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## Illegitimacy: An Examination of Bastardy

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ILLEGITIMACY: AN EXAMINATION OF BASTARDY. By *Jenny Teichman*. Ithaca: Cornell University Press. 1982. Pp. 185. \$18.50.

Most modern books dealing with illegitimacy are either sociological studies of its causes and distribution<sup>1</sup> or pleas for reform in the treatment of unwed mothers and their children.<sup>2</sup> Jenny Teichman's *Illegitimacy: An Examination of Bastardy* is neither. Rather, Teichman attempts to analyze illegitimacy as a social institution, tracing its connections to other institutions such as the law,<sup>3</sup> the family, marriage, and religion. Although this book is a revised and expanded version of an earlier pamphlet,<sup>4</sup> Teichman's analysis remains sketchy. Nevertheless, her book provides a thought-provoking and entertaining look at the origins of the concept of illegitimacy.

Teichman begins by noting that the legitimate/illegitimate distinction is a necessary by-product of any system regulating sexual activity and reproduction (pp. 4-8). A child whose conception and birth comply with the law is legitimate; a child whose conception and birth violate the law is illegitimate, that is, "a child which ought not to have been born" (p. 7). After briefly summarizing sociological studies of the causes of illegitimacy, the author concludes that the social institutions that give rise to the legitimate/illegitimate distinction provide the key to understanding illegitimacy (pp. 10-22).

Teichman proceeds to examine these institutions, beginning with the law. She discusses the relation of illegitimacy to the English law of marriage, custody and support, property and poverty. These early chapters develop a number of themes which appear throughout the book: the close connection of illegitimacy to the institution of marriage (pp. 76-85), the relationship between the mother's economic power and her right to custody of legitimate children (pp. 40-52), and the concept of the bastard as *filius nullius* — "no one's child" (pp. 60-75). Unfortunately, Teichman often presents her evidence without drawing a conclusion, leaving the reader to wonder why she told a particular story or cited a given case. The chapter on the *filius nullius* rule, for example, relates several stories about the bastard children of various nobles, the relevancy of which is not immediately apparent (pp. 55-58). Eventually, the reader realizes these stories were intended to show that not *all* bastards have been treated as "no one's child" (p. 60); Teichman, however, never makes this clear.

Teichman examines the legal requirements for marriage, legitimacy, and illegitimacy, and the legal mechanisms through which illegitimate children may be legitimated. Having drawn no conclusion from her glance at the formal criteria used to determine these statuses, Teichman moves on to

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1. See, e.g., *BASTARDY AND ITS COMPARATIVE HISTORY* (P. Laslett, K. Oosterveen & R. Smith eds. 1980).

2. See, e.g., H. KRAUSE, *ILLEGITIMACY: LAW AND SOCIAL POLICY* (1971).

3. Teichman focuses on the English law of illegitimacy. Since she examines not the specifics of the law but its development and relation to other social institutions, her treatment is broad enough to be meaningful to American readers.

4. J. TEICHMAN, *THE MEANING OF ILLEGITIMACY* (1978).

consider the historical development of the woman's right to custody of her legitimate children. She argues persuasively that the mother's "natural right" to custody could not be legally recognized until married women were allowed to control economic resources sufficient to raise children (pp. 40-52). Thus, the mother's natural right to custody had no real significance until the Married Women's Property Acts<sup>5</sup> were enacted.

Teichman next considers the mother's custody of and duty to support her illegitimate children. Traditionally, a bastard was "no one's child" and thus had no legal claim on anyone for support. The author traces the gradual disintegration of this rule through the Poor Law's imposition of the duty of support on the mother, and the implication of the corresponding right of custody (pp. 60-75). Oddly, Teichman draws no parallel to the preceding discussion of the growing economic rights of women. Although unwed mothers had never been debarred from owning property, the courts which awarded them custody of their illegitimate children noted that the children would be going to "suitable" (p. 75) homes. Surely no court would have found a home suitable had the mother not had the resources to maintain her child.

At this point, Teichman shifts rather disconcertingly from the law to an anthropological analysis of illegitimacy. She distinguishes four functions that the institution of marriage serves: to sanction sexual intercourse and reproduction, and to provide an economical means of support for the marriage partners and the children (p. 77). Based on these functions, Teichman defines an illegitimate child as a child "whose conception and birth did not conform to the institutional rules which, in its parents' community, govern reproduction" (p. 80) (emphasis omitted). Although she argues that the existence of marriage as an institution is neither necessary nor sufficient to the existence of the legitimate/illegitimate distinction,<sup>6</sup> Teichman concludes that "marriage, in a broadish sense of the word, is indeed what generates the distinction" (p. 85).

Teichman shifts gears abruptly several more times. Chapter 7 on kinship is followed by a chapter listing the legal and customary disabilities of the illegitimate child,<sup>7</sup> a chapter discussing the treatment of illegitimate children in literature, and a chapter on Judaic, Roman Catholic, and Islamic family law. The recurring theme of these chapters is the bastard as outcast: cut off from kin, legal rights and religion; portrayed as a murderous usurper, deformed and immoral. These observations support Teichman's

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5. Married Women's Property Act, 1870, 33 & 34 Vict., ch. 93; Married Women's Property Act, 1882, 45 & 46 Vict., ch. 75; Married Women's Property Act, 1884, 47 & 48 Vict., ch. 14; Married Women's Property Act, 1893, 56 & 57 Vict., ch. 63; Married Women's Property Act, 1907, 7 Edw. 7, ch. 18; Law Reform (Married Women and Tortfeasors) Act, 1935, 25 & 26 Geo. 5, ch. 30, §§ 1-5.

6. To illustrate the proposition that the institution of marriage is not itself a sufficient cause for the legitimacy/illegitimacy distinction, Teichman describes the institutions of the Baffin Bay Eskimo. Pp. 81-83. Decidedly, these Eskimos had no use for the legitimate/illegitimate distinction. On the other hand, from Teichman's account it is very difficult to see that they had an institution describable as "marriage" either.

7. These include not belonging to a lineage, possibly not being able to inherit, prejudice against the unwed mother in medical treatment, higher infant mortality rates, infanticide, probable inadequate support, separation from biological kin, adoption, and social disesteem and ostracism. Pp. 103-21.

thesis that illegitimacy *means* being born outside the approved system, and that as long as a system regulating conception exists, there will be illegitimacy. Yet this point seems so obvious that it may not merit four chapters of illustration. Teichman fails to draw any connections between this material and the preceding material on the legal aspects of illegitimacy. The reader is left to wonder whether Teichman has confused the factual statement, "Illegitimacy must exist as long as society regulates conception," with the normative statement "Illegitimacy should entail legal consequences." This confusion is manifest in Teichman's treatment of various attempts to abolish illegitimacy. Without taking a position either for or against abolition of illegitimacy, she appears to argue that abolition is impractical, if not impossible. Again, her conclusions are either vague or absent. Consequently, her description of various nations' efforts to treat equally legitimate and illegitimate children often seems pointless.

Although Teichman presents a wealth of information about illegitimacy, her book is of limited value to the practicing lawyer. Her goal, however, is admirable. Effective reform of the laws regarding illegitimacy depends on understanding the institutions which originally gave rise to those laws. Despite her failure to draw conclusions, Teichman has provided a backdrop against which conclusions may one day be drawn.