unusual statement in the dispensation, and so one might

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<sup>107</sup>See for example Papal Letters Vol. IX, 484. Some dispensations also list former sexual partners, almost always of the husband.

<sup>108</sup>Papal Letters Vol. II, 186.

deduce that the union was politically important to an equally unusual degree.<sup>109</sup>

The next two Mortimer dispensations appear in 1320 and 1329 for Roger Mortimer's children: his son Roger to marry Joan Butler and his daughter Margaret to marry Thomas, the Lord of Berkeley.<sup>110</sup> These dispensations do not mention the reasons for the marriages. However, the next two dispensations for the family in 1335 and 1337 mention specific causes for the marriages to take place.<sup>111</sup>

One of these includes the widow of Roger Mortimer's son Edmund, named Elizabeth de Badelesmere.<sup>112</sup> Elizabeth and Edmund had a son. William de Boun and "his accomplices" murdered Edmund, thereby creating a feud between the families, who arranged a marriage between Elizabeth and William de Boun "in order to put an end to the enmities" between the

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<sup>109</sup>Of 10 dispensations between 1307 and 1319, only one mentioned the king. The two include the dispensation to Roger Mortimer (Papal Letters Vol. II, 186) and to the earl of Fife and the King's niece (Papal Letters Vol. II, 30). The latter marriage was contracted "as a confirmation of the peace made between the English and the Scots." Therefore the marriage serves as another example of an impersonal political alliance. The other eight dispensations may be found on pages 33, 108, 130, 134, 137, 156, 162, 184, and 192.

<sup>110</sup>Papal Letters Vol. II, 203, 296.

<sup>111</sup>Papal Letters Vol. II, 527-528, 541.

<sup>112</sup>Elizabeth's father was probably Bartholemew de Badelesmere, the king's steward. See George Edward Cokayne, The Complete Peerage (London: The St. Catherine Press, Ltd., 1910), 373.

Mortimers and the Bouns.<sup>113</sup> Since Edmund had a son, the Mortimers retained an interest in Elizabeth, who otherwise would have been allowed to remain husbandless or choose her own husband, as provided in the Magna Carta. Still in the grip of the Mortimers, however, Elizabeth must marry her husband's murderer and allow him to raise her son. Considering the cold, brutal character of the Mortimers, though, in particular Edmund's brother Roger, who cruelly and savagely murdered Edward II in 1327, Elizabeth may have been at a loss to choose whether the Mortimers or William should raise her child.

The other dispensation includes Thomas de Berkeleye's daughter, Joan, who may have been Margaret Mortimer's daughter. Although Thomas and Margaret received their dispensation in 1329, they were already married, and the dispensation declares "past and future offspring legitimate." They may, therefore, have had children before 1329, so Joan may have been older than eight years. The family could arrange the marriage even before Joan was of age, though, as long as the marriage did not occur until she turned twelve. In Joan's case, the dispensation describes a situation in which she was a mere political pawn: her father had sided with Roger Mortimer and the prospective groom, John de Hantlo, had sided

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<sup>113</sup>Papal Letters Vol. II, 527-528.

with Hugh Despenser, the king's chancellor, in the struggle over the throne. The de Hantlos were obligated to the Despensers, for in 1313, William de Hantlo retained the provostship of Wingham in the diocese of Canterbury at the specific request of Hugh Despenser, who may have been either the Hugh mentioned in 1337 or the father, who was known as Hugh the elder.<sup>114</sup>

The Mortimers, in some ways, could not be considered typical of English families, for they were more volatile than most English dispensations portray the English of the time. Besides the case of Roger Mortimer and Queen Isabella, one might consider the case of William la Zouche Mortimer and Eleanor Despenser in 1333. William was lord of Assheby la Zouche. Eleanor was the widow of Hugh Despenser the younger. A knight named John de Grey, claiming to be Eleanor's husband, complained that William had "seized and ravished the said Eleanor, and detains her."<sup>115</sup> The diocese of Canterbury held court in the case, because the bishop of Lincoln (a Mortimer stronghold) refused to act in the matter. Upon appearing to testify, William and Eleanor claimed to be husband and wife, saying that "John had falsely asserted that

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<sup>114</sup>Papal Letters Vol. II, 115 and 438. Page 438 lists both Hugh Despenser the younger and Hugh Despenser the elder.

<sup>115</sup>Papal Letters Vol. II, 394.

he had previously married Eleanor."<sup>116</sup> The case was heard before two other courts, one of which declared William and Eleanor in the right. At this point John appealed to the pope "to put an end to the subterfuges, intricacies, and involutions of judicial processes."<sup>117</sup> The outcome of John's plight does not appear in the dispensations; nevertheless, the abduction of Eleanor by William Mortimer demonstrates the volatile temperament that set the Mortimers apart from their English neighbors and allied them more closely, at least culturally, to the Welsh Celts. As will be shown later, the Celtic Scottish families often married, as did the Mortimers, to stop bloodshed. This reason for intermarriage does not appear in the English medieval dispensations after 1300 outside of those for the Mortimer family and one in 1341 for Hugh Despenser and the daughter of the earl of Salisbury. In the latter case, Despenser and Salisbury were both kinsmen of the king and so might have viewed the intermarriage as a diplomatic tool in the same detached manner that monarchs did, as in the example of Edward II and the earl of Fife in 1307. The king had requested that marriage "as a confirmation of the peace between the English and the Scots;"<sup>118</sup>

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<sup>116</sup>Ibid.

<sup>117</sup>Ibid.

<sup>118</sup>Papal Letters Vol. II, 30.

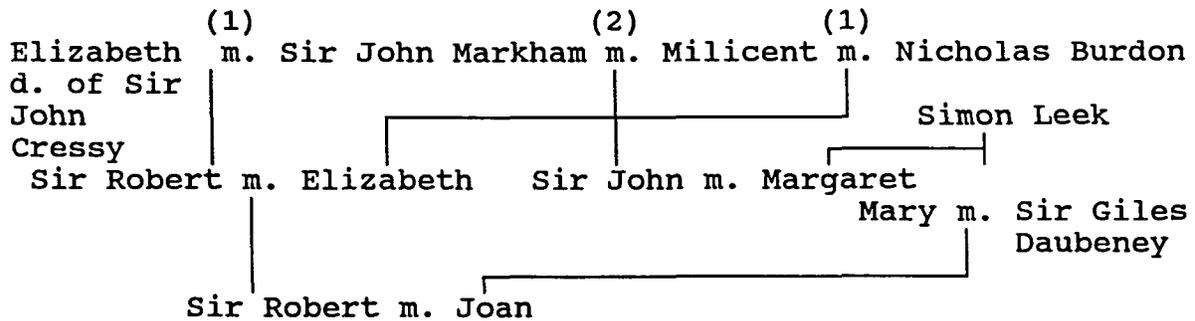
therefore this dispensation cannot be considered purely English, either, but must be seen as partially a Scottish document. Therefore, with the exception of the Despenser dispensation, the only English dispensations which state family strife as a reason for intermarriage are the Mortimer documents;<sup>119</sup> and since the Mortimers were Welsh Marcher lords, they belong in a unique way both to the world of the Celts and to the world of the English, and so combine the attitudes of the two cultures to create a family driven by worldly ambition and a warlike temperament.

Another English family built up a vast estate by marriage. The Markham family of East Markham blatantly intermarried within extremely close degrees of relationship. For instance, Sir John Markham (d. 1409) married Elizabeth, the daughter and coheiress of Sir John Cressy and bore a daughter, Elizabeth, and a son, Sir Robert. After his first wife's death, Sir John married Milicent, daughter of Thomas Beckering. Milicent had a daughter, Elizabeth, by a previous marriage to Nicholas Burdon of Maplebeck in Nottinghamshire. Elizabeth was her father's heir. Sir John married his son Robert to his stepdaughter, which would have been a relationship of first degree affinity.

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<sup>119</sup>The dispensations were required because the two families were already related; therefore, the fighting occurred between two branches of the same extended family.

Sir Robert and Elizabeth had a son, Sir Robert, who married Joan Daubeney. Joan was Sir Robert's cousin by marriage. Elizabeth of Maplebeck had a half-brother, Sir John, who married Margaret Leek of Cotham. Margaret's sister, Mary Daubeney, was Joan's mother. Since a tie by marriage was considered by the Church to be as strong as a tie by blood, the second Sir Robert and Joan were related in the second degree affinity.<sup>120</sup>



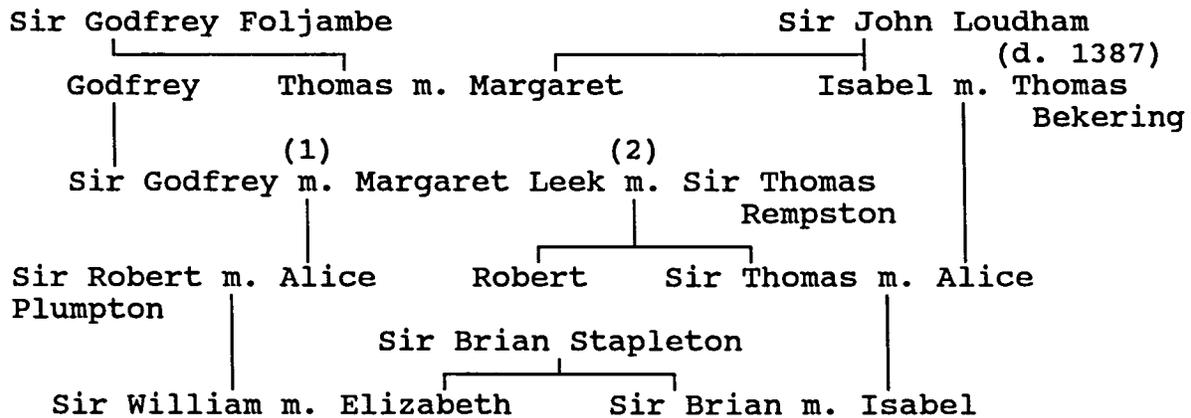
The obvious motive here is the conservation of family property. While it is possible that in the closeness of the family circle the children might have conveniently fallen in love, they just as likely might have learned to detest each other. If the former, it stretches the imagination to believe that it happened twice within two generations.

The Foljambes of Bingham, of Yorkshire, and Nottinghamshire, illustrate another case in which the family members intermarried regularly. Sir Godfrey Foljambe (d. 1376) had a

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<sup>120</sup>Political Society, 236.

son, Sir Godfrey, who married Margaret Leek (not the daughter of Simon). Margaret's second marriage, to Sir Thomas Rempston, produced a son, Sir Thomas. This Sir Thomas married his cousin by marriage, Alice Beckering.<sup>121</sup>



<sup>121</sup>Political Society, 239.

like the Markhams, the Foljambe line intermarried twice within two generations.

The genealogies and the dispensations for English families attest to the existence of a cultural value placed on marriage for gain, political, social, or financial. John Neville, although he gave lip service to affection, married for land. The Mortimers married for wealth as well, as did the Foljambes and Markhams. Even John Colvyle, who eventually received a dispensation to marry his long-time lover, Emma, fought the impulse even to the point of marrying her off to one of his underlings, a sign that she was beneath John's station and so was unworthy of being considered by John as a marriage partner until he found he couldn't live without her.

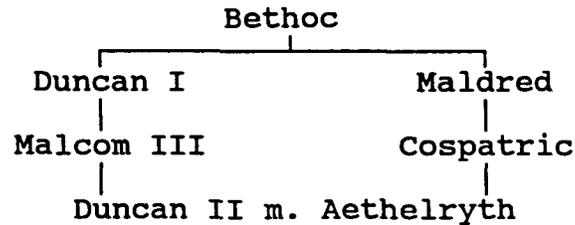
The dispensations give wealth, and love (however insincere or reluctant), as reasons for intrafamilial marriage. They also give the reason of feuding, or rather the resolution of feuding, but not generally among English society. The Mortimers appear most often among the English dispensations as the single most likely family to intermarry because of feuding. The Mortimers, although legally falling under English law, were by location and genealogy as much Celtic as English. The following chapter will demonstrate that the Celts intermarried to resolve feuding more often than for any other stated reason.

## CHAPTER 4. SCOTLAND

The Scots intermarried, undoubtedly, for power and wealth, for powerful families preferred to marry among each other rather than outside their cultural group. As seen in the evidence relating to the Celtic Moritmers, however, an additional reason for marriage was prevalent among the Scots: the resolution of a blood feud. One must consider, too, that wealth, power, and feuding are by no means mutually exclusive. For the purpose of investigating the reasons for Scottish intrafamilial marriage, it is fortunate that the supplications from Scotland to the pope survive, because in these requests for dispensations are the explicitly stated reasons for the marriage, unedited by papal clerks. Therefore, we have clearly demonstrated reasons for intermarriage in Scottish society: power, wealth, and family harmony.

From the descendants of Alpin (d. 843), the Scottish royalty and nobility have intermarried to consolidate their claims to the throne or their local political power. For instance, Malcom I's (943-945) great-granddaughter, Bethoc, had a great-granddaughter, Aethelryth, who married Bethoc's great grandson, King Duncan II (1094). By committing this third-degree consanguineous incest, the ruling line was consolidated into one. Unfortunately, the strategy failed for Duncan, because the monarchy stopped with Duncan and

continued through his half-brother Alexander I (1107-1124), and David I (1124-1153).

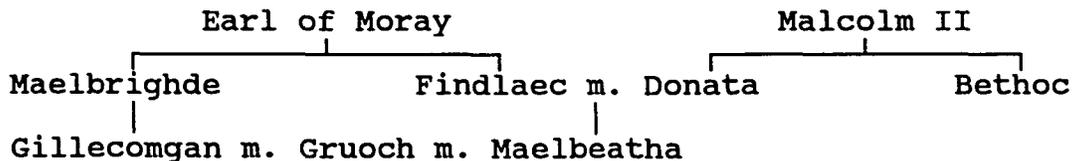


Duncan II is the king in the play Macbeth, who is supposedly murdered by his host, Macbeth (Maelbeatha). Although the murder took place at Maelbeatha's castle, Maelbeatha did kill Duncan because of a blood feud in the battle of Bothgowanan. Maelbeatha was not related by blood to Duncan, but his wife Gruoch was. Gruoch and Duncan were first cousins through their mothers; Duncan's father had been responsible for Gruoch's brother's death, and since Malcolm III (1057-1093) died, his son Duncan inherited the blood feud. Maelbeatha inherited the blood feud despite the first marriage of Gruoch to Gillecomagan of Moray, who should have solved the feud but for his death. She then married Gillecomgan's first cousin, Maelbeatha, who took it upon himself to carry out vengeance for his brother-in-law's death.<sup>122</sup> The tendency for Scottish families to harbor blood feuds shows up during

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<sup>122</sup>Agnes Mure MacKenzie, The Foundations of Scotland (London: W. R. Chambers, Ltd., 1938), 102-104.

all the rest of the Middle Ages as the marital dispensations and supplications bear witness.



Scottish supplications to the pope mention violence far more often than do the dispensations. At least two reasons may exist why dispensations lack the references to violence which are found in the Scottish supplications: either certain periods of time encouraged violent behavior, or the dispensations leave out the background information which was included in the correspondence to the pope. Perhaps both reasons are valid; certainly the supplications vary in the amount of violence mentioned from decade to decade.

For instance, from 1394 to 1419, the years of the Great Schism, no mention appears that a couple wishes to marry to prevent violence among their kin. However, during the reign of Pope Eugenius IV (1431-1447), ten Scottish supplications mention violence among kin as the reason for the marriage, all occurring between 1437 and 1445.<sup>123</sup> At first the statements sound relatively mild. A dispensation for John de

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<sup>123</sup>Anne Dunlop and David MacLauchlin, eds., Calendar of Scottish Supplications to Rome, 1433-1447 (Glasgow: University of Glasgow Press, 1983), nos. 358, 476, 607, 632, 696, 745, 780, 145, 1167, 1219.

Maxwell and Beatrice de Pollock in 1437 , for example, declares that the couple wish to marry "In order to pacify dicords [sic] between kinsmen and friends. . . ." <sup>124</sup> In the next year, John Cambel and Agnes Angusii request a matrimonial dispensation "because in the past there was a a feud between the kinsmen and friends of John and Agnes;" <sup>125</sup> evidently their illegal union of long years standing had kept the peace. John and Agnes had many impediments: "they were related in the double third and fourth degrees of consanguinity and in the double second and triple third and triple fourth degrees of affinity on divers sides. . . ." <sup>126</sup> They had also, according to the document, "cohabited for many years, fornicated and had offspring." <sup>127</sup> Evidently the joining of two family lines, however illicit, promoted peace. They seemed to want to legitimize their relationship at this point to ensure the continuance of peace and to have their children declared legitimate; they do not mention any new outbreak of feuding. The children no doubt provided a focus of solidarity for the factions and so prevented quarreling. If other such unions turned out as successful in keeping the

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<sup>124</sup>Scottish Supplications 1433-1447, 88.

<sup>125</sup>Scottish Supplications 1433-1447, 115.

<sup>126</sup>Ibid.

<sup>127</sup>Ibid.

peace, it is no wonder that families chose this method of solving disputes.

A dispensation from 1439 states the threat violence yet more explicitly than the last one. Cristinus Kennedy and Mariota Emckawryck wish to "pacify the wars and homicides among their kinsmen and for the consolidation of peace between them. . . ." <sup>128</sup> Here we have an example not merely of quarreling and dissension, but killing among family members. Cristinus and Mariota, like John and Agnus, already had an illicit relationship of several years duration (since they had three children together by their own acknowledgement <sup>129</sup>) but they were evidently less successful as peacemakers, because the feuding still required "pacification." This couple resembled John and Agnus also in that they were related to each in several ways: "in the third and fourth degree of consanguinity, and also in the fourth and fourth and second degrees of affinity. . . ." <sup>130</sup> These families had intermarried, godparented, and/or committed themselves in other ways spiritual and physical until they had given up hope of being able to marry legally. Some couples married first and asked for a dispensation later, but these couples

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<sup>128</sup>Scottish Supplications 1433-1447, 145.

<sup>129</sup>Ibid.

<sup>130</sup>Ibid.

were more closely related than the usual simple third or fourth degree, a possible result of the lack of available men caused by the feuding.

The next month another couple, Colin Cambel, a knight, and Mariota Stewart, although they were related as closely as the second degree as well as double third and fourth degree consanguinity and double third degree affinity, also wished to legitimize their union "since, at the instigation of the devil and through occasions of discord, divers homicides, brawls, scandals, and ruin were perpetrated and endured between their kinsmen and their friends. . . ." <sup>131</sup> Truly, Colin and Mariota found themselves surrounded by violence and disturbances of many kinds. One wonders, though, why they believed their marriage would improve the situation; they were already related closely by blood so it seems doubtful that a marriage would mend matters. One connection more seems redundant when all the other alliances did not keep the peace.

After the tumultuous year of 1439, life became a little more peaceful for a time. A supplication for October, 1440 merely states that James Douglas and Elizabeth Stewart wish to "preserve the peace and friendship lately contracted by

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<sup>131</sup>Scottish Supplications 1433-1447, 150.

their friends and kinsmen . . .,"<sup>132</sup> a more hopeful and far less volatile circumstance than that of Colin and Mariota. James and Elizabeth's family had already come to terms with each other and therefore the couple had a better chance of consolidating their families in peaceful coexistence than couples whose families were continuing to murder each other.

Two supplications in 1441 were also vaguely worded so that the time seems more peaceful, at least, whether it actually was more peaceful looks doubtful in light of other supplications unrelated to the marital documents. For example, on 26 February 1441, James de Hamylton and Euphemia de Grahame "of a race of earls"<sup>133</sup> asked for a dispensation to marry "at the common will and consent of their kinsmen and friends and also for the sake of peace and concord among their subjects. . . ." <sup>134</sup> Since their kinsmen and friends were able to agree on the marriage and no mention of dissent appears here, life may have been relatively peaceful for James and Euphemia, although they may have chosen to omit some of the horrific events mentioned in other supplications. Patrick Maogregore and Mariote Cambel were more explicit in their supplication of 29 July 1441, in which they stated a

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<sup>132</sup>Scottish Supplications 1433-1447, 167.

<sup>133</sup>Scottish Supplications 1433-1447, 180.

<sup>134</sup>Ibid.

"desire to be united in matrimony for the settlement of scandals between their kinsmen and friends. . . ." <sup>135</sup> Patrick and Mariote, like several of the couples mentioned before, already had an unsanctioned relationship, although no children were mentioned, and so their wish to marry arose from their love for their family and friends rather than a desire to consolidate the family inheritance. <sup>136</sup> Nor did the scandals arise from their illicit relationship; when a relationship did cause scandals, the supplications mention the situation without prevaricating. For example, a supplication of 8 January 1437 states that if the couple were not allowed to remain in the marriage they had already contracted, a "divorce could lead to great dissensions and scandals arising among their kinsmen and friends and the woman "would remain under censure. . . ." <sup>137</sup> Therefore, the scandals mentioned by Patrick and Mariote had nothing to do with their relationship, but rather the dissensions grew from other sources.

Whatever the problems of the Hamiltons and Campbells, they were not worthy of mention in other papal supplications.

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<sup>135</sup>Scottish Supplications 1433-1447, 190.

<sup>136</sup>Ibid. They had "committed fornication several times," and so their union was first and obviously more important to them than the benefits, both material and social, of a legal marriage.

<sup>137</sup>Scottish Supplications 1433-1447, 82-83. See also no. 714.

However, even among the priestly class, violence occurred with frequency alarming to the government. A supplication of 3 March 1441 states that "at the instigation of the devil, a certain son of iniquity, Thomas Morow, abbot of Paisley, . . . stirred up many rapes, seditions, wars, homicides and other scandals among the inhabitants of the said diocese [Glasgow]."<sup>138</sup> The abbot's crimes created such a breach of peace that King James requested the assistance of the pope instead of leaving the matter to one of the King's officials or an official of the Church. Perhaps, though, James distrusted Church officials, for the same letter mentions that the bishop of Glasgow, too, was involved not only in many of the same kinds of crimes as the abbot of Paisley, but also "dissensions, seditions, schisms, rebellions, sieges of castles . . . plunderings of royal lands, and . . . a most treasonable conspiracy against his majesty . . . to plot to the death. . . ."<sup>139</sup> Violence high up in the society finds its reflection in the violence among the populace.

In the papal letters to Scotland, the dispensations show more clearly than the letters to England that the Church asked payment for dispensations. In dispensations dated from 30 October 1395 to 9 May 1412, eighteen of the thirty-two

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<sup>138</sup>Scottish Supplications 1433-1447, 181.

<sup>139</sup>Ibid.

specific dispensations<sup>140</sup> mentioned that the couple were required to pay for the privilege of marrying or staying married.<sup>141</sup> In some instances, the amount was unspecified, as for example the dispensation of Alexander de Hamylton and Margaret de Dunbar, both nobles, in which the couple were required "to pay a certain sum of money at the discretion of the mandatory, to a holy place or to the poor of Christ."<sup>142</sup>

However, sometimes the amount and the beneficiary were stated very specifically. For instance, in a dispensation dated 30 October 1395, the nobleman Angus Goffnedi and the noblewoman Anna, daughter of Lachlanin MacGilleon, had to pay "one mark of silver each to the church of Glasgow and the monastery of Sagadel" in order to remarry.<sup>143</sup> Some dispensations stated the recipient even more specifically: for example, the dispensation dated 1 August 1404 ordered Walter, earl of Caithness, and Elizabeth, daughter of Sir William

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<sup>140</sup>Francis McGurk, ed., Calendar of Papal Letters to Scotland of Benedict XIII of Avignon, 1394-1419 (Edinburgh: Scottish History Society, 1976), 16. One dispensation allowed the bishop of Candida Casa to dispense any ten people.

<sup>141</sup>Scottish Letters, 253-251.

<sup>142</sup>Scottish Letters, 252. Dated 9th of May. Last of Benedict's dispensations to require money.

<sup>143</sup>Scottish Letters, 55. This is the first dispensation of Benedict's reign which required money in exchange for absolution.

Graham," to pay 10 marks sterling to the fabric fund of the church of the Friars Minor of Dunfres, Glasgow diocese."<sup>144</sup>

Neither rank nor severity of offence seemed to affect Benedict XIII's monetary requests. Out of a total of thirty-three individuals' dispensations from the first of his reign on 28 August 1395 to the last dispensation of his reign which required money in exchange for absolution, twenty-three were for nobles<sup>145</sup>, eleven for non-nobles. Of the twenty-three dispensations for nobles, thirteen, or 56%, required money. Of the eleven dispensations for laymen, five, or 45.5%, required money. Thus in both cases for nobles and for non-nobles, Benedict XIII asked about half of them to part with money.

Nor does the severity of the offence influence the pope in his monetary requirements. For instance, John Steward, lord of Dernly, and Elizabeth Levenaux had an impediment to their marriage because Elizabeth's first husband was related in the third degree of consanguinity to John Stewart. Benedict required the couple to pay ten francs of gold for ornamentation to their parish church.<sup>146</sup> On the other hand,

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<sup>144</sup>Scottish Letters, 122.

<sup>145</sup>One couple needed two dispensations: David, earl of Carrick, first born of Robert, king of Scotland and Elizabeth, daughter of the earl of March.

<sup>146</sup>Scottish Letters, 155. 23 Sept., 1406.

Gilbert Thomas and his wife Christiana were not required to pay anything in spite of the fact that they married without a dispensation even though Gilbert had been married to Christiana's sister,<sup>147</sup> which would have been an impediment of affinity in the first degree.<sup>148</sup>

The second couple's offenses were far greater than the first's: the relationship, though similar, was far closer (first degree rather than third) and they married without first obtaining a dispensation to do so, and no fine was required of them.

During this period, Benedict's rival Boniface IX, imposed no monetary penalties at all on the couples asking for marriage dispensations in England.<sup>149</sup> Since Benedict usually left the dispensation of the fine in the hands of the local clergy, we cannot attribute the imposition of the fines to personal greed, at least in Benedict's case; however, such funds may have helped to keep the loyalty of Scottish clergy. Since Benedict had few supporters (Scotland was among these;

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<sup>147</sup>Not that in the case of both couple's, one spouse was related to the other's previous spouse by blood.

<sup>148</sup>Scottish Letters, 150, dated 7 May 1406 Christiana's sister had died only two days after the wedding. However, since even a betrothal created a bond and would therefore have been an impediment, Gilbert and Christiana need a dispensation to marry. For example, see vol. 5, p. 27, for such a case.

<sup>149</sup>See Papal Letters Vol. IV and Papal Letters Vol. V. Boniface IX became pope in 1389 and died in 1404.

England was not), he would naturally have wished to maintain Scotland's loyalty. The problem with this theory, of course, is that he imposed fines on some of the most powerful Scottish families--those whose patronage the Scottish clergy would little like to lose. As can be seen in the examples just stated, though, the fine was small in comparison to that imposed in 1368 on the earl of Pembroke of 1000 gold florins, so perhaps the penalty of a few marks would not have upset the nobles of Scotland. The case of 1368 occurred when England and Scotland recognized the same pope<sup>150</sup> I conclude that since three different popes chose to deal with marriage dispensations in three different ways, one imposing no fines, one imposing small fines occasionally, and one imposing very large fines, the differences are due to individual ways of punishing sin, not greed, either personal or on behalf of the Church. If avarice or need were factors in the decisions to impose fines, the popes of the Great Schism, whose revenues had been split and who were at war with each other, had reason enough to increase their own funds. Since Boniface and Benedict did not do so in this way, with fines, the huge penalties imposed are probably due to each pope's opinions and attitudes about how sin should be punished rather than Church policy or greed.

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<sup>150</sup>Before the Great Schism that split the Church. When the Schism occurred, each country chose which pope it would recognize.

As previously discussed, the major Scottish families kept power by intermarrying. One example is Malcolm III (1058-1093) who married his great-grandfather's (Malcolm II) great-granddaughter, Ingibjorg. With this marriage, Malcolm formed an alliance with the Norsemen through his wife's family, especially her father Thorfinn, earl of Orkney, to whom the Scots lost territory during the reign of Malcolm's father, Duncan I. Malcolm therefore kept Norse invasions at bay as well as reconsolidated Scottish territory.<sup>151</sup>

After Ingibjorg's death, Malcolm married Margaret, sister of the Saxon heir to the English throne, Edgar the Atheling (which marriage made his court a refuge for those who opposed William the Conqueror)<sup>152</sup>. Malcolm and Margaret's daughter married Eustace III of Boulogne; Margaret's daughter Matilda married King Stephen of England, uniting the Scottish and English ruling families.<sup>153</sup> No doubt Malcolm hoped for this conclusion to his marital scheming when he married Margaret. His marriages helped guarantee Scotland's safety from attack in both the north and south.

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<sup>151</sup>W. Croft Dickinson and Archibald Duncan, Scotland from the Earliest Times to 1603 (Oxford: Clarendon Press, 1977), 30, 56, 64. Thorfinn and Duncan were both grandsons of Malcolm II; therefore the relationship of third degree consanguinity between their children.

<sup>152</sup>Scotland, 57.

<sup>153</sup>Scotland, 67.

Centuries later, two brothers of the Douglas house, George (first earl of Angus, d. 1403) and James (second earl of Douglas, d. 1388) married a daughter and a sister of Robert III, respectively.<sup>154</sup> In consolidating their power with that of the ruling family, the Douglasses committed an act of second-degree affinity: James was already married to Isabel, Robert II's daughter, and so when George married Mary, Robert III's daughter, he was actually marrying his niece-in-law.

About a half century later, two more Douglas brothers, William, the eighth earl of Douglas, and James, the ninth earl of Douglas, married in succession the same woman: "The Fair Maid of Galloway."<sup>155</sup> Marrying two brothers was the same religiously condemned practice that gave Catherine of Aragon so much trouble and caused Henry VIII to separate England from the Church of Rome. In our present case, however, the woman was also related closely by blood to the Douglas brothers: she was Margaret, daughter of Archibald, the fifth earl of Douglas, and great-granddaughter of Archibald the Grim. Archibald was the grandfather of William and James, which meant that Margaret was related to William and James in the third degree consanguinity (see the "Earls of Douglas"

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<sup>154</sup>Scotland, 225.

<sup>155</sup>Scotland, 225.

chart).<sup>156</sup> Therefore, according to Church law, she should not have been able to marry either brother. Margaret had overwhelming attractions, though, in terms of her inheritance of Galloway and untitled lands acquired through her mother, Joanna Movay,<sup>157</sup> creating a large Douglas territory. Since Margaret was only twelve years old at the time of her marriage to William, she was too young to have had much, if any, say about the arrangements.<sup>158</sup> The Douglases could not afford to allow emotion to interfere with their ambitions for wealth and power; they would not wish to lose Margaret's inheritance by allowing her to marry outside the family at her whim.

The Scots married for reasons both similar and different to those of the English. For instance, we see that the Scots married for power and wealth as the English did. However, they also married for the purpose of creating or preserving family harmony, a reason mostly absent in English records. As we have seen, obtaining a papal dispensation to marry could be both expensive and time-consuming, so it was not to be undertaken casually. Therefore, when a Scottish family chose to intermarry to stop or prevent a feud, they must have

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<sup>156</sup>Scotland, 225, 227.

<sup>157</sup>Widow of Sir Thomas Movay of Bothwell, Scotland, 224.

<sup>158</sup>Scotland, 228.

had a serious problem indeed, as some of the dispensations and supplications prove. At times the letters state that the couple desires to make their children legitimate; however, since other letters show that couples stayed together for years and had children without benefit of marriage, the need or desire for legitimacy was by no means an all-pervasive cultural value. The marriage for family peace and the lack of urgency to ensure legitimate marriage differentiate the Scottish marriage patterns from the English.

## CHAPTER 5. CONCLUSION

The complicated system of relationships, as defined by the Church, created many marital impediments which do not exist in today's Western society. The Church's strict governance of the rules of incest created hardships, sometimes extreme, for the people who chose their mates from within the prohibited degrees of kinship. The Church required either a dispensation from the pope forgiving the marital impediment, or it would prevent or dissolve the marriage if it had already taken place. Sometimes the couple would be excommunicated as well. If no dispensation had been obtained, the Church showed no mercy; it made no difference to the ecclesiastical court whether the couple had children or not, or how long the couple had been married; the marriage would be dissolved even if the couple had been married for decades. Nor did the Church grant leniency if the incest was but newly discovered; the marriage was nullified whether the couple knew about the incest in advance of the marriage or if the couple had been married twenty years and only then discovered it.

However, the documents left by the transactions related to dealing with marital impediments, including the supplications to the pope for dispensations and the dispensations in reply have provided us with a record of reasons for people of

the late Middle Ages marrying within their close kinship group; we may also extrapolate from other evidence the reasons in general why and how people chose their mates, and apply the information to the incestuous marital arrangements of the time.

For instance, most of the English marriages in the dispensations were arranged for wealth or power or for affection (although insincere or reluctant). From generational evidence in certain families such as the Mortimer family, we can see that families could follow a program of material ambition consistently for many decades. From such unrelated sources as the letters of the Paston family, we can infer the evidence of ruthless exploitation of the children to marry well and apply such information to the Mortimers as well as the Markhams and Foljambes. Forthright confessions of worldly avarice by Sir John Neville in the dispensations allows us to unite the information into a cohesive whole and say that wealth held a prominent place in the decisions of finding a mate. On the other hand, instances like that of John Colville and Emma Gedeneye prove that some couples married in spite of personal and societal pressure to marry for wealth, choosing instead to marry where their hearts lay.

The dispensations of Scotland show a very different story from that of England. Although most of the dispensations state no reason for the marriage, a relatively large

number state that the marriage must take place in order to quell disagreements between the respective families; this particular reason is entirely absent from the English dispensations. Therefore, we may conclude that while the English married overtly for wealth, the Scots married often for preventing or solving blood feuds among their kin, an important and heretofore ignored cultural difference between the two peoples.

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