

Family Relations and Inheritance in Early South Carolina

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This study analyzes the inheritance strategies of testators in coastal lowcountry South Carolina from the period of settlement to the 1790s. It measures the modification there of customary English attitudes to property relations among family members. Most other studies of inheritance in early modern Anglo-American society have considered it as a process involving patriarchal property relations, with intergenerational definitions of family interests, with primary attention to land, and with preference for males as landholders. By contrast, inheritance decisions in South Carolina played down the distinctiveness of land as a special type of property and tended to give family members, females as well as males, equal and independent shares in the succession.

Cette étude analyse les stratégies successorales adoptées par les testateurs de la région côtière de la Caroline du Sud depuis les débuts de la colonisation jusqu'aux années 1790. Elle mesure le changement du comportement traditionnel anglais devant la transmission de la propriété entre les membres de la famille. La plupart des autres travaux sur la succession dans les treize colonies anglo-américaines sont arrivés à un schéma marqué par une transmission de propriété de type patriarcal, définissant en termes de générations les intérêts de la famille, mettant l'accent sur la terre et privilégiant la filiation masculine des biens fonciers. Par contre, dans les décisions prises en matière successorale en Caroline du Sud, la terre perdait son caractère distinct et privilégié par rapport à d'autres types de propriété, et il y avait tendance à une transmission égalitaire — et sans primauté sexuelle — du patrimoine entre les membres de la famille.

Early modern English law allowed an unusual degree of testamentary freedom. Elsewhere in Western Europe, discretion in arranging intergenerational transfers of property was limited or nil; a decedent's children, and often more distant kin as well, succeeded to his or her property in prescribed ways.¹ The right under English law for men—and for women, when unmarried—to bequeath property as they chose, was at the basis of distinctively English notions of the proper relation of

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A Social Sciences and Humanities Research Council of Canada Leave Fellowship supported this study. Professor Crowley acknowledges the helpful criticism of Carole Shammas, Robert Weir, Marylynn Salmon, Lorena S. Walsh and Bruce Tucker.

1. On the use of wills in family history, see Richard T. VANN, "Wills and the Family in an English Town: Banbury, 1550-1800", *Journal of Family History*, IV (1979): 346-47. The chapters in Jack GOODY, Joan THIRSK, and E.P. THOMPSON, eds., *Family and Inheritance: Rural Society in Western Europe, 1200-1800* (Cambridge: Cambridge University Press, 1976), provide an introduction to the comparative history of inheritance in early modern Europe. On the corporate nature of inheritance rights on the Continent, see Ralph E. GISEY, "Rules of Inheritance and Strategies of Mobility in Prerevolutionary France", *American Historical Review*, LXXII (1977): 271-89; Pierre BOURDIEU, "Marriage Strategies as Strategies of Social Reproduction", in *Family and Society: Selections from the Annales, économies, sociétés, civilisations*, eds. Robert FORSTER and Orest RANUM (Baltimore: The Johns Hopkins University Press, 1976), pp. 117-44; John W. COLE and Eric R. WOLF, *The Hidden Frontier: Ecology and Ethnicity in an Alpine Valley* (New York: Academic Press, 1974), chap. 8.

family and property.² The Quebec Act protected inheritance by common law, one of two exceptions to the continuation of French-Canadian private law in the new British colony.³

Testation allowed British subjects to favour some members over others, to transmit property beyond the legal heirs, and to determine which heirs received particular property. Laws, customs, and choices bearing on inheritance define family interests in property in ways that vary according to particular social contexts.⁴ The prevalent patterns of testamentary inheritance in England—protection of land as an asset, favouring of children on the basis of birth order and sex, restrictions on widows' autonomy—derived as much from custom as from stipulations of the law. These traditional customs of inheritance were suited to property relations in an agricultural context and tended to restrict the liquidity of land. England's law of intestacy mirrored testamentary practice in these respects. It was most appropriate for cases where there was an adult son to receive all the intestate's land while his widow was granted use of one-third of the real estate for her lifetime.

This study analyzes the inheritance strategies of testators in eighteenth-century lowcountry South Carolina in order to determine what modification of customary English attitudes took place there. Wills are examined as evidence of the structure of family relationships and interests. The topics of chief interest are the economic autonomy of widows and children as heirs, the pattern of equality and bias in the provisions for sons and daughters, and the economic and cultural significance of different types of property. The study analyzes the ways that differences in family situation and social status affected inheritance decisions. The chief findings are that South Carolina property holders paid less attention to land than their counterparts in New England and the Chesapeake, and as a consequence they also tended to discriminate less against female heirs. Familial status is more important than social status in accounting for variations in South Carolina's inheritance patterns. These patterns derived largely from strategies to deal with the high mortality and small family size prevalent in the lowcountry, as well as from the commercial orientation of the colony's slaveowners.

The colony merits attention because, of all the North American mainland colonies, its inheritance practices differed the most from those of the mother-country. South Carolina was the only royal colony to preclude entails. Later, as a state, South Carolina also instituted the most far-reaching reform of inheritance law following the American Revolution. This precocious liberalism in matters of inheritance will be related to the distinctive demography and economy of lowcountry South Carolina. High mortality, characteristic of the other Southern colonies in the period

2. On early modern English notions of family and property, see Alan McFARLANE, *The Origins of English Individualism: The Family, Property, and Social Transition* (New York: Cambridge University Press, 1979), chaps. 1, 4, 5.

3. On the provisions of the Quebec Act concerning common law inheritance, see Hilda M. NEATBY, *The Administration of Justice under the Quebec Act* (Minneapolis: University of Minnesota Press, 1937), pp. 4, 320.

4. William BLACKSTONE, *Commentaries on the Laws of England in Four Books*, ed. William Draper LEWIS, 4 vol. (Philadelphia: Rees, Welch, 1898), I, chap. 16, II, chap. 32, drew on conventional wisdom when he asserted that parents have a natural duty to provide materially after their deaths for their children; but his familiarity with different legal traditions also showed him there is no natural process of succession to property.

of first settlement, continued there throughout the eighteenth century and had a strong impact on inheritance strategies. The economy of the region was the most thoroughly slave-based of the thirteen colonies, and in Charleston it had an entrepôt for an intensely commercial agriculture. Accordingly, property arrangements emphasized the commercial rather than the patrimonial character of wealth.

I — INHERITANCE AND THE LAW

Since testamentary freedom was so broad, English laws on inheritance dealt primarily with the property of people who died without writing wills. Royal colonies, including South Carolina, initially adopted the English law of intestate estates as well as the customs of primogeniture and dower.⁵ The law of intestate estates dealt with personalty, property other than land. It gave the widow one-third and the children equal shares of the personalty, after expenses and debts of the estate had been paid. Primogeniture gave the eldest son exclusive succession to the land. Dower gave the widow lifetime use of one-third of the land.

In the two decades after the American Revolution those states which as colonies had used primogeniture and entail abolished such practices and changed the law of intestacy to eliminate privilege in the succession to family property. Inheritance, it was assumed, necessarily shaped the social structure by providing the assets in land for one generation to succeed another in wealth and status. Primogeniture and entail were thought to perpetuate a feudal social order of great landlords, prevalent economic dependence, and commercial underdevelopment; thus their elimination was supposed to foster equality and independence. American revolutionaries congratulated themselves on maintaining liberties for testators in matters of property and family without undermining egalitarian republicanism.⁶ It is now understood that their reforms, in fact, largely confirmed colonial practice in testamentary succession. The intent was to bring the new laws of intestacy into correspondence with what people were already doing by wills.

Still the reformed statutes on inheritance retained certain traditional legal definitions of property relations within the family. Most states, when reforming their laws of inheritance, discriminated against female family members: they kept English definitions of wives' dower interests and, in at least five states, they favoured sons over daughters as heirs of land. However inconsistent with the abolition of primogeniture and entail, which applied to real estate, the inheritance of land was still usually distinguished from that of personal property. Personal property maintained a widow as well as children, while real estate provided the productive wealth to assure the social status of the following generation at maturity. The retention of this distinction bore chiefly on widows. A widow's right to land was still that of

5. In 1712 South Carolina adopted the British Statute of Distributions (22 & 23 Charles II, ch. 10 [1670]) as "An Act for Better Settling of Intestate Estates", in Thomas COOPER, ed., *The Statutes at Large of South Carolina*, 5 vol. (Columbia, S. C., 1837), II: 523-25.

6. In contrast, French republicans required strict equality among children in successions to eliminate the arbitrary powers and social privilege implicit in even limited testamentary liberty. Stanley N. KATZ, "Republicanism and the Law of Inheritance in the American Revolutionary Era", *Michigan Law Review*, LXXVI (1977): 1-29; James KENT, *Commentaries on American Law*, 4 vol. (New York, 1830), IV: 490.

dower. A husband could not use his will to abrogate the widow's right to dower. This security, however, was at the expense of her autonomy. Land held in dower was privileged against creditors' suits (except in Pennsylvania), but the widow could not sell or devise it. If a husband left a will, his widow could choose to accept his bequests in lieu of dower or to bring suit for dower in disregard of any legacies.

Under the conditions, a woman was probably better off if her husband died intestate. He was under no obligation to bequeath personal property to her, and she had no entitlement, except in Maryland, even to the use of such property. But if the husband died intestate she had—in addition to dower rights in land—unhampered ownership of at least one-third (one-half if they had no children) of his estate's personal property after debts and funeral expenses had been paid.⁷ The significance of the distinction between land and personalty for widows is evident, for example, in the complexity of Virginia's legislation regarding the applicability of dower to slaves. A widow there had dower rights to slaves as though they were real estate (namely, only use of one-third of the income), but she did not actually own them as she would have done if they had been personalty. Yet slaves were treated as personalty for settling the estate's debts and for providing children their portions. The intent of Virginia's inheritance law remained that of passing on productive forms of wealth to the next generation.⁸

The chief concern of the reformed statutes for intestate succession was equality among children. The distribution of land to children was put on the same basis as that of personalty. This change enhanced the rights of daughters and younger sons as heirs. Yet these new laws retained traditional biases as well. In every colony intestate succession had favoured eldest sons in the descent of land, either by primogeniture or by entitling them to a double share. Where daughters had had parity in law with younger sons, custom had strongly favoured sons. In recognition of such custom the reformed statutes of several states slightly favoured sons over daughters. In Connecticut males were preferred as heirs of land; in Pennsylvania eldest sons had priority as heirs of real estate that did not permit division. In New Jersey sons were to receive twice as much as daughters. In Massachusetts the eldest son had a double share, and in North Carolina sons were preferred to the exclusion of daughters, though the provisions favouring males in these two states were soon repealed.⁹

Relative to other states, South Carolina's reform of inheritance law was distinctively liberal. South Carolina differed from virtually all the other states in

7. Marylynn SALMON, "'Life, Liberty, and Dower': The Legal Status of Women After the American Revolution", in *Women, War, and Revolution*, eds. Carol R. BERKIN and Clara M. LOVETT (New York: Holmes Meier, 1980), pp. 91-96.

8. William Waller HENING, ed., *The Statutes at Large; Being a Collection of All the Laws of Virginia* . . . , 13 vol. (Richmond, 1823), XII: 140-54; Joan R. GUNDERSON and Gwen Victor GAMPEL, "Married Women's Legal Status in Eighteenth-Century New York and Virginia", *William and Mary Quarterly*, 3d ser., XXXIX (1982): 121.

9. Zephaniah SWIFT, ed., *A Digest of the Laws of the State of Connecticut*, 2 vol. (New Haven, 1822), I: 114; *Laws of the Commonwealth of Pennsylvania*, 4 vol. (Philadelphia, 1810), II: 143-53; William PATERSON, ed., *Laws of the State of New Jersey* (New Brunswick, 1800), p. 43; *The Perpetual Laws of the State of Massachusetts* . . . , 3 vol. (Boston, 1801), I: 125-27; James IREDELL, comp., *The Public Acts of the General Assembly of North Carolina*, rev. ed. (New Bern, 1804), p. 351.

the thoroughness of its reassessment of traditional attitudes toward the relations of property and family.¹⁰ After the Revolution, the new state went furthest in giving family members equal property rights. Its reformed inheritance law had the least patrimonial and patrilineal definition of kinship, and it made the fullest break with English conceptions of the intergenerational relations of family and property. The revision of its intestacy law in 1791 made little distinction in the distribution of real and personal property: sons and daughters shared equally, and, far more striking, widows received outright ownership of one-third of the estate's real property rather than just lifetime use of it. A widow could still claim dower in lieu of any legacy by testament, but in doing so she would be giving up new possibilities of independence with property.

The changes benefitted the surviving spouse, either wife or husband, at the expense of the decedent's consanguineal kin. Spouses now inherited from each other on nearly the same basis. Husbands no longer had a life interest in their widow's land. The relevant South Carolina statute reads:

On the death of any married woman, the husband shall be entitled to the same share of the real estate as is herein given to the widow out of the estate of the husband, and the remainder of her real estate shall be distributed among her descendents and relations in the same manner as is heretofore directed in case of the intestacy of a married man.¹¹

The modified law of intestacy explicitly redefined the priority of economic interests within the family. It also implied changes in the relative importance of different types of kin: If husbands and wives were more nearly interchangeable as heirs, fathers and mothers became more like each other in their economic relationships with their children. If spouses could come into full possession of each other's land, then the decedent's affinal kin, relations by marriage, became closer kin as well. They were potentially indirect heirs. In fact, the new intestacy act specifically removed any priority of paternal over maternal lines in the calculation of next-of-kin, so consanguineal and affinal kin were merged. The parity of spouses as heirs also reduced generational differences in the nuclear family; mothers or fathers now shared with their children in the inheritance of the other spouse's land.¹²

II — CHARACTERISTICS OF SOUTH CAROLINA TESTATORS

South Carolina's elimination in 1791 of the legal privileges of gender and generation in inheritance was the culmination of a century of individual decisions. Four groups of wills, drawn from the probate records of Charleston County at thirty-year intervals from the period of settlement to the 1790s, provide evidence of this

10. The qualification to South Carolina's distinctiveness was neighbouring Georgia, which passed a similar act for intestate succession. *Statutes, Colonial and Revolutionary, 1774-1805*, 2 vol., in *Colonial Records of the State of Georgia*, comp. Allen B. CANDLER (Atlanta: C.P. Byrd, 1912) XIX (pt. 2): 455-58.

11. *Statutes of South Carolina*, V: 162-64.

12. *Ibid.*, V: 304-5, VI (ed. David J. McCORD): 284. As noted by an amendment of 1797, the statute of 1791 on intestacy used ascent as well as descent to establish a decedent's next-of-kin, giving parents priority over siblings. The amendment corrected this inadvertent and undesirable change, but it still allowed parents half the estate and siblings the other half. On how civil law affected kinship in America, see John Faucheraud GRIMKÉ, *The Duty of Executors and Administrators . . . According to the Laws of South Carolina* (New York, 1797), pp. 290-303.

process.¹³ These wills provide an insight into lowcountry South Carolina property holders' attitudes toward their families' economic interests. As a single set, these testators cannot be used to represent attitudes and circumstances among the whole propertied population of South Carolina, since they are not necessarily typical in every respect. But the specific social and demographic traits that account for differences in testamentary decisions presumably point to corresponding attitudes on the part of intestates who shared these characteristics. For example, whether or not testates were more likely than intestates to have surviving minor children, if the existence of minor children made testators more likely to allow their wives economic autonomy, intestates with minor children may be thought to have been similarly inclined. When a particular pattern of testation holds true across the different sub-groups of testators, then something more broadly characteristic of South Carolina's social development may be indicated.

Who left wills? South Carolina is largely lacking in the tax lists, censuses, and records of local courts that provide the evidence necessary for a precise comparison of testates and intestates.¹⁴ Probate records, however, indicate that testation was frequent: nearly one-half of the decedents with inventoried estates left wills.¹⁵ Wealthy people with inventoried estates were very likely to leave wills, people of moderate wealth, moderately likely and the barely propertied, very unlikely.¹⁶

13. The wills were, for the first group, all those written in the 1670s and 1680s, plus those from the odd years between 1690 and 1720 (N = 151); for the 1730s, those written in 1731, 1733, 1735, 1736 (N = 117); for the 1760s, those written in 1761, 1763, 1765 (N = 122); for the 1790s, those written in 1791, 1793, 1795 (N = 163). For the first three periods the sample includes testators from throughout the colony, since South Carolina for administrative purposes was practically one county for almost the entire colonial period. By the 1790s courts in Beaufort and Georgetown Districts administered parts of the lowcountry on either side of Charleston District. Only the records of Charleston District survive, but these cover a broad area roughly half of that settled in the 1760s. Most of the wills were read in the Works Progress Administration transcripts of county records (hereafter WPA). The transcripts are available at the South Carolina Department of Archives and History, Columbia (hereafter SCDAH), and those of Charleston District at the Office of the Judge of the Probate Court, Charleston County Courthouse, as well as in the Charleston Public Library.

14. The closest approximation to a census of adult free males in colonial South Carolina is a jury list made in 1738. It in turn was based on a recent tax list, now disappeared, that was exceptionally inclusive by virtue of being based on a poll tax. The petit jury list included almost all free men who owned some land or one slave or other property. The listing for the grand jury required moderate planter status, that is, possession of hundreds of acres and several slaves. The proportion of testators among these jurymen, 41 percent of the petit jurors and 48 percent of the grand jurors, confirms that wills were frequent among all property holders. Statutes of South Carolina, chaps. 530, 628, 636; Library of Congress, Microfilm Collection of Early State Records, "An Act for a New List of Persons Fit to Serve as Jurors" (Charleston, 1738), South Carolina, B2, Reel 3, Unit 1, 59-93, catalogued in *A Guide to the Microfilm Collection of Early State Records*, comp. William S. JENKINS (Washington, D.C.: Library of Congress, 1950).

15. According to the records of the Court of Ordinary, the probate court, which survive for only the last few years of the colonial period, 48 percent of the probated decedents were testates. SCDAH, Records of the Secretary (Register), Journal of the Court of Ordinary, 1771-1775.

16. This correspondence of levels of wealth and testation is apparent, for example, in a volume recording inventories of estates from about the middle of the period studied, 1744 and 1745: 51 percent of the inventories (56 out of 110) were those of testates. While the median value of all estates was 240 pounds sterling, that of testators' estates was 490 pounds sterling. Three-quarters of those decedents who were above the median in wealth were testates, as compared to approximately one-third of those below median wealth. The poorest quintile of probated decedents were very unlikely, about one in ten, to leave wills. Their estates were valued at less than 30 pounds sterling, and rarely included slaves. The proportion of testates in the next two quintiles of wealth was consistent at 38 percent; in the fourth quintile the proportion was 71 percent, and in the topmost, 81 percent. Estates in the top 40 percent of

The family circumstances of testators and intestates are more difficult to compare. By virtue of leaving a will the testator had an apparent security about arrangements for succession. Conversely, the intestate left family matters to court-appointed administrators for his estate. There was a preferred order for such appointments: first the wife, then next-of-kin, then the greatest friend, and finally the greatest creditor. Perhaps the intestate, knowing this order of preference and confident that the desired administrator was available, willing, and preferable to the court, chose not to write a will. As measured by the citations granting administration of their estates, however, intestates had no greater assurance than testators that close kin or friends would take responsibility for their families.¹⁷ Studies of probate records in other colonies have usually shown that testators included an above average proportion of wealthy, middle-aged males. But testators' family sizes and their likelihood to transmit property *inter vivos*, characteristics bearing directly on inheritance decisions, were seldom very different from those of non-testators.¹⁸

In the final analysis, drawing up a will may have been more a function of cultural orientation than anything else. Practically by definition a "rational" activity in the Weberian sense, testation assumed responsibility in the face of nature (death), recalculated customary practices (intestate succession), and to a lesser extent, separated social and economic relations (family and property). South Carolinians in positions of authority assumed that intestacy was characteristic of people who were unable to handle their responsibilities. In 1695, when South Carolina's government provided for the registration of births, marriages, and burials, it did so to regulate "the descent of lands and other estates" that otherwise would "occasion many controversies, sometimes to the ruining of orphans and other persons illiterate and ignorant of the law".¹⁹

Eliza Lucas Pinckney, one of the shrewdest commentators on colonial South Carolina's society, thought it was irrational for people of property to die intestate. With her earnest self-improvement and extroverted practicality, she became an amateur lawyer in order to draw up wills for her neighbours. In writing to a niece about these efforts she asserted that dying intestate was irresponsibly careless: "We

inventoried value were worth over 300 pounds sterling, or the equivalent of a dozen or more slaves. SCDAH, Records of the Secretary, Inventory Book 1732-1746 (WPA, Charleston County, LVII A).

17. According to the Ordinary's journal of the 1770s, barely one-third (36 percent) of the intestates had their widows as administrators, another third (34 percent) had kinsmen, one-quarter (24 percent) were subject to the tender mercies of the estates' creditors, and only a handful were administered by friends. Indicative of the similarity of testates and intestates in security of succession were decedents in the upper median of inventoried wealth, who infrequently died intestate and who, compared with less wealthy testates, were only slightly more likely to be married and no more likely to have adult children.

18. Kenneth LOCKRIDGE, *Literacy in Colonial New England: An Enquiry into the Social Context of Literacy in the Early Modern West* (New York: W.W. Norton, 1974), pp. 7-13; Linda AUWERS, "Fathers Sons, and Wealth in Colonial Windsor, Connecticut", *Journal of Family History*, III (1978): 143-44; Gloria LUND MAIN, "Personal Wealth in Colonial America: Explorations in the Use of Probate Records from Maryland and Massachusetts, 1650-1720" (Ph.D. dissertation, Columbia University, 1972), pp. 60-61; John J. WATERS, "The Traditional World of the New England Peasants: A View from Seventeenth-Century Barnstable", *New England Historical and Genealogical Register*, CXXX (1976): 18n; Linda AUWERS BISSELL, "Family, Friends, and Neighbors: Social Interaction in Seventeenth-Century Windsor, Connecticut" (Ph.D. dissertation, Brandeis University, 1973), pp. 154-55; Alexander KEYSAR, "Widowhood in Eighteenth-Century Massachusetts", *Perspectives in American History*, VIII (1974): 103.

19. The act was a temporary one, for two years, and apparently went unrenewed. *Statutes of South Carolina*, II: 120-21.

have some in the Neighborhood who have a little land and few slaves and Cattle to give their children that never think of making a will till they come upon a sick bed and find it too expensive to send to town for a Lawyer". Yet when her husband died leaving a will she was reluctant to prove it and expressed distress with the detailed paperwork involved. She had run plantations since her teens, but at this time she hired a manager—and saw execution of the estate as performance of a "Sacred trust" rather than sound domestic management.²⁰

Reluctance to confront death may have reduced testation. In writing about the acuteness of disease in South Carolina, David Ramsay, the prominent nineteenth-century physician and historian of South Carolina, warned that such aversion was irresponsible:

He that wishes to do the great business of life by preparation for futurity, or even to make a prudent and judicious testamentary disposition of his property, would do well to arrange these matters before serious sickness commences; for that is often so rapid as to leave little leisure to attend to anything further than the prescriptions of the physician till reason departs or death closes the scene forever.²¹

Given human nature, the reluctance of some of his eighteenth-century forbears to plan for death should not perhaps be surprising.

However different economically and culturally, testators did share with intestates one important characteristic: they died young. South Carolina's testators had always faced demographic imperatives imposed by an environment of high mortality. Over half the testators in South Carolina lacked the nuclear family that corresponded to the prime concerns of English inheritance law, transmission of property to children and maintenance for the widowed spouse. Barely half were married when they wrote their wills, and one-sixth made no reference to having ever been married (Table 1).

Table 1 Testators' Marital Statuses, South Carolina lowcountry, 1670-1795

Period	Husbands		Widowers		Widows		Bachelors		Unclear		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Before 1720	90	60	16	11	12	8	28	18	5	3	151	27
1730s	67	57	17	14	9	8	22	19	2	2	117	21
1760s	61	50	14	12	23	19	20	16	4	3	122	22
1790s	85	52	18	11	28	17	24	15	8	5	163	30
(Charleston District)												
Total (%)	303	(55)	65	(12)	72	(13)	94	(17)	19	(3)	553	(100)

Sources: South Carolina Department of Archives and History (hereafter SCDAH), Records of the Secretary, Charleston County Wills.

20. Letters from Eliza Pinckney to Mary Bartlett, June 1742, and to George Morley, 14 March 1760, in *The Letterbook of Eliza Lucas Pinckney, 1739-1762*, ed. Elisa PINCKNEY (Chapel Hill: University of North Carolina Press, 1972), pp. 41, 144.

21. David RAMSAY, *History of South Carolina, From its First Settlement in 1670 to the Year 1808*, 2 vol. (Charleston, S. C., 1858), II: 54. Between the period of settlement and the 1760s the median interval between the writing of a will and its probate dropped from less than five months to less than three.

Almost one-third of the husbands were childless. Those testators who had children as heirs had few of them; in no period was the median greater than three; two-thirds of the parents had fewer than four children to survive them (Table 2).

Table 2 Number of Children Surviving Testators, South Carolina lowcountry, 1670-1795

Period	Ever-married Testators (including childless)		Parents only	
	Mean	Median	Mean	Median
Before 1720	1.9	1.3	2.8	2.3
1730s	2.7	2.2	3.4	2.8
1760s	2.3	2.0	3.2	3.0
1790s	2.2	1.9	2.7	2.3

Sources: SCDAAH, Records of the Secretary, Charleston County Wills.

Small family size affected inheritance strategies in two important ways. First, it meant that the cultural preference for adult, male heirs often simply could not be exercised. One-quarter of the parents among testators only had daughters, and 40 percent had only minor children. Testamentary references to transmissions of property *inter vivos* suggest that even the adult children among the heirs were youthful. Secondly, relatively few testators had to face the difficulty of too many children to make succession to the family's status feasible for all of them.

Throughout the eighteenth century the demography of lowcountry South Carolina resembled that of the seventeenth-century Chesapeake. Several studies of the early Chesapeake have revealed the dramatic impact of demographic factors on inheritance in those plantation colonies.²² The succession of generations in the early Chesapeake was insecure because of high mortality for all ages. Two-thirds of the parents dying left no adult children and had fewer than three children surviving at all. High rates of testation corresponded to these uncertainties of succession. In seventeenth-century St. Mary's Country, Maryland, half of all inventoried decedents, and about 90 percent of the married men owning land, left wills. The family strategies typical of plantation colonies differed from those of rural New England, where fathers usually lived until at least some of their children were adults, where most fathers had sons and where, therefore, it was reasonable to maintain the English cultural preferences for sons to inherit land.

Unlike their counterparts in New England, husbands in the seventeenth-century Chesapeake characteristically used testation to enhance their widows' economic

22. Lois Green CARR and Lorena S. WALSH, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland", *William and Mary Quarterly*, 3d ser., XXXIV (1977): 552-56, 569-70; Lorena S. WALSH, "Charles County, Maryland, 1658-1705: A Study of Chesapeake Social and Political Structure" (Ph.D. dissertation, Michigan State University, 1977), pp. 143-45, 462; Lorena S. WALSH, "'Till Death Us Do Part': Marriage and Family in Seventeenth-Century Maryland", in Thad W. TATE and David L. AMMERMAN, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society* (New York: W. W. Norton, 1979), p. 143; Daret B. and Anita H. RUTMAN, "'Now Wives and Sons-in-Law': Parental Death in a Seventeenth-Century Virginia County", in *ibid.*, pp. 164-73; Daniel Blake SMITH, "Mortality and Family in the Colonial Chesapeake", *Journal of Interdisciplinary History*, VIII (1978): 403-27, and *Inside the Great House: Planter Family Life in Eighteenth-Century Chesapeake Society* (Ithaca: Cornell University Press, 1980), chap. 3; GUNDERSON and GAMPEL, "Married Women's Legal Status", pp. 122-23.

autonomy. With few other kin available, wives were usually executors. If there were no children then wives were usually the sole heirs as well. Three-fifths of the widows were given more than the equivalent of dower. Complicated intergenerational obligations and conflicts were necessarily few, since most children were as yet unable to provide for their mothers. There were few restrictions on children's freedom with property. The chief difference among children's inheritances was that daughters were less likely to be devised land if they had brothers.

The eventual lessening of child and adult mortality in the Chesapeake led to greater opportunities for parental influence and authority. As more children survived into adulthood, and marriages lasted longer, wives lost some of their earlier independence, and heirs' property interests became more interdependent.

Among South Carolina testators, by contrast, one observes neither the aging of the population nor the increase in family size that occurred in the Chesapeake. Reflecting the early age at which many parents continued to die, the average and median number of surviving children showed no tendency to increase over the eighteenth century (see Table 2).²³ This continuity in demographic conditions at least partially explains the persistence of inheritance patterns characteristic of the period of settlement elsewhere in the South.

III — GENDER AND GENERATION IN INHERITANCE

The provisions of a will were the result of a series of choices about the interests and rights of family members in the testator's property. Did a wife deserve a fixed proportion of the estate, or was her share to be balanced against children's needs? Should she actually own her part of the estate, or would her rights be limited to use only? What types of property should she receive? Should she have executory responsibilities? Should the sons and daughters receive different amounts and types of property? Were the bequests to be contingent on the recipients' behaviour toward one other? The decisions on these choices depended more on the testator's marital status (married or unmarried) and his parental circumstances (the ages, number, and sex of his children) than on his wealth or occupation.

The most important re-evaluation of customary behaviour by South Carolina's testators involved the sexual stereotyping of property. The crucial inheritance choices concerned the wife. Her benefits and responsibilities involved decisions on family strategy, while provisions for children, especially sons, were governed more by cultural custom. Testators in South Carolina gave their wives a much more valuable and independent share of their estates than was usual in northern colonies.²⁴ Female property rights in the latter continued on a customary basis: wills identified the

23. Colonial South Carolina's demography is discussed in Peter H. WOOD, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York: Alfred A. Knopf, 1974), chap. 5; Scott M. WILDS, "The Unification of Lowland South Carolina in the Eighteenth Century: A Demographic Perspective from St. Thomas Parish" (paper, University of Pennsylvania, 1976). The only important change in the demographic characteristics of testators was the increase between the 1730s and the 1760s in the proportion of widows. Otherwise, there was little change in the marital status of testators. See Table 1.

24. On the question of gender preference in testation in northern colonies, see AUWERS, "Fathers, Sons, and Wealth", p. 144.

specific part of the estate for the widow's use and specified her care as a condition for grown children's inheritance.

The average figures for the whole period indicate liberal provisions for South Carolina widows. Four-fifths of the husbands bequeathed their wives some property to own rather than just to use. Nearly two-thirds named them to share in the residue of the estate. (The residue was that part not specifically bequeathed and which remained after the debts and expenses of the estate had been paid; it was usually more valuable than specific bequests.) In 69 percent of the cases, husbands appointed their widows as executors. Nevertheless, the conjugal relation of husband and wife did not itself determine inheritance patterns. The standard of provision for widows was more one of adequate maintenance rather than entitlement to a particular proportion of the family's property. The larger the estate the less likely a widow was to have the equivalent of dower.²⁵ Anticipating that widows suing for dower rights would have to renounce their legacies, testates could successfully bequeath their wives less than they would have received from an intestate succession. Widows were unlikely to sue if the bequests of slaves and money were more valuable than the dower right to use of one-third of the real estate.

Whether or not a couple had children, and their ages and numbers if they did, strongly affected the extent of the widow's benefits. Most childless testators made their wives their most important single heir. Only 33 percent of such testators limited any of their spouse's property to use but not ownership, and only 13 percent gave them less than the equivalent of dower—namely, use of one-third of the real estate plus ownership of one-third of the personalty (Table 3).

Table 3 Motherhood and Widows' Inheritance, South Carolina lowcountry, 1670-1795

	Bequeathed less than Dower ^a		Bequeathed more than Dower		Total	
	N	%	N	%	N	%
Motherhood status						
All wives ^b	105	38	171	62	276	100
Number of children						
0	11	13	73	87	84	30
1-3	42	36	76	64	118	43
4 or more	52	70	22	30	74	27
Age of children						
only minors	38	39	59	61	97	35
only adults	28	56	22	44	50	18
minors and adults	28	62	17	38	45	16

Sources: SCDAH, Records of the Secretary, Charleston County Wills.

^a "Dower" refers here to what a wife would inherit from a husband dying intestate—a life interest in one-third of his real estate and ownership of one-third of his other property.

^b Ambiguous cases of motherhood are excluded.

25. 61 percent of the testators with estates valued at less than the median for contemporary probated estates gave their wives more than the equivalent of dower, while only 21 percent of the more wealthy ones did so.

By comparison, widows who were mothers were less likely to share in an estate's residue; nearly one-half of them received less from their husbands' wills than the equivalent of dower from an intestate succession. Half of these widows had some of their property for use only (usually for life).

Husbands recognized the conflict between their wife's economic interests and their children's. Rather than the conjugal relationship, it was the interplay of the children's legal dependence and economic interests that determined the widow's benefits from the estate. In deciding how much wealth and autonomy she should have, a testator had to weigh his children's long-term interest in the estate, which conflicted with their mother's claim on the same property, against their short-term dependence on her supervision. This conflict of economic interest between mothers and children increased with the children's number and age. Among mothers with four or more children, 70 percent received less than the equivalent of dower, compared to 36 percent of those with fewer children. The benefits to the widowed mother were greatest when all of a couple's children were minors. Once all the children of a couple were adults, her benefits and autonomy were much less. It was usual for such mothers to receive less than the equivalent of dower, to be excluded from the residue, to have their independence with property restricted, and to be excluded from administration of the estate.

Moreover, South Carolina widows' benefits from inheritance had declined by the middle of the eighteenth century. They were experiencing the same trend as widows in other colonies (Tables 4 and 5).

Table 4 Changes in Widows' Independence with Legacies, South Carolina lowcountry, 1670-1795

Period	Some for use only		All fully owned		Total	
	N	%	N	%	N	%
Through 1730s	59	39	92	61	151	53
1760s & 1790s	69	52	63	48	132	47
Total (%)	128	(45)	155	(55)	283	(100)

Sources: SCDAH, Records of the Secretary, Charleston County Wills.

Table 5 Changes in Widows' Appointment as Executrices, South Carolina lowcountry, 1670-1795

Period	Sole Executrix		Shared Executorship		Excluded from Executorship		Total	
	N	%	N	%	N	%	N	%
Through 1730s	43	29	67	46	37	25	147	51
1760s & 1790s	21	15	68	49	51	36	140	49
Total (%)	64	(22)	135	(47)	88	(31)	287	(100)

Sources: SCDAH, Records of the Secretary, Charleston County Wills.

Some of the privileges of wives as heirs and executors shifted to people outside their immediate families. Widows were more often excluded from the residues of their husbands' estates. Their interests in estates were also more frequently limited to use rather than ownership.

Patrick Simpson, who died childless in 1791, provides an example of the change. He was wealthy and owned fifty slaves, but in his will he allowed his wife only a small portion of his assets. In lieu of dower she received possession of and the right to bequeath a horse and chaise, household furnishings, several hundred pounds sterling, and three slave families. He divided most of his estate among several nephews and nieces, offspring of his brother, several sisters, and a stepchild. They were also to have the proceeds of the slaves and dwelling used by his wife.²⁶ Through the 1730s 76 percent of such childless testators had made their wives exclusive heirs of their estates' residues; 38 percent of them did so later. The naming of childless wives as executors also declined from 83 percent to 65 percent. There was a general decline in the naming of wives as executors: from 75 to 64 percent in the case of executors as a whole, and from 29 to 15 percent in the case of sole executors. Husbands in different family situations were becoming more similar to each other in reducing their wives' economic autonomy. The change involved a more all-embracing definition of family interests in relation to kin and community and a rebalancing of property interests within the family. If in absolute terms South Carolina widows continued to enjoy greater legal and economic advantages than widows in other colonies, it was because they were more often childless or had minor children only.

For bequests to children as well as to wives, the overall inheritance pattern was more liberal than that usually found in the British mainland colonies. Taking the period as a whole, the differences between the legacies of brothers and of sisters depended more on the kind of property being bequeathed than on its monetary value. Children tended to inherit land unequally by sex and to get other types of property equally. As Table 6 shows, 70 percent of the testators with both sons and daughters expressed sexual bias in their devises of land, 41 percent did so regarding personalty.²⁷

26. SCDAH, WPA, Charleston County Wills, XXIV, pp. 967-69, will of Patrick Simpson (1791).

27. The analysis is based on cases where testators were obliged to make a choice. Sexual bias could occur when there were both sons and daughters, while principles of equality or favouritism among children were relevant when there was more than one child.

The stereotyping of land for sons was strongest in the disposition of homesteads. Seven-eighths went to sons rather than to daughters, although this pronounced bias applied to fewer than 20 percent of the devises of land.

Table 6 Changes in Daughters and Sons' Equality as Heirs, South Carolina lowcountry, 1670-1795

Equality or bias	1730s & 1760s		1790s		Total	
	N	%	N	%	N	%
Equality with land	13	19	19	54	32	30
Preference for sons	57	81	16	46	73	70
Total (%)	70	(67)	35	(33)	105	(100)
Equality with personalty	43	52	35	70	78	59
Preference for sons	39	48	15	30	54	41
Total (%)	82	(62)	50	(38)	132	(100)

Sources: SCDAH, Records of the Secretary, Charleston County Wills.

Table 6 also reveals that inheritance practices in the late eighteenth century were changing the relative standing of daughters and sons as heirs of the land, as implied by the reformed intestacy statute of 1791. Land lost most of its stereotyping as masculine property.

The wills of Richard Singleton and Michael Durr provide illustrations of the change. In 1735 Richard Singleton had an unusually large number of children, five sons and five daughters, but he had plenty of property to distribute and the children shared the estate's twenty-three slaves. The land, over three thousand acres of it, went only to the sons. In 1793 Michael Durr, a planter with six slaves, had eight children. Rather than consolidate his family's holdings among the sons, he only slightly favoured his four sons over his daughters in dividing his land.²⁸ Into the 1760s daughters had been very unlikely to share their parents' real estate with their brothers; but in the 1790s 54 percent of the testators with both sons and daughters gave them land on equal terms.

The relationship between familial and social variables and the likelihood of daughters' being treated unequally that existed earlier in the eighteenth century no longer held true by the end of the century. Widowers and husbands became more like widows, who had previously been exceptional in their impartiality regarding daughters as heirs of real estate; testators with large families, who had previously been more likely to deny daughters land, acted as those with few children had; richer testators, who had been reluctant to allow daughters land, were as disposed to equality as less wealthy ones were; and planters came to resemble testators with commercial occupations in their similar treatment of real estate and personalty.

Throughout the eighteenth century the South Carolina pattern of inheritance implied an acceptance of family members' going their separate ways. The succession to property in South Carolina was not a protracted process. Heirs were seldom obliged to hold property in common or to provide the actual legacies for other heirs. Specific reversionary provisions regarding heirs who predeceased the testator were

28. SCDAH, WPA, Records of the Secretary, LXVI, p. 405, will of Richard Singleton (1735); Charleston County Wills, XXV A, pp. 171-72, will of Michael Durr (1793).

also infrequent. Yet there were numerous bequests which, like entail in the other colonies, limited the alienability of the property to be inherited. These bequests were made on condition that property descend according to a variety of conditions, to the heirs, the male heirs, the issue, the male issue, and so forth—"heir" referring to the next-of-kin, but not necessarily to a lineal descendent; "issue" referring to a child or grandchild. They were estates in conditional fee. Should the legatee die without having had a child, or otherwise fulfilling the condition of descent, then the property reverted to the heir of the original donor. However, should the legatee meet the conditions of the fee by having the appropriate heir, then, paradoxically, it was alienable.²⁹

When it incorporated numerous English statutes in 1712, South Carolina's assembly did not include one to provide for the entailing of estates, and two decades later it specifically precluded entails.³⁰ The preclusion of entail corresponded to the economic and demographic peculiarities of inheritance in the colony. Estates in conditional fee were calculated to deal with the demographic uncertainties of succession without unnecessarily encumbering the alienability of property. Since South Carolina had not enacted *De Donis*, once a child was born to an heir—or if, in the respective case, he or she became an adult with an heir-at-law—then the terms of the conditional fee were met and the property could be alienated because it was now held in conditional fee simple.

Thomas Eberson, for example, was a planter with thirty-seven slaves. He had a son and two married daughters. He divided the slaves equally among his children and their respective "heirs". He gave each child land as well, but on different conditions: the son was required simply to have an heir-in-law while the daughters were required to produce "issue". Thus the son's assets were protected against creditors because his heirs had a potential claim on them through intestate succession, but should he wish to sell them he could do so because he held them in conditional fee simple. If the daughters became widows they would retain ownership of their slaves, in defiance of their status as *femes covertas*, because their heirs had a similar potential claim. And should a daughter with a conditional fee predecease her husband, her children would have all of her land without interference from her husband's claims to be tenant by the courtesy.³¹ These temporary limitations on outright

29. This paradox arose from the careful preservation of a legal archaism. In the thirteenth century feudal landholders' efforts to limit heritability had confronted the legal argument that all estates were fee simple. This argument held that should the heir meet the conditions of the fee, by having a child (if "issue" was the condition) or even by reaching adulthood having an heir-at-law (that is, a satisfactory next-of-kin if "heir" was the condition), then the property was alienable. Thus the English barons' petition of 1258 complained that, despite land being given to a couple with the condition that it descend to their issue, the widow could in fact alienate the land. The statute *De Donis* was enacted in 1285 because landowners were finding that their attempts to restrict heritability had only temporary legal force. Since *De Donis* such conditions had entailed estates. The heirs of such an estate could no longer alienate or devise it since they had only a life tenure. A. W. B. SIMPSON, *An Introduction to the History of the Land Law* (Oxford: Oxford University Press, 1961), pp. 64, 77.

30. *Statutes of South Carolina*, III, pp. 341-43, 383-83. Both of these acts stipulated that the intention in not adopting the statute of entails was to avoid having "estates which were or are fee-simple, conditional at the common law, estates in tail in this province". This explicit rejection of entail was probably necessitated by the earlier adoption of the Henrican statutes on uses and wills, which referred to "fee tails" as well as fee simple estates.

31. SCDAH, WPA, Charleston County Wills, X, pp. 611-12, will of Thomas Eberson (1763). This interpretation of conditional fees in South Carolina combines the eighteenth-century terminology

ownership corresponded to the efforts of testators in northern colonies to protect and provide for their dependents by placing daughters' legacies in trust or by stipulating maintenance for widows. In South Carolina economic security was more frequently arranged on the basis of individual protection from interventions outside the family, while in the North individual security was achieved through reciprocal, intergenerational arrangements in the disposition of estates.³²

Thus the legal peculiarities of South Carolina allowed for the protection of the property of minors, married daughters, and remarried widows when they were legally incompetent, while arranging for their independence when they could exercise it. The aim was to prevent alienability in the short run while securing it in the long run, not to restrict descent permanently or to maintain the advantages of a consolidated holding. Rather than the testators' wealth and occupation, or the number of their children, it was the age of testators' children that corresponded most closely with the likelihood of such bequests. They were made for sons when there were both adult and minor children—so that the property of a prematurely dying son might go to his sibling rather than a step-father. Daughters' portions were more likely to involve such conditions if they were adults—in order to prevent the ownership of their personal property and landed income passing to their husbands. One-third of the wills written by parents before 1760, and half of those after, contained bequests with conditions that the property descend to heirs or the issue of the legatee. This increase largely corresponded with the increasing equality in inheritance for daughters and the decreasing autonomy for wives.³³

for estates in fee tail with the legal possibilities available when entails themselves were precluded. Testators in South Carolina distinguished between "heirs" and "heirs and assigns"; the second term allowed alienation without the condition of having an heir-at-law. The problematic case involves bequests with "heir" rather than "issue" as the condition. After *De Donis* such usage just indicated a fee simple; but before then the term was interpreted to allow alienation if the person holding the property had an heir-at-law. In the eighteenth century, with entails frequent, English courts were willing to supply the necessary words to create fee tail estates if they were missing from wills. By that time "heirs" in deeds referred to fee simple estates, but in wills the term was usually taken to refer to fee tail. Frederick POLLOCK and Frederick William MAITLAND, *The History of English Law before the Time of Edward I*, 2 vol. (2d ed., Cambridge: Cambridge University Press, 1968), II: 13-29; Henry SWINBURNE, *A Treatise of Testaments and Last Wills* (6th ed., London, 1743), pp. 144-45, 159, 166-71; Theodore F. T. PLUCKNETT, *A Concise History of the Common Law* (5th ed., London: Butterworth, 1956), pp. 549-52. The applicable interpretation for South Carolina is further complicated by the use of conditional fees for property other than real estate, especially slaves. James E. ELY, Jr., "Patterns of Statutory Enactment in South Carolina, 1720-1770", in *South Carolina Legal History*, ed. Herbert A. JOHNSON (Spartanburg, S.C.: The Reprint Co., 1977), pp. 75-76.

32. Fewer than 10 percent of the widows in South Carolina were in the passive situation of having maintenance (lodging, food, clothing) provided them, the usual arrangement for widows in rural New England and Pennsylvania. James T. LEMON, "Household Consumption in Eighteenth-Century America and its Relationship to Production and Trade: Farmers in Southeastern Pennsylvania", *Agricultural History*, XLI (1967): 59; Alexander KEYSSAR, "Widowhood in Eighteenth-Century Massachusetts", pp. 104-11; Stephanie Grauman WOLF, *Urban Village: Population, Community, and Family Structure in Germantown, Pennsylvania, 1683-1800* (Princeton: Princeton University Press, 1976), pp. 321-22.

33. The restriction of heritability to male heirs or male issue as a condition of possession was present in fewer than 5 percent of the wills written before 1760 and almost disappeared thereafter. Among those devising land at all, 25 percent placed legal limits (occasionally trusts, but usually conditional fees) on possession in the 1730s, 45 percent in the 1760s, and 55 percent in the 1790s; the respective proportions for testators bequeathing slaves were 25, 36 and 38 percent. After the 1720s the proportion of sons having such limited ownership was steady at about one-third; the proportion for daughters rose from under one-fifth in the 1730s to more than two-fifths in the 1760s and 1790s.

IV — SLAVERY AND PATRIMONY

While the demography of lowcountry South Carolina was comparable with that of the early Chesapeake, the economic and social development of the two areas differed significantly. In the Chesapeake the adoption of slavery as the chief form of unfree labour was a protracted process; even after the establishment of plantation agriculture, there continued to be numerous non-slaveowning farmers. By contrast, within the first decades of settlement, South Carolina already displayed its primary distinguishing social characteristics, an entrepôt in Charleston and a slave labour force making up the majority of the population. As early as the 1730s South Carolina's planters had begun a half-century of profitable staple production of rice and indigo. Between the 1730s and the 1760s the social structure of the province was relatively stable. A combination of wealthy merchant-planters and powerful agents of London commercial houses dominated the government and commerce of lesser planters.³⁴ While the proportion of non-slaveowners and small slaveholders (ten slaves or fewer) in the propertied population remained nearly constant at about one-quarter and one-half respectively, the number of very large slaveholdings increased.

With the rapid development of an economy dominated by a highly commercialized plantation agriculture, South Carolina's major structures of wealthholding, production and exchange were established early on. The stability of these structures was reflected in the constancy, after 1720, with which different types of property were identified for inheritance. The types of wealth most frequently bequeathed were lands, slaves, and liquid capital; each was mentioned in over two-fifths of the wills in the 1730s, 1760s, and 1790s. Livestock (including riding horses) and household goods figured explicitly in one-third of the wills. Personal effects (clothing, weapons, jewelry) and equipment (for agriculture, domestic production, skilled trades, and transportation) figured in about one-fifth. Planters and merchants had much in common in this highly commercialized plantation society. One-quarter of the planters identified Charleston as their residence, and three-quarters of the merchants and tradesmen owned slaves.

These general characteristics of South Carolina society reinforced the demographic imperatives for individual testators to provide for autonomy with family property. English laws on intestate inheritance embodied several traditional associations of family and property which testators in South Carolina implicitly calculated as disadvantages. Propertied families in the lowcountry usually had more wealth in slaves than in land. English law assumed that land was the critical family resource, that its continued consolidation was necessary, that males were the proper owners and transmitters of land, and that a widow's interest in the landed estate was sufficiently compensated by maintenance for life from one-third of its income. In

34. WOOD, *Black Majority*, chaps. 1-2, 4; Richard WATERHOUSE, "South Carolina's Colonial Elite: A Study in the Social Structure and Political Culture of a Southern Colony, 1670-1760" (Ph.D. dissertation, The Johns Hopkins University, 1973), chap. 3; Jacob M. PRICE, "Economic Function and the Growth of American Port Towns in the Eighteenth Century", *Perspectives in American History*, VII (1974): 161-63; Stuart Owen STUMPF, "The Merchants of Colonial Charleston, 1680-1756" (Ph.D. dissertation, Michigan State University, 1971); Robert M. WEIR, "A Most Important Epoch": *The Coming of the Revolution in South Carolina* (Columbia, S.C.: University of South Carolina Press, 1970), pp. 3, 9-10; Rachel KLEIN, "The Rise of the Planters in the South Carolina Backcountry, 1765-1808" (Ph.D. dissertation, Yale University, 1979).

intestate succession the transmission of non-landed wealth, moveable property and liquid assets favoured the wife when children were numerous by assuring her outright ownership of one-third, while treating the offspring impartially with an equal division of the residue.

The use of property in South Carolina called for a different emphasis. The critical resource there was a form of property, slaves, unknown to English law, but in South Carolina held to be personalty.³⁵ Much of the peculiarity of inheritance in South Carolina involved efforts to take into account the legal status of slaves as personalty in the division of estates. While the widow of an intestate received outright ownership of one-third of the slaves, the law of *couverture* transferred them to her new husband upon remarriage. Given the legal incompetence of married women, intestacy could in this way allow the greater part of the family's wealth to pass into the control of males from other families. Children from the widow's first marriage risked losing property to step-siblings and half-siblings.

If from a patriarchal perspective the inheritance of slaves involved a potential legal handicap for family interests, liquidity of property was the overriding consideration in a commercial environment. Equal and independent access to wealth was necessary for the movement of assets between land and commerce that characterized the economy of South Carolina. For example, in 1777 the colony's legislature made it possible for a widow to convert her dower interest in land into an outright cash settlement from her husband's estate. This arrangement gave widows greater economic independence, but its primary purpose was to facilitate the collection of debts against

35. By a statute of 1690, which was subsequently disallowed, slaves had briefly been freehold property for purposes of descent in South Carolina, while also being subject to seizure for debt as chattels. After 1696, there was legislative recognition of the custom of treating slaves as chattels. M. Eugene SIRMANS, "The Legal Status of the Slave in South Carolina, 1670-1740", *Journal of Southern History*, XXVIII (1962): 462-73. In Virginia, by way of comparison, the property status of slaves was complicated by legislative change and royal disallowances, but there was a continued disposition to treat them as real estate, especially for purposes of inheritance. They could descend with entailed estates, but they were not considered to be real property for descent by primogeniture. Clarence Ray KEIM, "Influence of Primogeniture and Entail in the Development of Virginia" (Ph.D. dissertation, University of Chicago, 1926), pp. 44-45.

The redrawing of intestacy laws in most non-royal colonies, where the significance of land in a family's wealth was comparable with that in England, pointed up an inadequacy of English inheritance law more general than its relevance to slavery. The law of primogeniture discriminated invidiously among sons even when there was sufficient land for division without counter-productive effects. The well-known colonial reform was partible succession by children to land in intestate estates. The division of personalty remained largely as in English law, but with it as with land the eldest son received a double portion relative to the other children. George L. HASKINS, "The Beginnings of Partible Inheritance in the American Colonies", in *Essays in the History of Early American Law*, ed. David H. FLAHERTY (Chapel Hill: University of North Carolina Press, 1969), pp. 204-44.

This revised law of intestacy corresponded to the patterns of testamentary inheritance found in several communities in New England and Pennsylvania. It also corresponded sufficiently with the situation in which most propertied decedents there found themselves, namely with children to make the customary intergenerational transmission a reality. For example, Philip Greven found in Andover that over half of the fathers of the first generation had two or more sons; among seventy-four third-generation fathers only one was without a son. Such uniform minimal fertility and low mortality made customary succession far less complicated by demographic lapses than has usually been the case in pre-industrial societies. Philip J. GREVEN, *Four Generations: Population, Land and Family in Colonial Andover, Massachusetts* (Ithaca: Cornell University Press, 1970), pp. 83, 228; WATERS, "Family, Inheritance, and Migration", p. 73. See also Jack GOODY, "Strategies of Heirship", *Comparative Studies in Society and History*, XV (1973): 3-20.

estates by reducing the complications from dower claims.³⁶ Dower, ownership in common, restrictions on alienability, and obligations of heirs to maintain one another all complicated the availability and reliability of credit. Changes in the identification of family interests in South Carolina reflect an increased awareness of the commercial character of wealth.

In this respect, inheritance patterns in South Carolina diverged from those in most rural localities in early America. Inheritance is usually pictured as at least implicitly patriarchal, with intergenerational definitions of family interests, primary attention to land, and sons' economic status dependent on their father's age. Henretta's survey of the relations of family and property in northern, preindustrial America argues for the importance of "lineal family values"—or intergenerational relations—relative to individualistic or conjugal ones.³⁷ Studies of inheritance in the colonial period almost take for granted the favouring of sons over daughters because outside the plantation colonies land was usually the most valuable form of a family's wealth, and it had strong masculine associations regarding descent.

The patrilineal succession of one generation by the next, both as a strategy in the ownership of land and as a principle for inheritance, is the chief theme of recent studies of inheritance in New England; the countertheme is the increasing tension between ideal and reality. The rate of success of intergenerational transfers, however, remained high in New England through the eighteenth century.³⁸ In Virginia as well, parental and sex roles became more highly defined, and the life chances for sons grew increasingly dependent on paternal favour regarding land and education. Patriarchalism among the planters of the Chesapeake in the eighteenth century is almost a shibboleth: "Social chaos in the seventeenth century, characterized by internal conflict, families broken by parental death, and a search for profit, was followed by social peace in the eighteenth century, characterized by patriarchy, gentry rule, and extended families."³⁹

Inheritance practices of lowcountry South Carolina, in fact, most resembled those in northern localities where there was a combination of a likelihood of children's migrating and an intensive commerce between town and country. Germantown, Pennsylvania, with its mixed farming and suburban crafts economy, and Petersburg,

36. SALMON, "Legal Status of Women", p. 102n.

37. James A. HENRETTA, "Families and Farms: *Mentalité* in Pre-Industrial America", *William and Mary Quarterly*, 3d ser., XXXV (1978): 3-32.

38. AUWERS, "Fathers, Sons, and Wealth", pp. 139-41; John J. WATERS, "Patrimony, Succession, and Social Stability: Guilford, Connecticut, in the Eighteenth Century", *Perspectives in American History*, X (1976): 129-60, and "Family, Inheritance, and Migration in Colonial New England: The Evidence from Guilford, Connecticut", *William and Mary Quarterly*, 3d ser., XXXIX (1982): 76, 79; GREVEN, *Four Generations*, pp. 72-99, 140, 216, 228-30; Christopher M. JEDREY, *The World of John Cleaveland: Family and Community in Eighteenth-Century New England* (New York: W. W. Norton, 1979), pp. 79-80. This association of family interests with sons' succession to land is marked in Greven's *Four Generations*. Given New England's inheritance customs and demography, his study of the succession to land was implicitly about inheritance by sons to the neglect of daughters. There was no major entry for "daughters" in the book's index, while that for "sons" was the longest after "family" and its variant entries.

39. Allan KULIKOFF, "Population and Economic Growth and Social Change in Early America: A Chesapeake Example", *The Newberry Papers in Family and Community History* (1977), p. 4; James W. DEEN, Jr., "Patterns of Testation in Four Tidewater Counties in Colonial Virginia", *American Journal of Legal History*, XVII (1972): 159-62, 173-76; SMITH, *Inside the Great House*, chap. 6.

Virginia, when it was a nascent commercial town, provide examples of the parallels between the relations of family and property found in towns and those in the lowcountry. In Petersburg widows had extensive autonomy, and daughters shared equally in estates which were also readily divisible.⁴⁰ In Germantown equality between sons and daughters was normal, and the usual means for the transmission of estates was to sell them and to divide the proceeds equally.⁴¹ The implication in both cases was that land had little special significance for livelihoods.

How commercialization affected property relations within South Carolina families requires analysis of testators' practices on the basis of their wealth and livelihoods. To this end, occupations have been grouped into categories of merchants and retailers, tradesmen, and planters;⁴² and testators' wealth has been distinguished in relation to the median for contemporary inventoried wealth (converted to pounds sterling) of all estates, testate and intestate. The correlation between social and familial variables is insignificant: a testator's occupation or wealth are unrelated to the number or ages of his children. Social and familial statuses vary independently: a testator's occupation is a poor predictor of his marital status, for instance, and the number of children has no bearing on relative wealth.⁴³

Planters were predictably more patriarchal in their attitudes toward family and property than were merchants and tradesmen. They were more likely to place limiting conditions on legacies and to favour male over female heirs. Relative to other occupational groups, twice as many planters left their wives less than the

40. In Petersburg half of the married men wrote wills. 60 percent of testators' widows received some outright ownership of property. The greater the testator's wealth, the more likely he was to make bequests for use only, but remarriage was an infrequent condition on uses. Half of the wives were executors. Daughters shared equally with sons in four-fifths of the estates. 61 percent of the fathers had no adult children, so very few children were required to maintain the widow. The estates were treated with the assumption of liquidity: 40 percent made no specific bequests. Suzanne Dee LEBSOCK, "Women and Economics in Virginia: Petersburg, 1784-1820" (Ph.D. dissertation, University of Virginia, 1977), chap. 2.

41. WOLF, *Urban Village*, pp. 323, 326. In New York City, as Dutch customs of joint property in marriage waned, there was a complicated transition in inheritance patterns. The maintenance of widows had priority initially. They also had extensive discretion with estates. By the middle of the eighteenth century, however, widows' independence and share of property had declined. Fathers showed increased concern with specific provisions for their children. But equality among children as heirs continued as the custom, and the terms of children's legacies encouraged the sale and division of estates. David Even NARRATT, "Patterns of Inheritance in New York City, 1664-1775" (Ph.D. dissertation, Cornell University, 1980), chaps. 3-4.

42. Classification by occupation is based on how testators actually identified themselves. About half did so. Those whose occupations, such as mariner or soldier or lawyer, are difficult to place in one of the three categories have been excluded from the calculations. Planters make up 51 percent of the group studied.

43. Chi-square tests of the association of the respective social variables (occupation and wealth) with the respective familial variables (marital status, and number and ages of children) suggest that the two sets are independent. No association is significant at $< .10$. But within each of the two sets of variables the associations are often quite strong. Wealth and livelihood are significantly related, of course, as are wealth and sex. Two-fifths of the female testators had estates valued above the median for all contemporary inventoried estates; two-thirds of the male testators did. Similar expectable correspondences exist between the different variables of familial status. For example, husbands were likely to be younger than widowers, and they had more minor children. Among testators who were parents, 74 percent of the husbands had minor children, compared with 57 percent of the widowers. 83 percent of the widows mentioned no minor children, and one-fifth of them had families of three or more children compared with one-quarter of the husbands and widowers.

equivalent of dower. They also tended to resolve conflict between the wife's and children's property interests in favour of the latter. Planters were very unlikely to leave their estates' residue to their wives alone; they were more likely to exclude their wives when leaving the residue to their children. Fewer planters allowed widows legal autonomy in the administration of their estates. Two-thirds of them named their wives as executors; four-fifths of the men in commercial occupations did so.

Planters were more sensitive to the ways that the status of family members and the different types of property complicated the process of succession. More than half of them restricted at least part of their wives' legacies to a lifetime interest, while only one-quarter of the merchants did so. Planters more often complicated their sons' and daughters' bequests with limiting conditions regarding intestate succession, trusts, and compensation to other heirs. Planters were more precise in identifying which family members would receive particular property. For example, only one-fifth of the planters made references to heirs' already being in possession of their portions, but that was twice the proportion of merchants and tradesmen. Nine-tenths of the planters mentioned specific items as legacies, while three-fourths of the tradesmen and six-tenths of the merchants did. Among known slaveowners, 55 percent of the planters itemized slaves as legacies; 43 percent of the tradesmen and 35 percent of the merchants made such specific bequests. Compared with men in other livelihoods, planters in their inheritance strategies were more ascriptive in defining the relations of family members and wealth.

By the 1790s, however, there was a significant attenuation of these differences in testamentary practices between planters and men in nominally more commercial livelihoods. Planters' inheritance decisions became more like the others'.⁴⁴ Apparently, the patriarchal handling of property by planters had depended more on their ownership of agricultural land than of slaves, and land was becoming less significant as a particular form of property.

The low interest in status from land was characteristic even of the colony's élite. The practice of building mansions of plantations had lapsed by mid-century, and was not renewed until the turn of the century. Meanwhile, architectural interest focused on townhouses. David Ramsey measured this inconsequence of South Carolina's architecture outside Charleston by the absence of brick from any but public buildings. Few plantations had names before the 1790s, and real estate was usually devised by references to general acreage or specific location without the homestead itself being identified.⁴⁵

44. Although there was an increase from 52 to 67 percent in wives' likelihood to be devised land, land was becoming less important as a distinctive type of property. Testators were becoming more like each other in their provisions for their wives, as planters and other wealthy testators became three times as likely as before to leave their wives real estate.

45. RAMSEY, *History of South Carolina*, II, 253-55; Samuel Gaillard STONEY, *Plantations of the Low Country* (Charleston, S.C.: Carolina Art Association, 1938). On the characteristics of the lowcountry élite in the nineteenth century, see George C. ROGERS, Jr., *The History of Georgetown Country, South Carolina* (Columbia, S.C.: University of South Carolina Press, 1970), chap. 13, and *Charleston in the Age of the Pinckneys* (Norman, Okla.: University of Oklahoma Press, 1969), chap. 6. With their recent overseas wealth and cultivation of urbane sociability, the merchant-planter élite of South Carolina are analagous to nabobs. Although more frequently characterized as a landed upper class, such characterizations are either contradictory or anachronistic. Nineteenth-century developments

Neither do testamentary patterns suggest a primary association of the ownership of slaves with patrimony: in most wills the major division of the estates' slaves took place as a part of the residue, not as designated bequests. The designation of particular slaves as specific legacies usually involved only a few slaves per heir, regardless of the total number available for bequests, and there was a tendency to identify such slaves as property for females. An owner's control of slaves did not translate into determining their use by the next generation.

South Carolina was the archetypical slave society in early America. Yet patriarchalism, the definition of personal relations and family interests by paternal authority, was less evident there than elsewhere. Patriarchalism meant to be the founder of a line, to accumulate a landed estate and then ensure its perpetuation in a succession of direct, preferably male, descendants. The will of Thomas Lynch, Junior, delegate (with his father) to the Continental Congress, illustrates how strong patriarchalism could be. He felt deep responsibility toward his patrilineage. His father had left him, an only son, the family home, which was to descend to his male heirs, or, in lieu of a patronymic grandson, to the male heir of his eldest daughter on condition that the grandson take the name of Lynch. His father's widow had no outright possession from the estate, and only the son and daughters were executors. In his own will Thomas Lynch, Junior, followed the letter of his father's directions and acted in the spirit of exclusive patrilineal succession as well. He even directed that his father's body be moved from Annapolis for reburial at Santee and that a monument to him be erected in the churchyard. Both the father's and son's patriarchalism were largely hypothetical. The younger Lynch created a trust for succession to his plantation: it would descend to his son's eldest male heir, and that grandson's eldest male heir, and likewise in perpetuity. It was a trust for a nonexistent son: Lynch died childless. To cover that eventuality, in accordance with his father's will, he established a trust that would seek among his sisters, in turn by age, a line of direct male descendants renamed Lynch.⁴⁶

At the other extreme, the will of Benjamin Smith, a prominent merchant-planter, shows how muted patriarchalism could be in South Carolina. Smith had numerous children (nine are mentioned in his will and its codicils) and expressed little special preference or apparent emotional investment in the relations of family and property. After writing his will he had three more children, and in accordance with a marriage agreement he simply added a codicil giving them the same monetary amount and share in the residue as those previously born—the bequests to be raised through sale of his slaves, of a plantation, and of the house where he lived. In the initial will he gave one son his Berkeley County plantation, but by the time of the codicil he had sold it and instead gave him a town lot. He made bequests that suggest a diffuse sense of responsibility to the community—to his niece, to the

are extrapolated to the eighteenth century; all planters are portrayed as "gentry"; Charleston as the focus of social status is seen as compatible with disdain for commerce. Such characterizations are found in Eugene SIRMANS, *Colonial South Carolina, A Political History, 1663-1763* (Chapel Hill: University of North Carolina Press, 1966), pp. 225-33; David Duncan WALLACE, *The History of South Carolina*, 4 vol. (New York: The American Historical Society, 1934), I: 396, 398; Robert McColloch WEIR, "'Liberty and Property, and No Stamps': South Carolina and the Stamp Act Crisis" (Ph.D. dissertation, Western Reserve University, 1966), pp. 77-78.

46. SCDAA, WPA, Charleston County Wills, XVIII: 231-33, XX: 152-59, wills of Thomas Lynch, Senior (1773), Thomas Lynch, Junior (1779).

rector and his assistant on condition they preach a New Year's Day sermon, to another minister, to his brother for distribution to the poor, to the South Carolina and Library societies, to a friend, to a slave given him by his father and who would be freed, and (in codicils) to his sister and to St. Peter's for the organ subscription. The only property with elaborate provisions for succession and common use by family members was his church pew. Even responsibility for his children was unfocused: the executors were to be guardians of two of them, his wife of the "other children".⁴⁷ As a model for élite decisions on succession, Smith's strategy corresponded better than Lynch's to the demographic and economic realities of the South Carolina lowcountry.

Inheritance practices in South Carolina arguably involved attitudes more profeminine than patriarchal. In enhancing the economic status of women, they devalued patrilineal concerns and conjoint family property interests.⁴⁸ With his characteristic perspicacity, David Ramsey contrasted propertied women's traditional feminine subordination with their ability to stand in for men:

The name of the family always depends on the sons; but its respectability, comfort, and domestic happiness, often on the daughters. . . . No pursuit of pleasure interferes with duty to a father, or affectionate attention to a brother; so that the happiness as well as cheerfulness of a family is increased in proportion to the number of daughters. . . . In Carolina, where sickness and health, poverty and riches, frequently alternate in rapid succession, wives and daughters bear incredible fatigues and privations with exemplary fortitude and accommodating propriety. When they are left widows, though with small means, large families, and great embarrassments, they, in many cases, extricate the estate with wonderful address and devote themselves to the education of their children.⁴⁹

Inheritance patterns in South Carolina were shaped, on the one hand, by the imperatives of demographic insecurity in succession to property, and on the other hand, by an access to wealth in the form of plantation slavery, which depended more on immediate commercial and productive undertakings than on entitlement. To the extent that family and property had a close association there, it was of a feminine orientation, with relative disregard to lineage, impartiality to children, and minimal sexual stereotyping of property, and therefore muted authority within the family.

47. *Ibid.*, XIII(C): 831-39, will of Benjamin Smith (1768).

48. The decisions of widows particularly exaggerated the tendencies which made testators in South Carolina distinctive in the broader context of early America. Over half of the female testators gave slaves exclusively to daughters; fewer than one-quarter gave them exclusively to sons. Half of them treated their daughters equally with their sons in bequests of land, at least twice as many proportionately as men with children of both sexes. Women, did, however, show more exclusive interests regarding their children. For example, widows were less likely than widowers (48 vs. 73 percent) to make nonkin heirs of executors.

49. RAMSEY, *History of South Carolina*, II: 229-30.