

Dishonoured: The Fate of Infants Born out of Wedlock

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Keywords

History · Infants born out of wedlock · Infant mortality · Causes · Illegitimacy

Abstract

This paper investigates causes and consequences of the prejudice towards extramaritally born infants. The main rationale for such defamation seems to have been religious teachings. However, rather than a matter of sexual morals, “illegitimacy” became an economic issue when infants were maintained on taxpayers’ money. Under most civil laws, “bastards” could not inherit. In German-speaking states, they were excluded from the guilds, which deprived them of professional training. They found refuge in “dishonest” professions and life in poverty. In the Late Middle Ages, a third of the population was probably born extramaritally. From 1400 to 1600, the illegitimacy ratio dropped markedly, but from 1650 to 1850, it seems to have gradually risen from around 5 to 9% in most European states. French authorities did not search for the putative father but offered the mother the possibility to abandon her child in a foundling asylum. In 1990, the term “illegitimacy” was replaced by “born out of wedlock.” After an extramarital birth, the infant mortality rate was elevated by 40–50% above that of maritally born infants. After 1960, effective contraception changed sexual

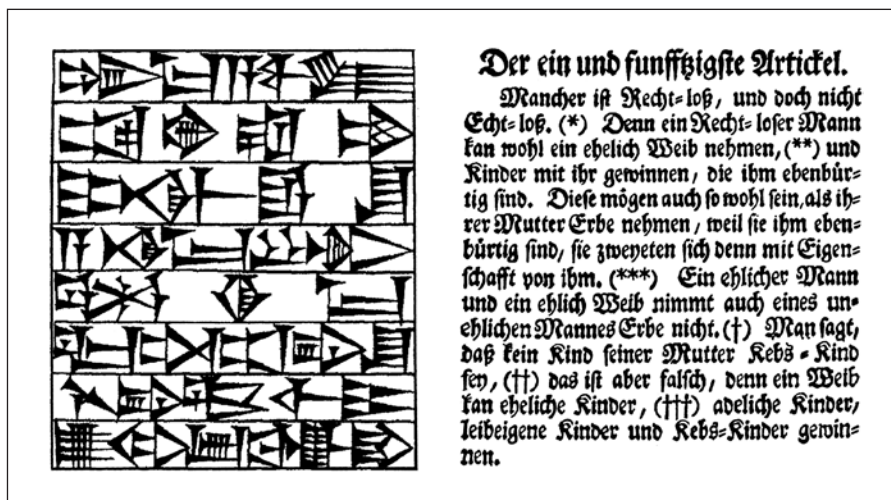
morals, but marital fell more than extramarital fertility. Paternity was no longer uncertain. The Catholic church’s influence decreased; and legal reforms protected the infant. Today, half of all infants in Europe are born out of wedlock; that is no longer a proxy for poverty.

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Introduction: Whence Defamed?

In many societies and for millennia of human history, infants born out of wedlock were despised, ostracized, and neglected, unworthy of family membership, excluded from heritage. The extramarital offspring of the poor carried the highest risk of being abandoned or even killed by their desperate mothers. “Bastards” were victims of gossip and curiosity. Although there is much literature on the “illegitimate” offspring of the nobility and clergy, it remains difficult to assess their position in society’s lower ranks. Researchers, legislators, and 18th century novelists focused on the unmarried mother and disregarded the infants. Most sources reveal a notorious lack of interest in the infants’ fathers. Earlier research on infants includes the works of Boswell [1], Laslett et al. [2], Sprandel [3], Schmutge and Wiggerhauser [4], and Gerber [5]. The present paper aimed to shed light on the causes and con-

Fig. 1 .Left: cuneiform inscription of the Code of Hammurabi, ca. 2250 BCE. §185 regulated adoption: “If a man take in his name a young child as a son and rear him, one may not bring claim for that adopted son.” [7]. Right: Sachsenspiegel ca. 1234 CE, Article 51: “A woman may bring forth infants conceived in wedlock, nobles, infants born in bondage, and those misbegotten.” [8].



sequences and beginning and weakening of the negative attitude towards extramarital infants. It omits problems affecting the mother and the abortion debate.

Prehistory and Antiquity

Lasting partnerships are frequent among vertebrates and became the paleolithic human tribe model. In mammals, the father usually shows less concern for the offspring than the mother. Among humans, marriage contracts defined unions that established rights and obligations between the spouses and their children. They often conceded less sexual freedom to females, as did the Old Babylonian Law in 2000 BCE [6]: “If [a man] arranged for a marriage contract and libation [ritual pouring of liquid as part of the wedding ceremony] with her father and mother and took her, she is [his] wife; the day she is caught with [another] man, she shall die.” About 2250 BCE, Hammurabi’s code regulated protection of infants by adoption (Fig. 1 left). Marriage to more than one wife was widely practised in antiquity, not to be confused with promiscuity. Polygyny most likely resulted from a female surplus due to excess mortality of male infants. In the second century CE, Diodorus Siculus wondered why Egyptians did not abandon unwanted children [9]: “The Egyptian priests only marry one wife, but all others may have as many wives as they please; and all are bound to bring up as many children as they can, for the further increase of the inhabitants, which tends much to the well-being of city or country. None of the sons are ever reputed bastards, though they be begotten of a bond-maid.” Stigma-

tizing infants born out of wedlock originated in monotheistic religions. Hebrews discerned infants according to their mother’s marital status: born by a married wife, a concubine (kebswife), a prostitute, or in a forbidden or incestuous relationship (mamzers). The Bible declared (Deut 23.2): “A bastard shall not enter into the congregation of the Lord; even to his tenth generation shall he not enter into the congregation of the Lord,” and in Gen 21.10–21: “Wherefore she [Sarai] said unto Abram, cast out this bondwoman and her son: for the son of this bondwoman shall not be heir with my son, even with Isaac.” But God saved the exposed boy’s (Ishmael’s) life in the desert. Extramarital births accumulated where social requirement or status legislation hindered legal marriages. In Athens, “bastards” were not debarred from citizenship [10]. Rome regulated marriages by law and offered them no status, even not through subsequent marriage of the parents [11]. Among the Maya in Yucatan [12] and the Inca in Peru [13], the masters used their female slaves as concubines, but the offspring of such connection could not inherit.

Canon Law and Clergy’s Children

Christians reiterated the Jewish tradition in Gal 4.30: “Cast out the bondwoman and her son: for the son of the bondwoman shall not be heir with the son of the free-woman.” For Bishop Augustine, who codified the dogma of original sin in the 5th century CE, the extramaritally born infant was the personification of wickedness. He admitted to have fathered “the boy Adeodatus, born of me

carnally, of my sin” [14] but insisted that “infants are involved in the guilt of the sins not only of the first pair [Adam and Eve] but of their own immediate parents” [15].

The marginalization of infants born out of wedlock accelerated during the Christian Middle Ages. Multiple denominations evolved, all of which became pejorative after some time [16]. The term *bastard* was of Celtic origin, initially reserved for the nobility, but fell out of use by mid-18th century, connoting corruption, dishonesty, wickedness, and imperfection. German terms included *winkelkind* (marriage without public witnesses), *keb-kind*, *unechtes* (false), *bankert* (begotten on the bench instead of the marital bed), and *schandkind* (child of shame). English terms were *bastard*, *natural child*, *brat*, *bantling*, and *illegitimate*. French terms included *bâtard*, *enfant naturel*, and *enfant de la patrie*. Foundlings usually were not found but abandoned at a hospice, whereas the term *orphan* was used for children born within marriage but given to a charitable institution. Marriage as a sacrament originated in the 12th century [3], and celibacy for clerics, after several attempts, was ultimately instituted by the second Lateran Council in 1193 [17]. Not all clerics succeeded in leading a life of chastity, and their children were excluded from clerical education, unless dispensed by the pope. Already in 1089, Urban II declared “to remove priests’ sons from the altar’s holy offices, unless they have learned religious order in a monastery” [18]. Nevertheless, clerics’ children became so frequent that in 1172, Pope Alexander III instituted the office of the Great Penitentiary, who was responsible for dispensing thousands of priest’s sons from the *defectus natalium* (birth stigma) and granting them ordination, higher offices, and financial benefits [19, 20].

German Civil Law: Excluded from Guilds and Tournaments

In most civil laws, “bastards” could not inherit. But in German-speaking states, the birth certificate separated them from middle class and prosperity. The Reformation brought forth a pharisaic and priggish religiosity, and the tolerance towards extramarital sexuality vanished. The Free Imperial City of Frankfurt closed its municipal brothels and turned prostitution into a crime in 1574. From 1562 to 1696, the same city pronounced more verdicts for sexual infringements (“fornication,” adultery, incest) than for violent crimes [21]. Medieval trade and manufacturing were under the control of the guilds,



Fig. 2. Sachsenspiegel, ca. 1234 CE: Article 45 §9: the red-green garment identifies the “dishonest” birth, the letter p the parson’s child. See text for details [24].

which embraced quality, economic, and religious aspects. Excluding women and extramaritally born men from the guilds reduced competition and became a near-religious act. German citizens began to address each other as *wohlgeboren* (well-born). “Illegimates” were unworthy to hold public office or to act as witnesses in judicial affairs. Together with sentenced criminals, they were banned from all guilds, what meant from professional training, and a life in poverty. They took refuge in “dishonest” professions: minstrel, street musician, travelling people, barber, bath assistant, linen waver, gravedigger, beggars’ bailiff, night watchman, thug, usher, and hangman. Linen weavers, predominantly female, did not attain guild status before the 14th century. “Honest birth” (*echt und recht*) had to be proven by two witnesses or by expensive certificates, even for the applicant’s parents and grandparents [22]. “Dishonest” birth had to be revealed by tokens or clothes [3, 23]. How little value was placed on life and limb of illegitimate infants is evident from the law codex *sachsenspiegel* (Saxon mirror [1220–1235 CE]): Article 45 regulated compensation for death or severe injury: “Clerics’ infants and those falsely born are paid a cartload of hay as can be pulled by a pair of one-year-old oxen” (Fig. 2) [25]. In 1694, the Imperial law confirmed [26]: “the artisans” statutes that those born out of wedlock or not legitimated by marriage may not be admitted into a guild... Also those who espoused their wife too early [prenuptial conception] are not accepted to the guild... because by despising bastards, folks are kept from carnal crimes when realizing that their infringement will be punished in their sons.” Illegitimate offspring of the nobility, although frequent, were uneligible for heritage and

knighthood. The Würzburg Tournament Order of 1479 denied (among perjurers, deserters, rapists, profiteers, heretics, and adulterers) participation to “all those born out of wedlock [27].” In his “Science of Right,” philosopher Immanuel Kant wrote in 1797 [28]: “An illegitimate child comes into the world outside of the law which properly regulates marriage, and is thus born beyond the pale or constitutional protection of the law.” The guild system officially ended with the Recess of 1731 [29], but large parts of the society tacitly continued ostracizing the “dishonourable” until World War II.

British Civil Law: *Exceptio Plurimum* and Maintenance

In England, the law tried to elicit money from the putative father, but for hundreds of years, it sufficed for him to claim that the mother had had several sexual encounters during the period of conception (*exceptio plurimum*). Increasing defamation of minorities, especially those falling upon the public purse, was associated with inadequate resources: European famines followed a series of crop failures in 1437–1440 and the 30-year war in 1618–1648. In 1576, the Elizabethan Law ordered that extramaritally born infants must be supported by their genitor but grudgingly obliged the parishes to support them if the father was unavailable [18 Eliz. I, C.3, sec.2]: “That Bastards begotten and born out of lawful matrimony being now left to be kept at the charges 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.” [30]. Even when “illegitimates” were more or less accepted, their maintenance was not. A statute of 1609 [7th James cap. 4] ordered [31]: “Every lewd woman having any bastard which may be chargeable to the parish... [is] committed to the house of correction, to be punished and set on work during the term of one whole year.” Civil registration of birth was introduced in England and Wales in 1836. Public records stigmatized those applying for school, insurance, or employment in an era when illegitimacy remained a shameful family secret [32]. The “New Poor Law” of 1834 and the “Bastardy Laws Amendment” of 1872 changed the rights of illegitimates and their mothers to paternal maintenance and parish relief [33].

Legislation in Colonial America, derived from the English Poor Laws, was by no means more liberal towards those extramaritally born. Based on actual records of 17th century courts, Nathaniel Hawthorne described the life of

an adulteress in a Puritan New England community who was forced to wear a scarlet letter to reveal her infamy. Such shaming punishment continued in Massachusetts until the mid-1780s [34]. In addition to being outlawed, the children were tainted by the stigma of poverty. With the advent of reliable paternity testing in the 1970s, albeit handled differently among states, court decisions were no longer based on probabilities, and the *exceptio plurimum* became obsolete.

French Civil Law: No Paternity Search

In France, *bâtards* were excluded from the family and deprived of inheritance, but they were not legally excluded from holding public office or from artisanal trades as in the Germanic lands. Adapted and refined from Roman Law, Royal attorney Jean Bacquet’s “Bastardy Laws” of 1601 listed a taxonomy of extramarital offspring [35]: “Some are called *naturales*, who are born of a concubine; others *spurii*, who are born of public women and uncertain fathers; and others *adulterini* or *incestuosi*.” He reported that bastards could inherit the French throne under Merovingian (5th to 8th century CE) and Carolingian (8th to 10th century CE) dynasties. Julien Brodeau’s law collection of 1633 specified [36]: “The law would like for bastards to carry on their brow the mark of the vice and the shamelessness of their mother and father and to live in perpetual indigence.” The law of 1683 confirmed [37]: “One wishes to punish the crime of the fathers in the person of the children, in order to encourage marriage by making such offspring more odious to the public.” Since 1576, legitimation certificates could be purchased from the king by natural fathers, wiping out the blemish of extramarital birth so that the child could bear the father’s name and also might inherit from him; but usually, only nobles profited from this expensive option [5]. French authorities did not search for the putative father, and the Revolution law of 8th April 1791 confirmed: “All search for paternity is interdicted.” From the mid-17th century, France offered the mother a possibility to abandon her child in a foundling asylum. By the time of Napoleon’s Code Civil (1804), children born out of wedlock had their inheritance reduced to one-third of a legitimate sibling [Articles 757–8]. At the same time, the code retained the prohibition against paternity suits, safeguarding the marriages of men [Articles 762–3]. The state subsidized the foundling hospitals for raising the infants and the supervision of the nurses.

Table 1. Live births outside marriage (illegitimacy ratio in percent of all live births) in several countries over the last 150 years

Country/state	1860	1910	1960	2010
Europe				
Austria	17.6	23.0	13.0	40.1
Belgium	7.3	6.8	2.1	45.7
Bulgaria			8.0	54.1
Czech Republic			4.9	40.3
Denmark	11.1	10.7	7.8	47.3
Finland	7.0	6.8	4.0	41.1
France	7.8		6.1	55.0
Germany: Prussia	11.5	8.4		
Germany: Bavaria	24.6	12.1		
Germany: Fed. Rep.			7.6	32.7
Greece			1.2	7.3
Hungary	9.4		5.5	40.8
Iceland	14.3	13.5	25.3	64.3
Ireland	2.4		1.6	33.8
Italy	7.2	5.6	2.4	21.8
The Netherlands	3.1	2.3	1.4	44.3
Norway	8.7	6.9	3.7	54.8
Poland			4.8	20.6
Portugal			9.5	41.3
Romania				27.7
Russia (West)	2.8		9.1	55.7
Spain			2.3	35.5
Sweden	9.6	12.7	11.3	54.2
Switzerland	5.4		3.8	18.6
UK: total	6.1			46.9
Scotland	9.8	6.0	4.4	50.2
England & Wales	6.5	4.0	5.4	46.8
Other countries				
Canada			4.3	32.3
Chile				68.5
Israel			0.7	
Mexico				59.4
Japan		8.5	1.2	2.1
New Zealand	2.3	4.5		48.9
Turkey				2.6
USA		2.0	5.3	40.8

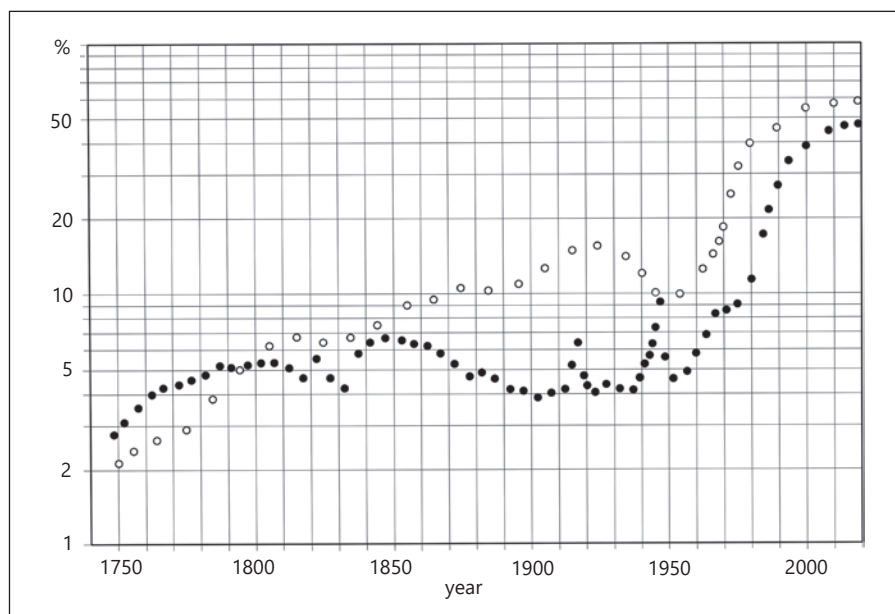
Governmental statistics from [2, 48–52], data since 1960 from Eurostat [53].

Contemporary Legislation: Towards Equality

For most European children, being born out of wedlock meant growing up in poverty. The German Republic's constitution of 1919 ruled: "For extramaritally born children legislation must ensure the same conditions for their somatic, mental, and social development as for those maritally born [29]." However, even in the 1960s, in Germany, only 60% of unwed mothers received alimony from the child's father [38]. In 1979, the European Court of Human Rights clarified that "illegitimates" must not be assigned lower legal status but must have the same rights

as all other children [39]. Scotland abolished the status of "illegitimacy" in 1986. In the USA, sociologist Kingsley Davis still wrote in 1939 [40]: "The bastard, like the prostitute, thief, and beggar, belongs to that motley crowd of disreputable social types which society has generally resented, always endured. He is a living symbol of social irregularity." Several US Supreme Court decisions in 1973 improved the nonmarital infants' access to parental and public support by strengthening the Equal Protection Clause. In 1990, the term "illegitimacy" was replaced by "born out of wedlock" but remained in frequent use to the present day.

Fig. 3 Trend of live births outside marriage (in percent of all live births, logarithmic scale). Closed circles: England and Wales, data before 1840 are from ecclesiastical records, from 1840 from civil records (Registrar general) [2, 54]. Open circles: Sweden, official statistics [2, 49]. Data from 1960 and 2010 from Eurostat [53].



Morbidity and Mortality

Even when adjusted for maternal age and parity, morbidity and mortality were higher in infants born out of wedlock than those maritally born, the major cause being prematurity. In Switzerland, the increase was 53% in 1876–1890, in Austria 26% in 1900–1904 [41], in London it was 78% in 1902 [42], in New Zealand 47% in 1921–1924 [43], and in Scotland 40% in 1970, rising to 50% in 1979 [44]. An international comparison revealed in 1986: “In each country the mean birth weight was lower if the mother was unmarried. However, the more common the unmarried state, the smaller was the deficit in mean birth weight [45].” A comparison in Latin American cities suggested that the magnitude of mortality differential correlated with the degree of negative sanctions against the consensual unions (concubinage) in a country [46]. Van Poppel listed the disadvantages that made children born and raised by unwed mothers so vulnerable and suggested that up to the 19th century, illegitimacy was a proxy for poverty [47].

Historic Incidence and Modern Trends

How many infants have been born out of wedlock? Sprandel estimated a third of the population in the Late Middle Ages [3]. Statistics on extramarital demographics are flawed by numerous methodological inconsistencies: definition of live birth varied, ecclesiastical records count-

ed baptisms, and were unreliable due to legitimation by subsequent marriage. There is a paucity of data before 1600. The *rate* of illegitimate births per 1,000 women aged 15–45 years usually is not available. The *ratio* of illegitimate births per 100 live births is available but is highly influenced by both marital and extramarital fertility. From 1400 to 1600, the illegitimacy ratio dropped markedly and from 1650 to 1850 seems to have gradually increased from around 5 to around 9 percent in most European states [48].

Table 1 compares “illegitimacy ratios” across several countries during the last 150 years. As shown in this Table 1 and Figure 3, the percentages of infants born out of wedlock skyrocketed from 1960 to 2010. In Europe, more than half of all infants were born out of wedlock in 2010. Greece had the lowest (8%) and France, the highest (60%) ratio of childbearing outside marriage. Remarkably, the availability of reliable contraceptives reduced marital fertility more than extramarital fertility. Unlike in the past, most extramaritally born children are welcome or even planned by their mothers, and “illegitimacy” is no longer indicative of poverty.

Conclusions

Why was the child victimized instead of the parents? Rather than of sexual morals (violating honour and status), “illegitimacy” was an economic issue: maintaining the infant on public money. Children born out of wedlock

were the visible sign of breaking a cultural taboo. The taboo's objective of dishonouring the infant however shifted in several steps from a ban on extramarital sex in the Middle Ages, to punishing births out of wedlock after the Reformation, and to criminalizing adolescent pregnancy in the 20th century. The de-stigmatization trend began in the 18th century and was enhanced by legislation during the French Revolution. In many developed countries, births out of wedlock have become the norm: technology changed culture. The infant's societal position has improved thanks to dramatic cultural changes: (1) effective contraception became available and profoundly changed sexual morals; (2) paternity was no longer uncertain; (3) the Catholic church's influence receded; and (4) ultimately, legal reforms protected the infant born out of wedlock.

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