Social Attitudes to the Problem of Illegitimacy

I. PINCHBECK

ILLEGITIMACY in some form is a universal phenomenon. Since all known societies regulate marriage and the family, it follows that law and custom in all societies must take account of those whose birth is not in accordance with the law. Moreover, since sex mores and family structure vary so greatly from one society to another it is to be expected that social attitudes to illegitimacy will reflect this diversity. As F. W. Hankin wrote, "Marital institutions and sex mores, however, differ so widely and are so differently integrated with economic, moral and religious practices as to give it a bewildering sociological variety." [1] In Europe, this diversity is illustrated by the relative acceptance of certain forms of illegitimacy, while others suffer social stigma. In Austria, for example, a relatively high rate of illegitimacy is associated with recognized conventions, the absence of stigma, and legitimation by late, subsequent marriage. In various European communities there still persists a convention that a girl should demonstrate her fertility before marriage—a custom that was widespread in pre-industrial England and Scotland. Again, the offspring of stable, marriage-like relations of couples who have omitted the marriage ceremony usually suffer no stigma, though legally they are illegitimate. On the other hand, in some sections of Western society, the stigma attached to illegitimacy is so strong that mother and child are both socially unacceptable. Similar variations of attitude are found among primitive peoples. According to the traditions of her tribe, an unmarried mother may find her chances of marriage enhanced, or unaffected, or seriously blighted. In some communities social censure demands the death or severe punishment of the mother, while the child is almost certain to be destroyed at birth. Where sex freedom is allowed to wives, and where the custom of wife-lending prevails, all the offspring are welcomed as members of the family irrespective of their paternity, while in other societies, a wife may be summarily executed for adulterine bastardy. Illegitimacy can only be understood, therefore, in the light of its entire sociological setting, and it cannot, of course, be viewed as an index of sexual morality.

In Western communities until recently lack of a sociological approach

has resulted in illegitimacy being regarded almost entirely as a personal problem, and attention has been concentrated on its moral aspects and on the financial burden borne by the community in the maintenance of illegitimate children. It is only during the present century that it has come increasingly to be recognized as a definite social problem, and begun to attract the attention of many who are engaged in constructive social effort. Although its causes may be considered as both personal and social, the former result largely from the latter, and both are subject to modification by social action.

The problem of illegitimacy may be considered from two aspects; first as an investigation into the causative factors centring on the parents of the illegitimate child, and secondly as a study of the social and legal status of the child—the disabilities and handicaps under which he labours. These two lines of investigation necessarily converge at many points. To a considerable extent the causative factors have an essential bearing upon the child's history, his natural endowment and his chances in life compared with those of a child born in wedlock; but in this paper it is with the second of these aspects that I wish to deal, i.e. the status of the child born out of wedlock and the historical development of the social attitudes which have led to his present position. First, however, it would be well to consider very briefly the significance of this problem to the community.

Although in the last few decades, social agencies have become more and more conscious of the large proportion of their work that may be attributed to illegitimacy, its heavy social costs are still imperfectly realized and must continue to be so until more scientific investigations into the ramifications of the problem have been made. "Hitherto most nations have preferred to forget the existence of illegitimate children," wrote Dr. Bowlby recently,[2] and although accounts of the hazardous and ever-changing lives of many illegitimates are disturbing, the lack of authoritative studies of what in fact happens to illegitimate children who are not adopted, is symptomatic of the absence both of public concern and of a scientific approach to the problem. Yet for long it has been known that illegitimacy is an important cause of infanticide and abortion, and that premature and still births are considerably greater for illegitimate than for legitimate births. The higher infant mortality and neonatal rates which are found in all communities result in a great wastage of child life and loss of potential citizens. The causes of this higher mortality may be in part the immature age of some of the mothers but are mainly due to the generally adverse economic and social conditions surrounding both mother and child, together with ignorance, secretiveness and sometimes malicious maltreatment. In general the illegitimate has a less favourable start in life than the child born into a normal home, and is more frequently exposed to influences which may inflict psychological damage. The psychological effects of illegitimacy have not yet been thoroughly investigated and we know little about its effects upon the child. A number of recent studies on delinquency in various countries have considered the connection between illegitimacy and delinquency,[3] and their findings suggest that there are greater

risks of delinquency among illegitimates than among others, while Dr. Bowlby's recent report on *Maternal Care and Mental Health* has drawn attention to the dangers of maladjustment and abnormal character development among illegitimates who are deprived of normal family life.[4] Again, it is well known that many illegitimate children are abandoned by their mothers, either voluntarily or in response to social and economic pressures, so that apart from those given in adoption, a relatively high proportion become deprived and have to be provided for by the community either in foster homes or institutions. Reliable statistics here are hard to come by, but such information as is available suggests that, in some countries, nearly half the children in care are illegitimate; e.g. in Finland, of the children taken into care in 1946, either as delinquent or deprived children, 46·9 per cent were illegitimate; in Sweden a quarter of all children taken into care in 1950 were illegitimate, and an investigation made the same year showed that 54 per cent of the total number of foster children were such. In this country no satisfactory figures are available. It is, however, the opinion of many experienced social workers that the majority of foster children are illegitimate, while in 1950 out of 711 children admitted to the National Children's Homes, 230 were of illegitimate birth. If we add to all these considerations of social cost, the fact that many illegitimates grow up to produce another generation of their kind, we see that in all illegitimacy creates a very great social burden, which makes all the more remarkable society's neglect of this problem.

Further evidence of this social lag in relation to illegitimacy is seen in the fact that hitherto, the care of illegitimate children has been undertaken merely as part of the general social provision for children who might need community care, without any recognition of the special needs of those who are handicapped from birth by peculiar disabilities. Only recently has it begun to be questioned whether society has not a special responsibility to safeguard the interests of these children who may be exposed to adverse influences and whose chances of normal development are often far from good. Again, it is significant that while immense changes have taken place in the last fifty years in establishing and protecting the rights of children by law—changes so great that this is sometimes described as the "children's century"—it is significant that English law relating to illegitimacy has remained unaltered in fundamentals for some eighty years. It is true that illegitimate children have shared in the benefits of social legislation during these years, but the fact remains that the "Principal Act" governing the custody and maintenance of illegitimate children is still (with various amendments) the Bastardy Laws Amendment Act of 1872, drawn up in an entirely different mental climate from our own. Of this law, Lieck, the editor of the sixth edition of Lushington's *Law of Affiliation and Bastardy*, wrote: "A new and comprehensive Bastardy Act is still to be desired. One was promised before the fifth edition of this work appeared. It will probably be still wanting when the seventh is prepared. The bastardy law is a disgusting patchwork as it stands." [5] His prophecy was more than justified. The seventh edition

has since appeared, drawing attention to the fact that four of the patches have been removed only to be replaced by a further thirteen. Yet a study of the present legislation can leave no doubt that revision is long over-due to bring the law into line with current social thought and practice. The urgency of this was emphasized in a brief report, *The Law in Relation to the Illegitimate Child*, produced in 1952 by a joint committee of the British Medical Association, and the Magistrates' Association, which made numerous recommendations, including one that " a committee of inquiry should be set up by the Government to investigate the present law relating to the maintenance, custody and welfare of illegitimate children with a view to recommending amendments to the law." [6]

The background of the present law, and the " old Acts which reek of prejudice and discrimination ", can only be understood in the light of earlier social attitudes. Throughout history, the law dealing with children born out of wedlock has reflected to a considerable degree the changing mores concerning illegitimacy, and in early times the position of illegitimate children was more favourable than later, since among most European nations they appear to have been acknowledged as part of the family with some right to share in the heritable property. But as monogamy won favour owing to the desire to hand on property to the heirs of the blood, the bastard's position in the family deteriorated and changed rapidly for the worse under the influence of the Church, which gave exclusive sanction to that form of marriage, with the consequence that all progeny not so begotten were deemed unlawful.[7] Yet so tenacious was earlier custom that many centuries elapsed before this teaching was generally accepted. Just as the African native who accepts Christianity to-day frequently finds himself at variance with Christian views on marriage and retains his several wives, so in Europe, extra-marital relations everywhere persisted, while the nations outside the main stream of Western civilization continued for centuries to treat illegitimate children as members of the family. Maine, in his *Early History of Institutions*, expresses the view that " the extremely ascetic form under which Christianity was introduced into Ireland was unfavourable to its obtaining a hold on popular morality ", and states that there is little evidence that it had deeply influenced the law of marriage and legitimacy,[8] and it was not until the early seventeenth century that the Irish custom of gavelkind, under which estates were partible among bastards as well as lawful kin, was abolished by judicial decision.[9] In Wales illegitimate sons continued to inherit until the Statute of Wales in 1284 restricted the heirship to legitimate sons alone. In Scotland ecclesiastical notions of marriage and legitimacy were as slow to permeate as in Ireland. Burton, in his *History of Scotland*, speaking of the number of illegitimate claimants to the Scottish Crown, who brought their claims before Edward I, observes, " That they should have pushed their claims only shows that the Church had not yet absolutely established the rule that from her and her ceremony and sacrament could alone come the union capable of transmitting a right of succession to offspring." [10] In the Highlands, even

as late as the seventeenth century the clergy had still failed to enforce the distinction between marriage and concubinage and consequently illegitimate offspring often took the succession among the Highland clans.[11] In England, while the illegitimate child was from Anglo-Saxon days excluded from inheritance, there is ample historical evidence to show that throughout the mediæval period it was customary in many sections of society to treat him in all other respects as a member of his father's family. In spite of ecclesiastical condemnation of unlawful conception there is little evidence of social stigma associated with illegitimacy in England before the sixteenth century, and then, only when it was associated with dependency. Speaking of early English law, Maitland says truly that " bastardy cannot be called a status or condition. The bastard cannot inherit from his parents or from anyone else, but this seems to be the only temporal consequence of his illegitimate birth. . . . In all other respects he is the equal of any other free and lawful man." [12] It was only later as substantive law increased in volume that he became distinguished at other points besides inheritance from the person lawfully born, and so gained a legal personality sufficiently varied to merit the description of status. Throughout the earlier centuries of our history and indeed right into the eighteenth century, many fathers appear to have been willing to acknowledge their natural children and to rear and educate them with their lawful offspring. The ease with which the bastard of gentle birth could intermarry with the highest families in the land is further evidence that inferiority of legal status was not accompanied by loss of social caste. Moreover, in English mediæval law, the bastard suffered under none of the harsh disabilities which degraded him in continental lands, such as loss of freedom or of personal rights. Maitland surmises that this divergence of English from continental law may well be " due to no deeper cause than the subjection of England to kings who proudly traced their descent from a mighty bastard ".[13] This may be so, for certainly William the Conqueror made no disguise of his illegitimate origin, and frequently styled himself William the Bastard.

There were, however, various other factors which operated to give the bastard a more favourable position in earlier times. In the middle ages, bastardy was a far more frequent phenomenon than later. Before the Reformation the Church had not complete control of marriage ; clandestine marriages were frequent, and many individuals were subsequently bastardized by the purely technical requirements of marriage laws, degrees of prohibited consanguinity or affinity, nonage, bigamy, etc. Again, English law in Bracton's day permitted a form of quasi-adoption, a form of legitimation which allowed a father to recognize a natural son as his heir during his lifetime, and so to secure to him the succession of his estates.[14] The " betrothal " child was also sometimes allowed to inherit. Miss Bateson quotes a case from the Court Rolls of Wakefield in the thirteenth century, in which the jury found the custom of that district to be that the elder son born after betrothal but before marriage should succeed as his father's heir,[15] and

this may well have been a more general custom. The development of primogeniture also alleviated the position of the bastard. It placed him on a level with the younger legitimate sons, while the power to alien gave the father the chance to make amends for defective birth. And lastly, and despite fierce ecclesiastical condemnation of illegitimacy, social attitudes towards the unlawfully born must have been influenced by the fact that up to the Reformation, many of the clergy were themselves illegitimate. Prior to the Conquest, marriage was wellnigh universal among the secular priesthood, and traditionally children of priests inherited their fathers' churches. When after the Conquest, Norman reformers demanded the chastity of the clergy and endeavoured to put down marriage and the hereditary descent of churches, they failed completely in their object. After a struggle of some three centuries and repeated episcopal fulminations levelled at the incontinence of the clergy, marriage was suppressed, only to be replaced by the new and greater scandal of concubinage which took its place, and by the spectacle of sons of these irregular alliances succeeding to their fathers' benefices. Some priests to salve their consciences went through a form of secret marriage but even so their children were illegitimate by canon law. To check the scandal, illegitimacy of any kind was established as a canonical impediment to the holding of orders or preferment and so it remains in the Catholic Church to this day. This impediment was, however, easily overcome by dispensation and, from the twelfth century onwards, grants were made almost as a matter of course to all who were able to pay the stipulated fees for the privilege.[16] A document in the Record Office dated 1536, quoting fees for various kinds of dispensations, faculties and licences, shows a dispensation for bastardy to be the cheapest of all, a modest sum of 7*s*. 6*d*. It is of interest to note that Cardinal Wolsey obtained dispensations to secure numerous preferments in the Church for his own son, and at the time of his fall, was endeavouring to secure for him the bishopric of Durham.

Throughout the mediæval period the bastard was not seriously penalized apart from his inability to inherit, although it must be recognized that the scope of inheritance was somewhat wider then than now. Admission to the Trade Gild or Livery Company, for example, was primarily by inheritance, hence the illegitimate was ineligible for admission to these fraternities, or to the corporation. But it is important to note that the description *filius nullius*, the phrase most frequently used by lawyers to denote the leading trait in a bastard's status and from which later stemmed most of his disabilities, meant originally that he was " the heir of no-one, a stranger in blood, in the sense that no inheritable blood either of father or mother flows in his veins . . . that and no more is the meaning of the phrase when it first appears. . . . Thus the phrase *filius nullius* is not used [as later it came to be used] with the purpose of ignoring the fact of blood relationship between a bastard and his natural relatives, still less to deny that his mother or even his father can be known." At this stage, *filius nullius* expressed no technical uncertainty as to the fatherhood of the bastard, but rather " the moral antipathy, incul-

cated by the Church, to the irregular intercourse of which he was the fruit ".[17] Later, however, as the Church increasingly gained control of marriage and meted out severer punishment for sexual laxity, the maxim gained a misleading generality, so that the bastard became indeed the son of no one, isolated in law from all his natural relatives. The importance of this mediæval maxim, *filius nullius*, developed by moral antipathy into a sort of technical fiction, can hardly be overestimated, for from its application have come most of the discriminating disabilities from which the illegitimate child suffers to-day. As later statute law and equity developed with regard to the relation of parent and legitimate child, the judges applied the maxim with remarkable consistency to exclude the illegitimate child from most of their benefits. By carrying this doctrine to its logical conclusion, the illegitimate became a stranger in law to father, mother and all other natural relatives, and at common law had no right to look to them for custody, maintenance or education. The canon law, on the contrary, while regarding the illegitimate child as unlawful, nevertheless maintained that he had the right to support and approved the doctrine of legitimation by subsequent marriage.

It was not until the sixteenth century that social stigma attached to illegitimacy in any marked degree, and even then only upon a class basis. The cause of this change would appear to be twofold: first, dependency caused by providing for illegitimate children through the Poor Law, and secondly, the rise of Puritanism, which was largely responsible for the obsession with moral guilt which characterized the early bastardy law.

The great increase in poverty in the sixteenth century, which compelled the development of the Poor Law, led to the widespread abandonment of illegitimate children of the poorer classes, with the result that Parliament was compelled to legislate for them in a Poor Law Act of 1576. *Filius nullius*, the child of nobody, now became *filius populi*, the child of the community, and upon the parish accordingly devolved the duties of guardianship and maintenance. The preamble of the Act indicates the spirit in which these duties were undertaken: "Concerning bastards begotten and born out of lawful matrimony (an offence against God's and Man's laws) the said bastards being now left to be kept at the charge of the Parish where they be born, to the great burden of the same Parish and in defrauding of the relief of the impotent and aged true poor of the same Parish, and to the evil example and the encouragement of lewd life, it is ordered and enacted . . ." etc. The justices were empowered to order payments by the parents towards the parish costs for maintenance, but these payments were to be made "for the punishment of the mother and the reputed father" of the child. It is significant that no mention is made of the welfare of the child, and it is clear that the main concern of Parliament was not any enlightened social purpose of enabling the child to be reared in the best possible manner, but the relief of public expenditure and the exposure and punishment of those responsible for bringing these children into the world. With the idea of discouraging vice and indemnifying the parish against the costs of maintenance, the parents were

treated as criminals and incurred punishments of whipping and imprisonment. Successive statutes inflicted harsh punishments, especially upon the mother, of any illegitimate child that became chargeable.[18] Such punishments included imprisonment in the House of Correction for a year, the wearing of a special badge, and public whipping through the streets at the cart tail. The rise of Puritanism which coincided with this early legislation was undoubtedly responsible for much of the new censoriousness that appeared at this time, for the Puritans hyphenated sex with sin. Their horror of extra-marital relationships is shown by the Presbyterian practice of compelling offenders to confess their fault at Divine Service, dressed in a white sheet, and during the Commonwealth adultery was made a capital offence.

The combined result of early bastardy legislation and its obsession with guilt was to stigmatize and ostracize both mother and child and inflict an often unbearable cruelty which compelled concealment, abortion, desertion, and infanticide and the later horrors of baby-farming. It is significant that the preamble of an Act of 1623—an Act to Prevent the Destroying and Murdering of Bastard Children [19]—refers to the great increase in infanticide which had followed on this brutal legislation, but in spite of numerous executions of unmarried mothers in succeeding centuries, the evil results continued. When illegitimacy went out of fashion in the upper and middle classes in the early nineteenth century, it served only to increase prejudice and re-enforce it by class attitudes. The conventional moral is clearly reflected in the work of the Victorian novelists, most of whom found no solution to the problem of the unmarried mother and her child but obscurity, emigration, or death. A notable exception is Mrs. Gaskell's *Ruth*, in which society was shown to be the chief offender, and this undoubtedly did something to prick the social conscience and advance a more intelligent and humane approach. But the book produced a storm of excitement and censure (as well as some appreciation of the author's purpose) and became a forbidden book in many Victorian households—even in Mrs. Gaskell's own, she admitted, so far as her grown-up daughters were concerned.

To sum up this brief historical survey, it will be seen that two separate trends have, in the main, been responsible for the legal and social status of the illegitimate child. First, the mediæval maxim *filius nullius*, which pushed to its logical conclusion in the courts has discriminated against him in many of the statutory developments affecting the relations of parent and legitimate child, and secondly, the social discrimination which has resulted from dependence, and from transferring to him in full the moral guilt of his parents. To do otherwise, it was believed, would only increase the numbers of illegitimate children.

Only in the twentieth century has the question begun to be looked at from a different angle. Such scientific studies as have been made in Canada and the U.S.A. in recent years into the causes of extra-marital relationships, and into the environmental and personality factors involved,[20] have shown how utterly futile and irrational punishment is, as a remedy for the chain

of causes that have led to this deviation from the social standard. Moreover, to-day the position is looked at increasingly from the angle of the child, and it is now appreciated, though still not universally, that there is no justification whatsoever in laws and social attitudes that penalize children who can in no way be held responsible for their illegitimacy. More liberal attitudes have resulted in enlarging somewhat the rights of illegitimate children in recent years, but the position remains profoundly unjust. English law is still based on what has been described as the "outrageous and unnatural fiction that the illegitimate child has only a mother"; legally he has no kinship with his father (except for a few specified purposes) or with any other child of his mother, or with relatives of either parent, and has no right of succession to, or claim against their estates. He is unable to inherit titles or certain estates which attach to titles, nor can he inherit from intestacy at all, except from his mother and then only if she leaves no legitimate descendants. The latter disability, but not the former, is removed by legitimation through the subsequent marriage of his parents under the Legitimacy Act of 1926. An illegitimate child cannot inherit British nationality if born without the dominions of the Crown, since he has no father, and consequently in such circumstances, he is an alien. He is entitled to no name at birth, though he usually acquires his mother's name by reputation. The law does, however, recognize a relationship between a father and his illegitimate child for the purpose of the prohibited degrees of marriage, and under the 1950 Adoption Act for the purpose of adoption proceedings. Again, while no obligation is laid on the father to support an illegitimate child, unless an Affiliation Order is in force, recent law has aimed at improving his lot by recognizing a parental relationship under the later Workmen's Compensation Acts and allows him, in certain circumstances, to receive "dependents' benefits" in connection with military service allowances and pensions, and other social service benefits. A relatively small proportion of illegitimate children are, however, benefited by these concessions, and for the great majority the social and economic effects of defective birth are still disastrous.

Many people are now agreed that the present discriminations are in principle socially unjust, and that in perpetuating inequalities they are a cause of suffering to many thousands of children. But any discussion as to how best to remedy this injustice immediately reveals wide divergence of opinion and social dilemma. Demands on the grounds of social justice for equality before the law for all children are invariably met with fears for the institution of marriage, an increase in illicit relationships and a rise in the illegitimate birth-rate. It may, therefore, be of value to consider briefly how this dilemma has been met in Scandinavian countries, where the law in regard to illegitimate children is more progressive than elsewhere.

The Norwegian laws concerning illegitimate children (the Castberg laws of 1915) are remarkable for the fact that by them, Norway became the first country in the world to abolish the status of illegitimacy and to adopt the principle of giving the child born of unmarried parents the same legal status

as the child born in wedlock. Denmark, since 1937, has had the same system. Sweden followed Norway's example with a protective law in 1917, removing discrimination and adopting several, but not all, of the same principles—a change which was all the more remarkable in Sweden, where prior to 1917, the illegitimate child was a foundling and had in law neither father nor mother. Finland adopted a similar law in 1922. During the last two years, these countries have been collaborating to produce a uniform system for the whole of Scandinavia. In these laws we see the first complete recognition of the inherent right of the child to maintenance, education and inheritance, irrespective of his parentage, and of the State's responsibility for ascertaining parentage and for holding the parents equally and continuously responsible for the illegitimate child.

The Norwegian laws were radical measures when passed in 1915, but according to Johan Castberg, the Minister of Social Affairs, the principles established by them were in part a return to some of those recognized by the early customary laws of Norway, under which the illegitimate child enjoyed substantially most of the family rights of the legitimate child: which we have seen was also the case in mediæval England. The new measures were only achieved after a long and bitter political struggle of some twenty years, conducted jointly by the Norwegian Women's Movement and organized Labour. In this campaign, emphasis was laid on the high mortality rate of illegitimate children, more than double that of legitimate children, and on the democratic demand for equal chances in life for all children. Illegitimacy was attacked as a demoralizing institution which freed man from his natural responsibilities, and thereby tempted him to recklessness in giving life, instead of regarding it as one of the most serious responsibilities. In the Storting, advocates of the laws denounced the legalized irresponsibility of the father and his legally protected anonymity, which resulted in the child being exposed to economic want and social disgrace, and caused many to fail in the struggle for life.[21]

The most revolutionary changes made in the Norwegian law are: [22]

(1) The child born out of wedlock has the same legal status in relation to the father as to the mother, subject only to two exceptions—the mother's preferential right to the custody of the child, and the legitimate children's allodial right to the family's landed property, corresponding to entailed property in English law.

(2) The State takes over the duty of establishing paternity and fixing maintenance on the grounds that every child must have a legal as well as a biological father, and that society has the right to know the fatherhood as well as the motherhood of every child.

(3) Both the parents are responsible for maintenance, education and upbringing, and the child is to be reared and educated according to the circumstances of whichever parent is in the better financial position. Thus there is no ceiling in maintenance allowances comparable to the English allowance of 30*s*. weekly, irrespective of the financial means of the father.

(4) The child is entitled to his father's name.

(5) Changes in the inheritance laws give the same rights of inheritance in regard to the father and the father's family as the legitimate child. It should be noted that in Scandinavian countries, there is not the same freedom of testation as in this country. In marriage all possessions are jointly owned and only a fraction may be bequeathed away from the family. On the death of one partner, the other retains possession of half of the property and the rest is inherited by the children.

These changes in regard to inheritance caused much heated discussion both in the Storting and the country before they became law. In justification of them, Johan Castberg wrote:

> Both the Ministry's proposal and its advocates in the Storting emphasised the point that the chief end in sight was not simply that the child should obtain the economic advantage which the right of inheritance might sometimes secure for it —in most cases the inheritance would be next to nothing. It was a demand for justice, which they wanted to grant—a demand that the child should have an equal right before the law to its father and its mother.

Opponents argued that the right of inheritance would, in many cases, make it difficult for the father to conceal the existence of the child, and that it might cause scandals and shame to the legitimate family when the child came forward to claim his inheritance. To this, Castberg replied:

> It is right that the father should prepare his family for this eventuality, and that he should not be enabled to conceal the existence of his own child from those nearest to him. . . . But further, if the illegitimate child is legally entitled to know who are its parents, and if society is of opinion that this is a matter of justice to the child, it cannot be deprived of this right for the reason that it brings distress to the father's family. The father cannot for this reason be freed from his responsibility. If a man steals or commits another criminal action, no one demands that he shall be free from punishment or responsibility because it will bring sorrow or disgrace to his family. Still less can this argument be pleaded when it implies an injustice to an innocent child.[23]

Swedish and Finnish laws are based on the same principles, with the exception that the right to name and inheritance from the father is, at present, restricted to children whose parents have been betrothed. Proposals to extend this right to all illegitimate children, as in Norway and Denmark, were strongly endorsed by the Swedish Population Commission, and it is expected that, in the new law now under discussion, this will be done. If so, this will finally extinguish the legal difference between legitimate and illegitimate children in Sweden.

Because it is recognized that a child with only one effective parent may have special needs and be subject to adverse influences, a welfare guardian must be appointed by the child welfare committee for every child born out of wedlock in Sweden, Finland and Denmark (and in Norway where the mother has not the custody of the child). This is also done for the children of widowed and separated mothers, where desired. This system is most

highly developed in Sweden. The guardian is appointed, if possible, prior to the birth of the child and his duties continue until the child reaches the age of eighteen, unless the mother has married the father before that time. In the larger towns, trained social workers are employed, each supervising about 200 children, while in the rural areas, where numbers are less, the work is usually done by voluntary workers. It is the duty of the guardian to assist the mother with advice and information, to take the necessary measures to establish the paternity of the child, and to see that both father and mother fulfil their obligations. After an investigation of means, he draws up the agreement between the parents for the maintenance of the child, and this, when duly witnessed, has the validity of a court decision. In general it is the duty of the guardian to act throughout as a second parent, to secure the welfare of the child, and protect him from possible neglect or exposure to adverse influences.

State responsibility for the determination of paternity (and for the security of maintenance), instead of leaving this to the initiative of the mother, has resulted in a remarkable change in that paternity is now, as a rule, established by acknowledgement and more seldom by court action. A recent investigation in Sweden showed that during the period 1925 to 1942 paternity had been established for almost 91 per cent of all children born out of wedlock. (By contrast, in England, in recent years, Affiliation Orders were granted for only about 10 per cent of the total number of illegitimate births though in addition must be reckoned an unknown number of private agreements.) Of these 91 per cent of established paternities, 85·2 per cent were established by acknowledgement, and only 14·8 per cent by court decisions. At the same time economic conditions have been greatly improved by the regularity of financial support which the State ensures. If the father fails to maintain his contributions, it is the duty of the guardian to secure this from his employer by a deduction of wages. It is, however, recognized that some fathers are unable to maintain payments, either temporarily, or permanently because of other increasing family responsibilities, and on the grounds that it is unjust that children should suffer from irregularity of support when such support has once been promised, the State now advances payments for the support of such children of either unmarried or separated mothers, and takes over the claim against the father. Such sums are usually less than those fixed by the maintenance agreement, to avoid abuse, and are subject to a means test, except in Sweden. Nevertheless, they prevent undesirable resort to the poor law, and ensure that children do not suffer want from the hazards of negligent fathers. In Norway, where family allowances start only with the second child as in England, additional assistance is given by paying an allowance for the *first* child of all single mothers.

Thus it will be seen that the aim of the Scandinavian policy has been to remove as far as possible the special handicaps of illegitimate children and to give them an equal status in law with children born in wedlock. What have been the results of this policy ? Have the fears of opponents and critics—that

marriage would be endangered and illegitimacy increased—have these fears been realized? Officials in Norway and Sweden are emphatic that the answer is "No", that they have experienced no bad results, and it is significant that there is no audible criticism of these laws and the protection given by them to mothers and children in the Scandinavian countries to-day. The expected scandals in connection with inheritance have not materialized. So far as illegitimate rates are concerned, in Norway, the rate has fallen from some 8 per cent in 1915 to 5 per cent to-day; in Sweden from 15 per cent to 9 per cent. This falling rate is common to some other countries, and is undoubtedly due to the spread of knowledge about more effective contraceptive techniques. At the same time, however, it is considered that State action in the determination of paternity, and the enforcement of maintenance by both parents, has acted as a deterrent, and helped to check irresponsibility on the part of both sexes. The position of the unmarried mother, even with the economic assistance provided, is still less favourable than if she were married, or if she had never had a child. The basic philosophy with regard to marriage and family life in the Scandinavian countries, is that illegitimacy is a social evil and ought to be prevented, and a vigorous policy of early sex instruction and education to respect family values is part of the preventive programme; but, so long as illegitimacy occurs, it is held to be the duty of society, not to punish, but to protect. In a recent speech, the Under Secretary of State in the Norwegian Ministry of Social Affairs said with reference to this policy: "Our social awareness tells us that society must, to the greatest extent possible, see to it that all children have as nearly equal chances as possible for development. '*All* children are equally worthy,' are words which ought to stand as a motto over this branch of our social work."

Scandinavian reforms have had an undoubted influence on recent legislation in other parts of the world. The general trend of bastardy legislation in western society is now in the direction of the viewpoint that illegitimacy is a problem of public concern. In some of the provinces of Canada, and some American states, bastardy is no longer a private action left to the initiative of the mother, but the State, as an interested party, follows up the birth of every illegitimate child, and institutes proceedings for the determination of paternity and securing support for the child. Several European countries, and some American states and Canadian provinces, have by statute given the illegitimate child the same rights to his mother as the legitimate child, while a number of countries now provide for the voluntary recognition of the child by the father, either by formal acknowledgement or in other ways, which generally entails some right to inheritance. A few states, e.g. North Dakota and Arizona in the U.S.A., Russia and Israel have followed the Norwegian example and abolished the status of illegitimacy. Thus the general trend of progressive legislation, in line with more humane attitudes, is to give every child an official father, to enlarge inheritance rights, and by the system of guardianship, to secure for him as far as possible an approximation to the care and support and education that he would be entitled to if born in wedlock.

By contrast, England has so far done little in this direction, and English bastardy law, which still retains much of the old " guilt obsession " and stigma of the Poor Law, now lags far behind that of the more progressive countries.

" English law remains cruelly punitive towards a group of children who deserve no punishment—those who are described as illegitimate," stated a leading article in the *Manchester Guardian* in 1952 [24]. There is, however, evidence that conservative attitudes, so largely responsible for perpetuating this law, are breaking down under the impact of changing social values, while among social workers and those concerned in the administration of the law, there is to-day growing concern at the inadequacies of the law and procedure relating to illegitimacy and desire for its revision. The recommendation made by the British Medical and Magistrates' Associations for a governmental committee of enquiry was shortly afterwards strongly supported in a Parliamentary Debate in February, 1952 [25], while in June this year, the Legal Sub-Committee of the National Council for the Unmarried Mother and Her Child produced a further report based on a study of the laws of the British Dominions and foreign countries, and an investigation of the opinions and criticisms of English bastardy law. This report, with suggestions for new legislation, has now been sent to the Home Secretary, again urging the appointment of an Inter-departmental Committee to consider the existing law and its revision. Numerous interested voluntary associations have appended their signatures in support of this request. These various approaches for a comprehensive revision of the law suggest that there is growing support for the view expressed by a Member in the Commons' Debate in 1952, that " it is the clear duty of Parliament to give a lead in this matter and to wipe the slate clean of all the old Acts which reek of prejudice and discrimination ".[26]

NOTES

1. Hankins, *Encyclopaedia of the Social Sciences*, vol. VII, p. 579.
2. Bowlby, *Maternal Care and Mental Health*, 1951, p. 100.
3. Cf. Ahnsjö, *Delinquency in Girls and its Prognosis*, Sweden, 1941 ; Carr-Saunders, Mannheim and Rhodes, *Young Offenders*, 1942 ; Mannheim, *Social Aspects of Crime in England Between the Wars*, 1940 ; Sheldon and Glueck, *Unravelling Juvenile Delinquency*, U.S.A., 1950.
4. Op. cit., chap. 10.
5. Op. cit., p. v.
6. Op. cit., p. 23.
7. Westermarck, *Origin of the Moral Ideas*, vol. II, pp. 49, 57 ; Pollock and Maitland, *History of English Law* (2nd ed.), vol. II, p. 397.
8. Op. cit., pp. 58, 61.
9. Montgomery, *History of Land Tenure in Ireland*, pp. 67–8.
10. Op. cit. (2nd ed.), vol. II, p. 126.
11. Ibid., vol. VI, p. 34.
12. Pollock and Maitland, *History of English Law* (2nd ed.), vol. II, p. 379.
13. Ibid.
14. Hooper, *The Law of Illegitimacy*, pp. 12–13.
15. *Borough Customs*, vol. II, pp. 135–6.

16. Hooper, op. cit., chap. 10.
17. Ibid., pp. 25–6.
18. Cf. 7 Jas. I, c. 4; 6 Geo. II, c. 31; 17 Geo. II, c. 5, etc.
19. 21 Jas. I, c. 27.
20. Cf. Welfare Council of Toronto and District, *A study of the adjustment of teen-age children born out of wedlock who remained in the custody of their mothers and relatives*, 1943; L. R. Young, *Personality Patterns in Unmarried Mothers*, U.S.A., 1947, and *Out of Wedlock*, U.S.A., 1954.
21. Castberg, "The Children's Rights Laws in Norway", in *Journal of the Society of Comparative Legislation*, No. XXXVI, pp. 283–6.
22. Act of 10th April 1915, Respecting Children Born out of Wedlock, as subsequently amended by Act of 28th July 1949.
23. Castberg, op. cit., pp. 288–90.
24. Op. cit., 1st Feb. 1952.
25. Hansard, H. of C. Debates, 29th Feb. 1952.
26. Ibid., 29th Feb. 1952, col. 1629.