

# RESEARCH NOTE

## “Patriarchy from the Grave”: Family Relations in 19th Century New Brunswick Wills<sup>1</sup>

SCHOLARS FROM VARIOUS DISCIPLINES have recognized the important connection between inheritance, property, and family relations. The British social anthropologist Jack Goody suggests: “The manner of splitting property is a manner of splitting people; it creates (or in some cases reflects) a particular constellation of ties and cleavages between husband and wife, parents and children, sibling and sibling, as well as between wider kin”.<sup>2</sup> Perhaps no documents more sharply reflect family ties and cleavages than do wills. In those written by 19th century residents of Richibucto Civil Parish, Kent County, New Brunswick, family relations are coloured by the efforts of senior males to govern their kin in death, as they had likely attempted in life. Their expressions of “patriarchy from the grave”<sup>3</sup> suggest the existence of underlying conflict, as well as cooperation, in the 19th century family.

Not everyone wrote a will, and the 56 wills prepared in Richibucto parish between 1843 and 1880 failed to reflect the make-up of the local population.<sup>4</sup> Perhaps not surprisingly, Acadians and women were the most under-represented among those who wrote wills; only five women and ten Acadian men were included among the 56 wills examined. Married women had little, if any, formal control of property, and none of the women who had wills was married. Three

1 This examination of wills is part of a larger study of households and families of Acadians and non-Acadians in Richibucto Civil Parish, Kent County, New Brunswick in the latter part of the 19th century. The research is co-directed with Muriel K. Roy, Université de Moncton, and has been funded by the Multiculturalism Directorate (Ethnic Studies Research), Secretary of State, Canada. R. Gilles LeBlanc cheerfully and painstakingly transcribed the wills. For that and his many contributions to the project, I thank him. The Provincial Archives of New Brunswick kindly facilitated our use of microfilms containing the wills.

2 Jack Goody, “Introduction”, in Jack Goody, Joan Thirsk and E.P. Thompson, eds., *Family and Inheritance, Rural Society in Western Europe, 1200-1800* (Cambridge, Eng., 1978), p. 3.

3 I am indebted to Ms. Carol Ferguson, University of New Brunswick, for this telling phrase.

4 The population of the parish grew from 2,088 people in 1840 to 4,005 people in 1861; there was little additional growth in the following decades: in 1871 the population was 3,845 and in 1881 4,076. The ethnic composition of the population shifted in this period: in 1861 residents of French origin made up about 30 per cent of the population, and in 1881 they made up 42 per cent of the population.

Fifty-six wills are included in microfilmed land registry records held by the Provincial Archives of New Brunswick. Two wills are illegible, two are duplicates, and three are of people who lived outside the parish; the remaining wills represent the corpus on which these remarks are based. Of these wills, five were written in the 1840s, 16 in the 1850s, 18 in the 1860s, nine in the 1870s, and one in 1880. In 1940 a fire destroyed early Kent County Probate Court Records.

were widows and two had never married.<sup>5</sup> The most frequently listed occupation in census returns was that of farmer. Among those who wrote wills, about half of the non-Acadian males whose occupations are known were farmers; the remainder included craftsmen, merchants, a master mariner, a clergyman, and a teacher. All the Acadians who prepared wills were apparently farmers, though with smaller and less valuable holdings than their non-Acadian neighbours.<sup>6</sup> Most non-Acadian farmers, but only one Acadian farmer, valued their acreage at more than \$1000; it might be suggested that non-Acadian men, rather than non-Acadian women or Acadians, were most likely to have property sufficient in size and complexity to warrant a will. Yet, in at least some of these cases, it may have been the complexity of family relations, as much as the complexity of property holdings, which impelled an individual to write a will.

In the absence of more extensive information on the way in which deceased persons' property was usually transferred within area families, we can compare these wills against the legal arrangements to be followed when a man died intestate. According to this norm, the widow was entitled to the right of dower, a life interest in one-third of her deceased husband's lands.<sup>7</sup> And, by New Brunswick law, "children or their legal representatives, including in the distribution children of the half blood" were to share equally in their father's estate. To ensure that all children benefited equally, settlements given them prior to their father's death were taken into consideration in the distribution at his death.<sup>8</sup>

The wills were generally prepared in accord with the legal stipulations. Wives were given the right to use some portion of the husband's real and personal estate; on the death of wives, the estate was divided among children. However, the wills do reveal departures from practices which would have been followed if a man died intestate, for these men were unequally dividing their property among children. And, though they could not deny a wife's dower rights, these men did not usually go much beyond the recognition of those rights. Wives were ensured maintenance and security, but they were not given bequests without encumbrance.

Sex, generation, and status as "full" or "half" siblings all represented dimensions along which kin could be differentiated and handled unequally in the wills. The will of William G. [Will #30, 1867]\*<sup>9</sup> is typical of the set of wills. Typically,

5 Five men who wrote wills were apparently unmarried.

6 Information on the acreage held by four of the Acadians and 13 of the non-Acadians (nine of whom were farmers) indicates that the Acadians' lands were about one-half the size and value of those held by the non-Acadians. This and other agricultural information is contained in Schedule 3, New Brunswick Provincial Census, 1861.

7 Widows were entitled to the dower right, whether their husbands died intestate or not. See Alan M. Sinclair, *Introduction to Real Property Law*, 2nd. Edition, (Toronto, 1982), pp. 21-5.

8 New Brunswick, *Acts of the General Assembly, 1858*, 21 Victoria cap. XXVI, p. 78.

9 Specific wills are identified by volume and page number in the microfilms: #3, Vol. L, pp. 413-414; #7, Vol. M, pp. 176-177; #16, Vol. N, pp. 174-175; #19, Vol. O, pp. 141-144; #24, Vol.

William G.’s daughters did not inherit equally with their brothers or with each other. Daughters may have customarily received partial inheritance at marriage, but no marriage contracts exist to indicate the nature of the dowry. Furthermore, many daughters who inherited less than their brothers were unmarried when the wills were written. It is more likely that daughters inherited less, regardless of the point in the life cycle at which the transfer of property occurred.

Inequality in inheritance extended to sons as well, as illustrated in Robert’s inheritance of 5 shillings. What significance could this disparity have had? Perhaps Robert had received earlier gifts from his father, and this was a final attempt to equalize distribution of property between sons. Or, perhaps the father was responding to the differing needs of his children. Also, perhaps the father intended to give Robert *no* inheritance, and this nominal inclusion insured that Robert could not contest the will by claiming that his father had unintentionally overlooked him. Furthermore, some of the disparities reflect the special status of the son who was given responsibility for maintaining the mother and other dependent people in his father’s household, as discussed below.

William G.’s will is unusual in two respects. First, it included among legatees kin other than nuclear family members, namely the grandchild. He may have been included because his parent, an additional child of William G., was deceased. “Social death”, due to disgrace, might also have removed a child from the inheriting circle, with a favored grandchild assuming that position. Secondly, it includes consideration of an unrelated person, the widow Mary M.; usually, inheritances to non-kin, or friends, figure only in wills of unmarried persons.

Two other wills provide further evidence of inequalities experienced by inheriting children. Germain M. [Will #3, 1854]\* had children by two different wives, and his will differentiated the lands which children from the two *lits* were to inherit. And, Elizabeth S. [#16, 1848] stipulated that her two daughters, Mary and Matilda, were to inherit all her estate, for her other children had been earlier provided for in her husband’s will. The latter case represented an instance in which the patriarch’s unequal treatment of his children was later rectified by his surviving widow.

The status of principal inheriting son was also a source of unequal treatment.<sup>10</sup> These sons received a disproportionately large share of the patrimony, yet they

Q, pp. 102-104; #30, Vol. R, pp. 517-519; #40, Vol. V, pp. 426-427; #43, Vol. V, pp. 581-583; #53, Vol. Y, pp. 496-500. The date in the text indicates when each will was written.

\*A copy of this will and of four other wills identified in the text with an asterisk is presented in the documentary selection below.

10 The custom of gravelkind was apparently observed in Kent County early in the period under examination: “The eldest son has two shares of the property, and all the rest of the children have one; and if a widow be left, her right of dower takes precedence of these”: James S. Buckingham, *Canada, Nova Scotia, New Brunswick and the Other British Provinces in North America with a Plan of National Colonization* (London, 1843), p. 427. As family records, especially in the earlier period, are incomplete, it is usually not possible to identify eldest sons and instances of gravelkind.

too received burdensome obligations. James B. [#19, 1860]\* instructed his inheriting son, William, to care for his mother, to provide a home for a granddaughter, and to make cash payments to two daughters and the granddaughter on the death of the mother. Robert, the primary heir of John B. [#24, 1864]\*, was instructed to make token payments to siblings and to build “a comfortable dwelling house” for his mother’s use, and to provide her with “maintenance, fuel, etc” out of the estate. Andrew M. [#43, 1866] stipulated that two sons were to inherit and share the land in common, but on the condition that they “stay with their mother and assist to work the farm in a fair and proper manner”. In most wills, the principal inheriting son received long-term responsibility for the care of dependent kin or was instructed to make sometimes considerable cash payments to kin as their portion of the patrimony.<sup>11</sup>

The father’s hand, awarding inheritance and obligation, was also felt by the females in the family. Daughters usually inherited less than their brothers and, thereby, had a more limited economic base on which they might shape their lives. And, although wives received the right to use some portion of their husbands’ property, they were given little, if any, cash or property which they might dispose of as they saw fit. The will of David M. [#53, 1879] is unusual in stipulating that his wife was to have for her use a lot of land, house, household furnishings, \$800 and \$375 annually to be paid by one of the inheriting sons. Having access to cash undoubtedly allowed this wife to exercise greater control of her life than most widows of her time.

Also unusual and indeed probably illegal, is the will of Joseph W. [#7, 1855] who apparently attempted to give all of his property to his father, mother, and sister, save one lot of land for his wife and daughter which was to be “in lieu of any dower or gift of dower”. James W. indicated even more clearly in a codicil to the will where his affections lay; he states: “if the aforesaid Will should prove invalid or illegal I give and bequeath the whole of my Estate, real and personal, so willed or intended to be willed to Mary A. . . , my sister who is hereby bound to and wished to take every reasonable and comfortable care of my father and mother while either of them live”.

In addition to these extremes — of James W., who wished to restrict severely his wife’s access to his property in favour of his parents and sister, and David M., who provided his wife with some independence through the cash made available to her — were those wills in which the wife’s death and remarriage were

11 Similar financial obligations associated with inheritance in Peel County, Ontario, at about the same time, drove some sons to mortgage land heavily or even to sell it. See David Gagan, “The Indivisibility of Land: A Microanalysis of the System of Inheritance in Nineteenth-Century Ontario”, *Journal of Economic History*, XXXVI (1976), pp. 126-41. Obligations established in wills, or recognized in the absence of wills, may have differed according to the ethnic origin of Richibucto people and may have figured in emigration and the resultant shift in the area’s ethnic group composition. Future analysis of land transfer records may help clarify the relation between ethnic origin and the distribution and sale of patrimony.

equated. John M. [#40, 1856]\*, for example, stipulated that, if his wife died or remarried, the property she had been given the right to use was to be sold and divided equally between the children. In short, the wife was permitted the use of property only as long as she remained his wife, or, to be more precise, his widow.

In these wills, then, we find sons being saddled with years of potential hardship as they attempted to merit the privilege of inheritance; we discover daughters usually inheriting unequally with sons; and we find wives limited in their use and their control of property.

The consequences of such practices in peoples' lives are difficult to see fully, though glimpses can be caught. From analysis of census and church records, it appears that widows were less likely to remarry than were widowers. This may be partially due to the kinds of constraints on property use-rights imposed in the wills — many widows may have simply viewed remarriage as an unacceptable material risk. Other women who did inherit property free and clear may have preferred to remain unmarried, independent, and in control of their property. For example, the two daughters of Elizabeth S., Matilda and Mary, remained unmarried well into their sixties.

Often wills stipulated that property was to remain intact until the wife had also died, at which time the estate would be divided among children. Consequently, adult children may have been forced either to leave home empty-handed prior to receipt of their share, or to remain at home, essentially awaiting the mother's death and the division of the property. The latter may have often been the preferred choice, as reflected in the census enumeration of the many households composed of mature unmarried siblings and their elderly mother. Similar inheritance practices and household arrangements in Ireland have been associated with family tension and conflict.<sup>12</sup>

Although men undoubtedly had various intentions in their writing of wills, an underlying purpose was to ensure that family life without them would continue largely as it had with them; rights, duties, and obligations, as well as basic relations of inequality, would be maintained. It would be unreasonable for us, as it would have been for those 19th century patriarchs, not to recognize that their attempts to perpetuate family bonds may have also maintained and even created family division and hardship.

NANCIELLEN DAVIS

*Note: In the following examples of Richibucto wills, only minor editing has been done. Portions enclosed in parentheses are “best guesses” in transcribing the original or indicate that short phrases have been omitted to improve readability of the original. Wills have also been broken into paragraphs to improve their readability. The surnames of individuals have been omitted to protect the pri-*

12 John C. Messenger, *Inis Beag, Isle of Ireland* (New York, 1969).

*vacy of families still living in Richibucto. The closing paragraph of each will is nearly identical with that found in Will No. 3 and hence has been omitted in all but that will. Witnesses always comprised two or three men, usually of different surnames than the Testator. It may have been common to select as witnesses individuals who were not of the Testator's immediate family and who had little, if any, vested interest in the content of the will. Will No. 3 is that of an Acadian and Roman Catholic; Will No. 40 is that of a Methodist of British origin; the remaining wills are those of Scotch Presbyterians.*

### **Will No. 3**

In the name of God, Amen. I, Germain M., of Richibucto, County of Kent and Province of New Brunswick, being sick in health, but of sound mind, memory and understanding, praised to God for it, and considering the certainty of death and the uncertainty of the time thereof, and to the end I may be better prepared to leave the world whensoever it shall please God to call me hence and be no more, I do therefore make and declare this my last Will and Testament.

(. . .) first and principally, I commend myself to almighty God, my Creator, hoping for the pardon and remission of all my sins and to enjoy everlasting happiness in his heavenly Kingdom, through Jesus Christ my Saviour. My body I commit to the earth at the discretion of my executors, having hereinafter named, and to the soul's worldly estate herewith it has pleased God to entrust me, I dispose of the same in the manner as follows, that after my death and the death of my beloved wife, Mary, of my real estate, that of upland and three half lots of marsh land that I have had by my first wife, I give to my son Melem, except a small piece of upland lying in the centre of the lot of land belonging to John M., situated in the Lower Village, containing about two acres more or less; and, of my upland and marsh which my father, Celestin, has given to me, I give the same to my children of my last wife, Mary, and to be equally divided among them.

As for my personal estate I leave that in the hands of my beloved wife, Mary, and to do as she may think proper but no division to take place till after my death and the death of my beloved wife, Mary, and that she shall not be disturbed nor molested by no one whosoever it may be and I do hereby appoint my beloved wife and Fabien R., executors of this my Last Will and Testament.

In testimony of which I have hereunto set my hand and seal this Nineteenth day of June in the year of Our Lord One Thousand Eight Hundred and Fifty-Four.

Germain M.

In presence of: Fabien R., Simon W., John D.

### **Will No. 19**

This is the Last Will and Testament of me, James B. of Richibucto, in the County of Kent and Province of New Brunswick, farmer.

First, I desire that my just debts, funeral and testamentary expenses be first paid out of my personal estate by my executor hereinafter mentioned. Secondly, I give, devise and bequeath to my daughters, Ann and Janet, and to my granddaughter, Elizabeth, a piece of my land to commence from the Chapel erected on the same and to run along the road lying towards the Creek and to extend back a sufficient distance towards my dwelling house, to include an acre, to be of such shape as my beloved wife may desire, the same to be divided into three equal (parts). The first part next to the Chapel to be the property of my daughter Janet, the (centre) part to be the property of my daughter Ann, and the part next to the Creek to be the property of my granddaughter Elizabeth, to have and to hold the said three equal parts by my said daughters and granddaughter and the heirs of their bodies to be (lawfully) begotten forever.

Thirdly, I give, devise and bequeath to my beloved wife, Elizabeth, all the residue of my real estate wheresoever situated and all my personal property, to have and to hold the same unto my said wife for and during (her) natural life.

Fourthly, I give, devise and bequeath to my beloved son, William, after the death of my wife, all the real estate which she held under this my Will, together with all the personal property devised to her by me, provided he continue to remain with his mother and cultivate the land, as he has been doing for some years past, to have and to hold the said land and personal property unto my son, William, for his natural life and to the heirs of his body lawfully begotten forever and, in case he should die without issue, then to my daughters and granddaughter or their legal representatives as tenants in common forever.

Fifthly, I give and bequeath to my daughter, Ann, the sum of One Hundred and Fifty Pounds currency, to be paid by my son, William, or his issue as aforesaid, in fifteen equal annual payments of ten pounds each year, the first payment to commence on the first day of January after the death of my wife, and I hereby charge the said lands with the payment of the said legacy.

Sixthly, I give and bequeath to my granddaughter, Elizabeth, the sum of One Hundred Pounds currency to be paid by my son, William, or his issue as aforesaid, in ten equal (payments) of ten pounds each to commence the first Day of January after the death of my wife and after she shall attain the age of twenty-one years, or sooner if she should marry, and I also charge my son, William, with the burden of affording her a comfortable home and to provide for her suitably until she marries, after the death of my wife, and to give her a suitable education, and I do charge the said land with the payment of the said legacy and the other obligations hereby represented (. . .).

I give and bequeath to my daughter, Janet, the sum of Eighty Pounds currency to be paid by my son William after the death of my wife, in equal payments, the first payment to be made on the first day of January after the death of my wife, such payment to be made either in money or in produce as my son shall determine (. . .).

I do fervently desire that my beloved wife and children will continue to dwell

together as they now are in peace, harmony and love and will assist each other by every means in their power to promote each others' temporal and spiritual welfare, and will always consider that the disposition I have made of the property which it has pleased God to give me is solely with the view of dealing as fairly with them as in my poor judgment and best affection for them I was called to do. To this, I would add my humble prayer that in their hands it may prosper and prove a blessing to them all. And I do hereby nominate, constitute and appoint my beloved wife, Elizabeth, sole executrix of this my Last Will and Testament, hereby revoking and annulling all former Wills by me at any time heretofore made and declaring this and this only to be my Last Will and Testament.

**Will No. 24**

This is the Last Will and Testament of me, John B., of Richibuctou, in the County of Kent and Province of New Brunswick, yeoman.

First, I desire all my funeral, testamentary and all other expenses together with all my just debts to be first paid. As regards to property wherewith it has pleased God to bless me, I dispose of what I may have at the time of my death as follows: Unto my son, Thomas, the sum of Five Shillings currency. And unto my daughters Effie, wife of Jonathan C., and Janet, wife of John A., also the sum of Five Shillings currency each, to be paid within one year after my decease.

All the rest and residue of my estate, real and personal, consisting of the homestead and farm with the barns and buildings thereon, and all the stock and farm utensils and effects, I give and bequeath unto my son, Robert, and to his heirs forever, subject nevertheless to the beforementioned legacies and payments and unto the following reservations; viz., unto my wife, Janet, I give my household furniture, to her and her heirs forever. Also, I reserve to her use during her natural life, one cow and the fodder there for. Also, ground for a house on which my said son, Robert, shall within one year from my decease, erect her, my said wife, a comfortable dwelling house and I also will and bequeath unto my said wife, Janet, her maintenance, fuel, etc. out of my said estate to be supplied to her by my said son, Robert, as long as she lives. And at her death the dwelling house and ground to revert to my said son, Robert and his heirs.

I do make and constitute and appoint my son, Robert, the sole executor and trustee, of this, my Last Will and Testament, hereby revoking other and former wills, testaments and bequests by me at any time, heretofore made and constituting this, and this only, my Last Will and Testament.

**Will No. 30**

The Last Will and Testament of William G. of Richibucto, in the County of Kent and Province of New Brunswick, farmer.

I, William G., considering the uncertainty of this life and being now of sound mind and body, and disposing memory, do make, declare and publish this, my

Last will and Testament in the manner following, that is to say:

It is my will that all my just debts and charges of my funeral be paid and discharged by my executors hereafter named and appointed, and (of) my estate I give unto my son, Robert, the sum of Five Shillings (. . .).

I give, devise and bequeath unto my son, William, that portion of my farm on which the homestead is situated, being in Galloway, in the parish of Richibucto and County aforesaid, to extend the whole width of the grant of said lot or farm of land such distance towards the rear as shall contain one hundred and four acres, together with the buildings and improvements thereon, and of the mare called Jess and the young horse called Fly. I further give unto my said son, William, all the other stock except two horses which I give unto my son, John, as hereinafter mentioned, and the rest and residue of my personal estate of every kind and nature so ever, except what may be required to pay the legacies hereinafter mentioned, I give unto my said son, William, and it is my will that my beloved wife, Isabella, be maintained in comfort by my said son, William, during the term of her natural life and that he also maintain Mary M., widow of the late Robert M., now residing with me, during her lifetime.

I give, devise and bequeath unto my son, John, eighty-four acres of land, adjoining the portion bequeathed as foresaid unto my son, William, and being to the rear of the same and extending the width of the lot. I further give to my said son, John, two of my horses, viz., the horse called Farmer and the other young horse.

I give unto my grandson, John, a piece of land adjoining the portion given unto my son, John, as aforesaid, and lying to the rear of the same to be four chains in width and to extend the whole breath of said lot about twenty chains.

I give, devise and bequeath unto my daughter, Janet, the sum of Fifteen Pounds to be paid her either in provisions or stock within three years from the time of my decease, by my son, William, and of the same given to him. I give, devise and bequeath unto my daughter, Catherine, wife of John M., the sum of Twenty Pounds to be paid her either in provisions or stock as may be agreed within three years after my decease by my son, William, and of the property given him by this Will. I give, devise and bequeath unto my daughter, Mary, the sum of Twenty Pounds to be paid her within three years after my decease in provisions or stock as may be agreed upon, by my son, William, and I hereby constitute and appoint my said sons, William and John, executors of this, my Last Will and Testament, hereby revoking all former Wills by me made at any time heretofore.

#### **Will No. 40**

In the name of God, Amen. I, John M. of Richibucto in the County of Kent and Province of New Brunswick, tailor, being sick and weak in body, but of sound mind, and understanding, and considering the certainty of death, and the uncertainty of the time thereof, and to the end I may be the better prepared to

leave the world whenever it shall please God to call me hence do therefore make and declare this my Last Will and Testament, hereby revoking and making void all former Wills by me at any time heretofore.

( . . . ) first and principally, I commit my soul unto the hands of my Creator, who gaveth, and my body to the earth to be buried with decent Christian burial at the direction of my executor, hereinafter named. And it is my will that all my just debts and the charges of my funeral expenses be paid and discharged by my executor, out of my estate, as soon as conveniently may be after my decease.

Then, I give and devise and bequeath all that certain piece or parcel of land with the house and buildings thereon, in which I now reside, situated in the town of Richibuctou, in the parish and county aforesaid, together with all my personal property of any nature or kind, by occupation to my beloved wife, Jane, for and during her life or as long as she shall remain my widow, and soon and immediately after death or after she shall again marry, then to my two sons, John and William, and my daughters, (Minerva) and Sarah Jane, share and share alike with this understanding that after (the) death of my said wife or her marriage, as aforesaid, my youngest child then of the full age of twenty-one years ( . . . ), all my said property, both real and personal, shall be sold by my said executor and the money ( . . . ) thereof to be divided in equal share and proportions between such of my children as shall there be alive, and I hereby nominate and appoint my beloved friend, Samuel H. of Richibucto, aforesaid to be the sole executor of this, my Last Will and Testament.