

# THE INFLUENCE OF LEGISLATIVE CHANGE ON BEHAVIOUR: A CASE STUDY ON THE STATUS OF ILLEGITIMATE CHILDREN IN SIERRA LEONE

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The imposition of a foreign legal system during colonial control is an example of "authoritarian" type law as discussed by Pospisil, the study of which he suggests has been "grossly neglected in anthropological literature" (1971, p. 193). Today most of the colonies have gained their independence. An examination of what has happened within these societies since independence with regard to the imposed foreign legal system provides the anthropologist with an opportunity to look at a number of aspects of the relations between law, social norms and values, the processes of internalization and political power. One such example is the problem of the status of children born out of wedlock in Sierra Leone<sup>1</sup>. Sierra Leone became independent in 1961. Four years later the legal status of illegitimate children became a topic of public debate as a result of an ill-fated attempt to pass a law which would eliminate the concept of illegitimacy altogether and equalize the legal status of children, especially with regard to inheritance.

The attempt to pass legislation equalizing the legal status of legitimate and illegitimate children was an example of an effort to bring about harmony between societal norms regarding children born out of wedlock (as they were perceived by the lawyers who drafted the legislation) and the law. Explicitly, the effort was seen as an attempt to rid the society of the evils resulting from the imposition of a law foreign to African ideas. Quite by accident the publicity surrounding the event convinced the general public that the law had been passed. The effects on the behaviour of individuals of the belief that the law was in effect provided my study with almost experimental conditions, unique in anthropological research, in which to examine the relationship between ideas and social change.

As Moore has pointed out:

"Attempts to remold society through legislation presume ideas of what society is, how it works, how it can be changed, and what it should be. Although judicial innovation and legislation by no means always have the intended effects, the models on which they are based imply a way of looking at social life and a 'folk' sociology of change implicit in legislation, that may be a way of finding out more about the relationship of ideas to social action" (1970 p. 287).

Before turning to a description of the events surrounding the attempt to pass the law and the reactions to this attempt, it is necessary to present some information about marriage law in Sierra Leone, the scope of the problem of illegitimacy there and attitudes towards the problem.

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<sup>1</sup> This paper is based upon material collected during fourteen months fieldwork in Sierra Leone (1967—69) and on later observations during subsequent research there (1971—73). The first study was an investigation of marriage among the professional group (i. e. persons having university degrees or equivalent professional level qualifications and their spouses). Quantitative data cited were collected from interviews with random samples of the students in the colleges of the University of Sierra Leone and of the professional group. During the second period of research I was conducting a team study of family law. For a description of methods used see Harrell-Bond 1972.

## Background to the problem of illegitimacy

English law had been the informal basis for administering the colony since its founding, although the necessary legislation was passed much later, in 1857 (Smart 1970). As far as marriage is concerned there are three systems of law in Sierra Leone. First, there is general law comprising English common law and equity and all enactments in force in Sierra Leone which do not pertain to customary law or Islamic law. Secondly, there is the customary law of the various tribes in the country and, finally, statutory provision for the recognition of marriage under Islamic law. These three legal systems were intended to accommodate three separate and distinct groups of people in the country. Although provision to be married under statutory law has been extended to everyone, personal law is determined by birth. That is, persons who are members of indigenous tribal groups retain the law of their tribe as their personal law. Only "non-natives" (Creoles), the descendants of the settlers of the colony, may claim the English-based statutory law as their personal law. We shall return to an explanation of the significance of these matters to the question of legitimacy shortly.

In Sierra Leone a person is deemed to be born out of wedlock, or illegitimate, if his parents were not married by one of the three recognized forms of marriage (ordinance marriage under English-based statutory law, Islamic marriage, and marriage by native law and custom). Provision is made for the compulsory registration of all ordinance marriages (Cap. 95, 96 and 97, Laws of Sierra Leone) and, more recently, for the registration of marriages by native law and custom (Cap. 61). However, only a minority of such customary marriages are being registered. While provision has also been made for the registration of births all over Sierra Leone (Cap. 92 and 93), only a fraction of births outside the Western Area are registered. Since in the Western Area it is necessary to present a birth certificate when a child is enrolled in primary school, most persons there do register their children's births. Our discussion of illegitimacy will be restricted to births registered in the Western Area. However, this is not inappropriate since the central concern of this discussion is with the results of the imposition of the English-based statutory marriage and the problem of legitimacy, and 80 per cent of the women and 71 per cent of the men marrying under statutory law between 1961 and 1968 lived in the Western Area. In Sierra Leone births are registered under four possible headings which indicate the type of marriage of the parents and, if appropriate, the illegitimacy of the child. These headings include the registration of legitimate children born to couples married under statutory law; legitimate children born to couples married by native law and custom; illegitimate children born to unmarried mothers where the putative father's name is given; and, finally, illegitimate children where only the unmarried mother's name is recorded. Although according to the law, those children whose births are registered in the third category, where both parents' names are given, are illegitimate, the situation is more complicated. This column is intended for the registration of those births where the putative father has acknowledged paternity, agreeing to the entry of his name in the registration of the birth. In many cases such putative fathers come to the office of the Registrar of Births to sign the certificate themselves. (The tendency for married men of high social status to accept responsibility for having fathered illegitimate births is revealed at once by

inspection of the signatures in this column). However, it is possible that another kind of conjugal union is represented by the births registered in this column. Marriage by customary law is regularized by the presentation of a marriage payment to the family of the girl. In many cases this payment may be made in instalments over an extended period of time. Until this payment is complete, the union is not a legal marriage. It is impossible to know how many of these unions are later regularized by the completion of the marriage payment. Of course, in terms of the law regarding legitimacy, these children can never be legitimized even if their parents' marriages are regularized, since, as we shall see, subsequent marriage of parents of illegitimate children does not legitimize a child in Sierra Leone.

Table 1 shows the total number of illegitimate births registered in the Western Area between 1961 and 1968.

**Table 1. Number of children out of wedlock in Western Area, 1961—1968**

Year	Total Number of Registered Births in Western Area	Father's name given or signature present		Only Mother's name given	
		Number	% of all births	Number	% of all births
1961	5 554	1 036	18.7	1 406	25.3
1962	6 072	928	15.3	977	16.1
1963	6 660	980	14.7	1 010	15.2
1964	6 008	1 040	17.3	859	14.3
1965	6 819	1 145	16.8	1 022	15.0
1966	7 116	1 125	15.8	1 007	14.2
1967	6 449	872	13.5	1 064	16.5
1968	6 657	744	11.2	974	14.6
Totals	51 335 <sup>a</sup>	7 880	15.3	8 319	16.2

<sup>a</sup> The total population of the Western Area is 195 023 and represents 8.9 % of the population of the country (1963 Population Census of Sierra Leone, Vol. 1).

Except for 1961, when 44 per cent of all registered births were illegitimate, the number of children born out of wedlock has remained around 30 per cent of all births in the Western Area<sup>2</sup>. The drop since 1966 in numbers of children born out of wedlock whose fathers acknowledged paternity may reflect recent legal changes which have increased the father's financial obligations to his illegitimate children. In 1961 the law was changed substantially to increase the amounts awardable for the maintenance of these children from a maximum of five shillings to thirty shillings a week<sup>3</sup>. The courts are now more severe in their treatment of

<sup>2</sup> Very few data are available to make meaningful comparisons with legitimacy rates in other countries. An attempt by the United Nations (Saario 1967, pp. 7—9) to produce comparative statistics on the problem of illegitimacy produced unsatisfactory results. This is not surprising given the differing bases for determining legitimacy, for compiling statistics, and the incomplete registration of births in so many countries.

<sup>3</sup> Bastardy Laws Amendment Act and Bastardy Laws (Increase of Payments) Ordinance, 1961. Cap. 100 Laws of Sierra Leone.

these cases and mothers of illegitimate children have become increasingly aware of their legal rights. Between 1961 and 1968 the number of maintenance cases brought to the court under this law almost doubled<sup>4</sup>. Because of the prestige associated with large numbers of children, formerly it was unthinkable for a father to avoid acknowledging a child as his own. Of course, some of the disputes over paternity may result from attempts by women to impose the responsibility for their child's support on the man most able to afford it, when paternity is uncertain. Awareness of the advantages of having a child by a financially able man are reflected in the Krio saying, "It's only a rich man who gets children" ("Na gentry man de bòn pikin").

Although the tendency to deny paternity to escape financial responsibility for an illegitimate child may have intensified as a result of the change in the law and the wider knowledge of the rights of unwed mothers to claim support, the illegitimate child has come to pose a much greater threat than simply a drain on a man's monthly income. It is not possible to ascertain how many illegitimate children are fathered by married men. To have asked persons in the professional group directly if they had such children would have produced considerable resistance. I did ask them if either they or their spouses were financially responsible for any children born to them outside the marriage and 24 per cent indicated they were (55 per cent of these were Creole). In view of the extreme sensitivity of the topic, we can be quite certain that these results do not exaggerate the numbers of persons who have children outside marriage<sup>5</sup>. It does not, however, tell us how many children are involved. For example, one wife admitted her husband had one child before their marriage, but the husband's sister told me her brother had nine children born outside since the marriage in addition to the one his wife admitted. Another husband had seven outside his marriage: such examples are not unusual.

While it is not possible to know how many children born out of wedlock are fathered by married men, it is generally assumed in Sierra Leone that most of them are. At any rate, the present social and legal status of these children directly hinges on the threat they pose to monogamous statutory marriages. To understand why this should be necessitates our examining some of the history of the acceptance of the institution of Christian monogamous marriage.

In 1787, through the efforts of philanthropists in Britain, a colony which came to be called Freetown was founded on the western peninsula of Sierra Leone for the resettlement of freed slaves who had been repatriated from the United States, Canada, the West Indies and England. Later, others were brought to Freetown after being rescued from slave ships captured on the high seas. The first group of settlers had been exposed to western culture during their enslavement and they assumed a role of superiority towards those who came later to the colony. (Porter 1963). We can get some idea of the extreme heterogeneity of the early population of the colony by noting that Koelle, a missionary, recorded over one hundred different African tribal languages spoken in Freetown (Koelle 1851). The term "Creole" came to be attached to all these people of diverse background, and,

4 Harrell-Bond 1975, p. 227. I studied such maintenance cases in my subsequent research. It became apparent that many women make a science of obtaining maximum awards. They have become aware that a judge is more likely to award the maximum amount allowed when a man is being sued for the support of only one child. As a result many women have seen the advantages of ensuring that each of their illegitimate children is fathered by a different man.

5 Some 43 per cent of the Creoles in the professional group indicated their fathers had outside children and enumerated how many.

later, to the descendants of these early settlers and “to others who had come to accept their way of living” (Porter 1963, p. 3).

The colony, as it was organized through the efforts of philanthropists and missionaries, emphasized the superiority of western education and religion. Although the settlers had originated from various parts of West Africa, they had been cut off from their own traditions and they were made aware that it was very much in their interest to adopt western ways. Relationships between the white settlers and administrators and the Creoles were remarkably good and equal treatment of white and black was even assured by legislation (Porter 1963, p. 24). The Church was the central institution in the organization of the life of the colony (Petersen 1969)<sup>6</sup>. The founders of the colony ambitiously aimed at developing a kind of utopian community based upon Christian ideals which would “. . . prove an agency for the spiritual and social regeneration of the whole African world” (Porter 1963, p. 48). However, the Creoles were much more concerned with personal advancement defined by the values of the western world than they were in identifying with or improving African society (Collier 1970, p. 47).

From the beginning relationships between the settlers and the local tribal groups were strained. Activities aimed at development and improvement were concentrated in the colony and were primarily for the benefit of the settlers. Most schools were concentrated in Freetown, and Fourah Bay College, the only institution of higher learning in West Africa until the 1940s, was founded in Freetown in 1827. The Creoles achieved a level of education and sophistication, in the western sense, which was indeed remarkable. Some persons from the indigenous tribes did manage to get an education through missionary efforts or as wards in Creole households. However, in order to obtain employment such persons found it necessary to identify themselves with the Creoles and to take an English name. This practice of “passing” as Creoles continued throughout the history of Sierra Leone until the 1950s when the increase in political power of the indigenous groups made identification with Creole society less important. However, even today, many of the professional group who call themselves Creoles have grandparents whose first language is one of the various tribal languages of Sierra Leone.

About the turn of the century the British turned their attention towards the economic potential of the hinterland of Sierra Leone. More opportunities for education became available to indigenous groups. In 1926, Milton Margai, a son of a prominent Mende family, qualified as the first provincial doctor and, later, his brother, Albert, became the first lawyer<sup>7</sup>. Although the Creoles no longer held a complete monopoly of professional roles, they continued to be in the dominant position. Their prestige role in the society was to rest on their close identification with the British way of life, their dominance in the professions, and their control of educational institutions. Although they represent less than 2 per cent of the population of Sierra Leone, 64 per cent of the professional group in 1968 was Creole.

In spite of the Creoles’ minority position in the society, they have, from the beginning, set the pattern for the social development of the rest of the population (Little 1967, pp. 262—264). The old-established Creole families who had early

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<sup>6</sup> It should be noted that there was always a significant group of Creoles who followed Islam. However, the prejudices of the colonial administration led to policies which served to frustrate their attempts to integrate themselves into the mainstream of Freetown society.

<sup>7</sup> The term “provincial” is used to refer to members of indigenous groups.

identified themselves with western culture became the reference group for the behaviour and attitudes of the educated members of the indigenous population. Because of the emphasis of missionary teaching from the earliest days of the colony, conformity to the Christian model of monogamous marriage became a primary measure of being civilized. Indeed it is safe to say that missionaries made acceptance of monogamous marriage the most important symbol of conversion. Rejection of "primitive" ways, the chief emphasis being on rejecting polygamy, became significantly bound up with status and position in urban life<sup>8</sup>. It cannot be over-emphasized that the fashioning of one's family life along the lines of the western model of marriage came to have a profound importance in supporting the Creole's and, later, the educated provincial's, image of himself as educated and civilized.

Nevertheless, the deep-seated and traditional desire for large numbers of children continued, and today still has importance for prestige and status. Men establish liaisons with women outside marriage and have children by them in addition to those produced within their marriages. These women are referred to as "outside wives" and their children as "outside children" (Baker and Bird 1959; Crabtree 1950; Izzett 1961; Jellicoe 1955; Little and Price 1967). This institution dates right back to the early days of the colony although there is considerable difference of opinion on whether or not there has been any significant change in attitudes towards these women and their children over the years. Many refer to the "Victorian" quality of life of early colonial days and note that formerly a girl who produced an illegitimate child was deeply disgraced in the community as well as within her own family circle. Many account for what they consider to be the lessened stigma attached to the role of the "outside wife" to the increase in women's education which allows more women to be economically independent and to the increased security afforded unwed mothers through recent legislative changes.

However, even if the stigma attached to being an "outside wife" or unwed mother has lessened somewhat over the years, there is considerable evidence that women who bear illegitimate children still impair their status in the society. Certainly, they seriously jeopardize their chances of ever marrying. Although men may gain social position through their own achievements, women continue to be assessed in terms of their family background, and their social position continues to be closely bound up with marriage<sup>9</sup>.

Although Sierra Leoneans may readily admit that the women who bear illegitimate children suffer from loss of status, they contend that the children themselves are not stigmatized. After all, as I was frequently reminded, children in Africa are always welcome, regardless of the conditions of their birth. It is possible to examine the extent of legal discrimination which illegitimate children suffer, and I shall do so shortly, but it is not so easy to document the degree of social discrimination they face or the psychological damage they may experience as a result of their position in society. Many factors have to be considered, the most important being the status of their biological fathers and the degree to which they and their

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<sup>8</sup> A strong emphasis was also placed on Christian standards of decent dress. Sec. XII of Ordinance No. 40 of 1851 imposed a fine of five shillings for appearing insufficiently clothed and twenty shillings for being nude.

<sup>9</sup> An examination of genealogies of several prominent Creole families and later investigation of the problem of maintenance laws revealed a definite pattern of daughters of outside wives following their mothers' example by themselves becoming outside wives.



mothers are able to provide them with economic security. The willingness of fathers to maintain their outside children and to pay their school fees varies widely. Teachers observe that outside children have more difficulty in school. Frequently they find themselves in the same school or even the same classes with half-siblings from the “married” home with certain attending stresses. Since the married woman and her children are accorded the highest status, outside children are often an embarrassment when they turn out to be classmates of their “legitimate” siblings. Outside children are deprived of a close relationship with their father. Moreover, the relationship between the outside child and his father’s wife is most likely to be fraught with tension. Quite understandably, wives hold markedly different attitudes towards illegitimate children born to their husbands before marriage and towards those who arrive afterwards, although their legal status is the same. Wives often pretend ignorance of their husband’s outside children and would not countenance their appearance in their household. However, the ideal arrangement for the care of his illegitimate children, from the man’s point of view, is for his wife to allow him to bring these children home to be reared. Although this does happen (sometimes the wife is even willing to rear her husband’s illegitimate children) usually married women object to this arrangement<sup>10</sup>.

Certain abusive phrases in the Krio language bear out the fact that the child born out of wedlock has an inferior social position. For example, to use the phrase, “You are born a bastard” (“Dis basta pikin yaso”) or to say “„you were born without a coat at the back of the door” (“Yu bɔn yu nɔmit kot behɛn do”), meaning there is no father in your house, is seriously abusive.

The church also discriminates against illegitimate children. Christenings for children born out of wedlock cost twice as much as christenings for legitimate children. And, in most churches, such christenings may not take place on Sunday, only weekdays. This rule of reserving Sundays for christening only legitimate children is sometimes relaxed if the father of the illegitimate child is a very prominent man. For example, one Sunday during my fieldwork the ninth illegitimate child of one very highly-placed Creole gentleman was christened and a large party followed the ceremony. Although his wife didn’t attend, a large number of his colleagues did.

Although I have referred to married women’s attitudes towards their husbands’ illegitimate children, what about their attitudes towards the extramarital affairs which produce these children? In interviews with the professional group and the university students, both men and women ranked arguments over men’s extramarital affairs as the greatest source of marital conflict. My own observations bore out their opinions. In fact, it is possible to say that men’s extramarital relationships are the most significant factor influencing family relationships and the organization of the household<sup>11</sup>. Despite the widely ramifying and disruptive effects on their marriage, men continue to establish liaisons and have children outside marriage and women appear to accept them as inevitable. As one man, a Creole, put it:

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10 According to married men, the ideal wife is one who overlooks her husband’s indiscretions and welcomes his offspring into the family circle. Wives, on the other hand, say they regard any woman who does “a fool”.

11 Harrell-Bond 1974, 1975.

“... I think that the whole thing is that inherently in the Sierra Leonean man, inherently he is a polygamist. I think inherently I am. Speaking for myself and I have thought about it, I think inherently I have got a polygamic germ in me. It isn't that this woman (referring to his girl-friend) is better or more sociable than my wife, but men just go about because they are polygamous-minded.

Men may not want to face it, particularly those who are Christians would not want to face that they are polygamous at heart by nature.”

I asked this man if he thought Europeans were different from Africans in this respect.

“I think the European man is really not polygamous. He is not. I have come across a good number of them. Perhaps I have just come across the wrong type, but I don't think you get people in Europe who are polygamous.

We do read about film stars and the number of women they get married to. We read about those [and] about people who run away with little girls of eighteen or nineteen, but those are the exceptions. I do feel that is why they catch the public eye.

Out here, if for instance, I had three or four sweethearts, it would not be in the papers. Even if I was going about seeing them in official hours, etc. But in England if the Minister of [he named his own post] had two or three sweethearts and was going to see them in official hours, you are going to find it in the personal column of some paper.

People [here] generally accept these things, I mean I don't say I do that, but it is the attitude in the community. I don't say polygamy is a good thing. The only thing is I think that it exists and there is no point in saying something which exists and is basically not wrong — I don't say it is good, but there is a vast difference between goodness and wrongness — I don't see why it should not be recognized and legalized.”

However, men's extramarital sexual relationships cannot be understood without appreciating the status associated with large numbers of children and its importance vis-à-vis his male friends, despite the long association of the educated with western, Christian ideas. Although a great deal of trouble may be occurring within his marriage as a result of his wife's discovering the birth of an outside child, a man will be receiving hearty congratulations from his friends and also from his relatives who usually welcome the new addition to the family. While the outside child may not be welcome to come to the married home, his “granny” and “aunties” on his father's side almost always accept the child. They may even be the ones who rear him.

It should also be noted that unmarried women achieve considerable prestige through unions with educated men. Unmarried girls, particularly those who have little hope of getting married to any high-ranking man in the community, are often quite willing to become their mistresses or outside wives, rather than to marry men of their own social position. As one former social worker pointed out:

“Well, if they don't want to get married to the kind of man who would like to get married to them — you see it may be a man of the same or lower social status to themselves — they think it is better to be the mistress Honourable so-and-so, than to be the wife of a carpenter. They will have their own status in their own social set-up. She would probably be better dressed than her other friends because Honourable so-and-so would be able to give her £ 10



to £ 20 more than the other girl who has a carpenter or who has a works foreman. So that would reflect in her appearance and will put up a big 'spree'. For them it is status, temporary though it might be."

The combination of the "polygamic germ" and the status associated with many children, together with the social ambitions of unmarried girls have resulted in a situation which has drawn considerable unfavourable attention:

"Dear Editor: First of all I must congratulate Kongosa Bench<sup>12</sup> for taking such a keen interest in the situation surrounding the behaviour of our girls and those who eventually become child mothers as a result of their own fault or otherwise.

I was very much moved by the question, 'How can we curb it a little?' This is no doubt a burning question lurking in the mind of all serious minded parents, teachers and religious leaders.

... If we are to curb this kind of disease in our girls I feel something ought to be done with those big men, married men at that, who roam our streets in Mercedes Benz and Admirals. These men intice young innocent girls with money and luxuries. They even build castles for them with sugar coated tongues and when the obvious happened, the girls are left holding the baby whilst the men continue their chase for others.

In this way misery has been brought on many homes, as the parents are left to bear the heart-break because of the disgrace which is often said, 'their children have put them'.

But what happens to these Big Men? They are in Freetown and hold key posts so therefore can do any wrong. Nobody dares say anything against them.

The big bosses take advantage of girls who are badly in need of jobs — what a state of affairs.

... As things are, our young girls have no protection from the state. But, of course, those who should or are expected to give that protection are the offenders in the first degree." (Letter to DAILY MAIL, 17 July, 1968, entitled Shocking Report — We need Legislation').

But despite such criticisms, not only men but married women seem to accept the situation as natural and few girls enter marriage expecting their husbands to be faithful. In interviews with the professionals I asked for a response to the statement, "It is unfair for a wife to expect her husband to have sexual relations only with her". One would certainly not expect any accurate measure of either attitudes or behaviour from such a question; the discussions following this question were of more interest to the inquiry. But despite the inadequacy of the question, 15 per cent of the women immediately responded that they agreed, they would not expect sexual fidelity. Another five per cent thought they would only tolerate sexual infidelity if they had no children themselves. The responses of the Creole women compared with the provincial women showed significant differences: only 9 per cent of the Creole women agreed, compared with the agreement of 29 per cent of the provincial women. Among the university students 23 per cent of the Creole girls and 39 per cent of the provincial girls agreed with this same statement. This difference between the attitudes of Creole and provincial women in the professional sample may reflect a greater acceptance of the

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<sup>12</sup> "Kongosa Bench" is a regular column appearing in the Sierra Leone DAILY MAIL. "Kongosa" is the Krio word for gossip.

“polygamist nature” of men by the provincial women compared with the Creoles, who have been under the influence of Christian ideas for a longer time. But more likely it reflects a quite different matter, an issue directly related to the fears that Creole women share regarding the legal status of illegitimate children. I turn to this question shortly.

As suggested, women’s tolerance of men’s sexual infidelity is related, among other things, to the general attitude about the importance of children. No one can envisage a successful marriage without them and, although a few informants suggested fostering children as the only acceptable alternative, the usual attitude is that childlessness fully justifies a man having children with another woman. The terrific conflict between their awareness of the importance of children and the difficulties associated with having them outside marriage, is shown in the responses of men and women in the professional group and among university students to the statement, “If a marriage does not produce children a wife should be understanding and allow her husband to have children outside” in Table 2.

**Table 2. “If a marriage does not produce children a wife should be understanding and allow her husband to have children outside.”**

	Males		Females	
	Professional	Student	Professional	Student
Agree	54	64	43	56
Other (only with the wife’s permission)	9	1	13	2
Disagree	36	31	43	41
No response	1	4	1	0
Totals %	100	100	100	100 <sup>a)</sup>
Number	85	142	72	97

a) Totals do not always equal 100% due to rounding

To appreciate fully why illegitimate children pose a growing threat to marriages of Sierra Leoneans we must now examine the legal status of these children and the case study of a recent attempt to revolutionize their position in the society. In a sense the problem can be summed up in the Krio saying, “Before the body is even cold, the fight for the property begins” (“Di b’di n’kol yet, d’n d’n begin f’t f’ propoti”).

### The legal status of children born out of wedlock

“In construing this will, regard must be given to the intention of the testator, a Sierra Leonean, whose will follows the pattern of most Sierra Leoneans in wanting to preserve their properties as a family property for as long as possible.”<sup>13</sup>

This comment made during the settlement of a disputed will leads us immediately into the key concern which makes the outside child such a threat to the married

<sup>13</sup> George v. George and Four Others. Sierra Leone Court of Appeal, 13 March, 1967 (Civil App. No. 20/66). (Emphasis added.)

woman and to her children, property and inheritance. In Sierra Leone, under the present law, illegitimate children have no inheritance rights from either of their parents, although today most people think they do.

The question of the legal status of illegitimate children became the subject of very heated public debate in 1965. A bill was drafted by members of the judiciary which would have eliminated the notion of illegitimacy and equalized the inheritance rights of all children.

Copies of the proposed bill were sent to the Bar Association, the National Women's Federation, and to leaders of the various church organizations, for discussion and consideration. There were radio broadcasts and articles in the press devoted to an explanation of the aims of the bill to the general public. A remarkable furore arose over this issue.

Sir Albert Margai, the Mende Prime Minister, publicly supported the bill and was accused of being its author. Critics said he had instigated the bill primarily to justify his own chaotic marriage situation. Sir Albert is a Catholic but, in addition to the wife he married in the church, he also has children with women whom he has presumably married by customary law. Moreover, his interest in the bill was construed by many Creoles as part of a general effort to corrupt Christian Freetown society with the traditional "primitive" practices of the "natives" of the provinces. The controversy over the proposed legislation shifted immediately into the political sphere. Sir Albert Margai's popularity with the Creoles had already waned<sup>14</sup>. Opposition was so effective that the bill was dropped before it ever passed draft stage and was never brought to a vote before Parliament. Nevertheless, the widespread publicity given the entire controversy has had important and continuing social consequences.

Although it is quite true that Margai was a keen supporter of the proposed legislation, it is not true that he was the author or even the one to initiate an attempt to pass such a law<sup>15</sup>. Interest among members of the judiciary arose from quite a different source.

In 1962 the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities was authorized to undertake a global study of discrimination against persons born out of wedlock (Saario 1967, p. 183). This commission circulated an outline for the collection of information about the position of children born out of wedlock among member nations. The collection of these data began in 1963 and extended over the next two years (Saario 1967, p. 184).

When members of the judiciary in Sierra Leone set out to provide the information requested for the United Nations study, they were confronted with an impressive discrepancy between what they thought to be the social status of illegitimate children and their present legal position. They had been asked to:

"Indicate whether the social status of persons born out of wedlock is inferior to that of persons born in wedlock (on any grounds such as ethical standards, religious ideas, the social concept of the family, etc.) Indicate also whether the fact of being born out of wedlock has any effect on membership in a religious community. Describe any other important aspect of the problem." (Saario 1967, p. 184).

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<sup>14</sup> See Kilson (1966) for a full discussion of the political events leading up to this period.

<sup>15</sup> I had the opportunity to discuss this proposed legislation with Sir Albert Margai in his home in London where he now lives in political exile. He dismissed the idea that efforts to pass the law were dropped because of extreme opposition that arose. He said that more difficult and pressing political events had to take precedence at this time.

Sierra Leone's response to this question was simply to state, "Generally, no distinction [exists] in political or religious life between persons born in wedlock and those born out of wedlock." ("Answers to United Nations Questionnaire. Persons Considered to be Born out of Wedlock": typescript copy from Attorney General's Office). Again, the inquiry asked, were any distinctions made with regard to public rights or access to social services? The response in the report from Sierra Leone was unequivocal: "There is no discrimination against persons born out of wedlock." Even if lawyers sincerely held these statements to be true, their subsequent review of the legal status of these children for the study revealed quite a different picture.

As noted above, in Sierra Leone a person is considered to be illegitimate if his parents were not married at the time of his birth under one of the three systems of marriage law. There is no way for a child born out of wedlock ever to acquire the status of a legitimate child, not even by the subsequent marriage of his parents.<sup>16</sup> In such cases where a decree of nullity is granted, any child who would have been the legitimate child of the parties to the marriage, had it not been dissolved, is considered to be their legitimate child. Although annulment of marriage does not make a child illegitimate and there is no specific procedure of disavowal of paternity, a person may be declared illegitimate by an Act of Parliament or the question may be decided incidentally in deciding a claim to property or other legal rights, or in proceedings for maintenance.

With reference to the question of family relationships, the child born out of wedlock has not legal familial relationship with his mother, although the law makes her liable for his maintenance. He is also not legally related to his father, but if paternity is established the father is liable for maintenance. There is also no legal relationship between the illegitimate child and the relatives of either his father or his mother.

An illegitimate person has no surname by inheritance although he may establish one by reputation. Nationality depends "principally on descent from a father and a father's father of Negro African Descent who are or were citizens of Sierra Leone and for this purpose the term 'father' includes a natural father."<sup>17</sup>

A child born out of wedlock acquires the legal domicile of his mother at birth, but he has the possibility of acquiring a domicile of choice when he is of age, just as does any other person.

Although the mother of an illegitimate child has no legal rights to the custody of her child, the court recognizes a blood relationship. The court is governed by equitable rules and so, in equity, regard must be paid to the mother, the putative father and to the mother's relations. The court has the power, however, to appoint someone else to have custody of an illegitimate child.

The mother of an illegitimate child must give him a mother's care and nurture and must not neglect or abandon him. She may not conceal his birth (an offence

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16 This discussion referring to the laws about the status of the child born out of wedlock is drawn from a typescript copy of the report to the United Nations, "Answers to United Nations Questionnaire. Persons Considered to be Born out of Wedlock" prepared by and obtained from the Attorney General's Office.

17 This definition of nationality included in the report to the United Nations commission stems from a Parliamentary decision regarding its membership. Afro-Lebanese, that is, persons having an African mother and Lebanese father, are viewed as a growing political and economic threat within Sierra Leone because it is believed there are many such children now being educated in the Lebanon. It is feared that they will return to Sierra Leone as Africans with a "Lebanese mentality" and take over political and economic control of the country. Nationality, for the purpose of limiting membership of Parliament, was defined in this manner.

by statute) and she must maintain him until he is sixteen, or in the case of a girl, until she marries. The putative father may be compelled to contribute to his child's support by legal proceedings.

An illegitimate person has no right to inherit from either of his natural parents although there is no limit to what may be given him by will. However, unless there is clear indication to the contrary, the expression "children" in a will is construed as referring to legitimate children only.

### **The attempt to eliminate illegitimacy**

So we see that in a society where it is contended that the illegitimate child faces "no social discrimination", he certainly does suffer considerable legal discrimination. Although he may assume Sierra Leone nationality, he has no legal relationship to either his own parents or their relatives, he has no surname, no inheritance rights, and he can never be legitimized. It is little wonder that members of the judiciary sought to remedy the situation with new legislation. They drafted a bill which would have eradicated legal discrimination against children born out of wedlock. The government newspaper published an article headlined:

"**BID TO END ILLEGITIMACY IN S. LEONE.** All Children of Sierra Leone citizens formerly regarded as illegitimate will become legitimate when a new Bill to this effect is passed into law." (DAILY MAIL, 3 September, 1965).

It should be noted, however, that the provisions of the proposed legislation were not intended to be retroactive. That is, the present number of persons in the population born out of wedlock would not be legitimized under its provisions. The aims were stated as follows:

"The object of this Bill is firstly to declare all children citizens of Sierra Leone born after its passing, to be legitimate; and secondly, to provide that the children of parents who subsequently marry under the Civil or Christian Marriage Acts or outside Sierra Leone shall, if the father is resident in Sierra Leone at the time of the marriage, be legitimated as children of the marriage. The Bill also provides a person legitimated under the laws of another country by the subsequent marriage of his parents shall be treated as legitimate in Sierra Leone if his father was domiciled in that country at the date of the marriage. The remaining sections deal with the effects of legitimation with regard to the succession to property and also with the right of [il]legitimate children who have not been legitimated to succeed to the property of their mother and the corresponding right of the mother of such illegitimate child to succeed to its property. Finally, the Bill provides for children of all citizens of Sierra Leone who are born after the date it becomes law, to be regarded as legitimate. There is a provision however to the effect that nothing in the Bill when enacted, shall affect the operation before the commencement of the Act, or affect any rights under intestacy of a person dying before the commencement of the Act." (From a typescript copy of the Bill supplied by the Attorney General's office).

The supporters of the Bill argued that the notion of illegitimacy itself was an evil by-product of Western influences. For example one Sierra Leonean wrote an article:

“Good news for the kids — and possibly for their mothers too! Sierra Leone is going to wipe off one more stigma from its social life, which has been one of the ugly relics of the colonial past! — the stigma of the ‘illegitimate child’.

The impact of Western civilization on this part of the continent brought with it certain advantages and disadvantages. For closely tied up with its religious influences was the doctrine of ‘one man, one wife’, which was meant to provide some security for the women. Western civilisation in Sierra Leone particularly, did not recognise any child born out of wedlock. The right of parenthood became a question of challenge and so started a new generation of unwanted children labelled by law, illegitimate.

While this problem may not have been so acute in Ghana and Nigeria, because of the strong desire of their peoples to preserve their own basic traditions for the settlers of Sierra Leone’s former colony area who had not only imbibed a lot of Western culture but had also become completely detribalised, there was hardly a place for the illegitimate child. At least, the law did not recognise them. And this influence has spread in Sierra Leone.” (Bangurah, 1965)

The argument that the whole notion of illegitimacy resulted from western influence and was not part of traditional African society is not actually true. There is sufficient evidence to show that illegitimacy is not a foreign concept in traditional culture<sup>18</sup>. However, the emphasis in traditional society seems to be on “illegal” sexual relations, since generally all women who are past puberty are married. Further, legitimacy in traditional society is of most importance with regard to succession and inheritance, particularly in contests over chieftainship. Otherwise, there seems to be relatively little evidence of social discrimination against the child conceived under these conditions.

Concern over inheritance and succession has considerable effect on relationships within the traditional household and it continues to do so in the household of the couple married under one of the ordinances. The status of the legally married wife is analogous to the position of the head wife in the polygamous household<sup>19</sup>. Ideally, compared with her husband’s other wives, the head-wife enjoys the position of highest prestige and authority. Ideally, her son should inherit the position and property of his father. But more often the father does not get round to considering the question of succession until he is old and then often he is likely to name the son of his favourite wife. She may be the most beautiful, youngest and most recent addition to his household. Women depend almost entirely on their sons for support and security in their old age. Thus, since the choice of who will succeed the father remains an open question until the father’s death, competition and rivalry among wives for favour for their sons continues over a very long period. However, in the case of the woman married under the ordinance the question of inheritance was thought to have been resolved, once and for all. Only the children of this union could inherit from the father, unless he happened to make a will which very clearly excluded them or included other heirs such as his illegitimate children. However, this is only true for those persons whose personal law is general law. Marriage in Sierra Leone under statutory

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18 For example, among the Mende “bi pueloi” is an abusive term meaning “You are a bastard”. “Poe loae” is the Mende term for a son of an illegal sexual relationship. “Wan ka pure” also refers to any child born of illegal sexual relations.

19 Baker and Bird (1959) make the same comparison.



law does not change the personal law of the partners with respect to inheritance. However, ignorance of this fact is quite general. Even one Mende lawyer gave as his reason for not marrying his wife in the church, the fact that he believed that if he did, she and her children would inherit his property rather than his male lineage under Mende customary law<sup>20</sup>.

Not surprisingly, the church organizations of Sierra Leone also bitterly opposed the proposed legislation, on the grounds that it would destroy the sanctity of the Christian home by promoting infidelity and increasing illegitimacy. The Bar Association, who also opposed the bill, did so on the grounds that it was a very inadequate way of attacking the problem of revising family law. Acknowledging the need for such reform, they argued it would require much more thought and consideration than the authors of this measure had given it.

In my interviews I asked people to respond to the statement, "A man's inheritance should be divided equally between all his children, whether born within the marriage or outside." Table 3 shows the results:

**Table 3 "A man's inheritance should be divided equally between all his children wheter born within the marriage or outside"**

		Males		Females	
		Professional	Student	Professional	Student
Agree		75	57	50	49
Disagree		23	40	48	49
Other		1	2	2	1
Totals	%	100 <sup>a)</sup>	100 <sup>a)</sup>	100	100 <sup>a)</sup>
	Number	85	142	72	87

a) Totals do not always equal 100% due to rounding

The professional men clearly favoured equalizing the inheritance rights of all their children. Even though women were divided in their view, the overall response to this question suggests that perhaps a sufficient margin of professionals might have voted in favour of the bill had it come to a vote.

Even more interesting than the response to the question is the fact that the respondents thought they were being asked to express an opinion on a law already in effect! Almost without exception the informants answered the question and then patiently explained to me that this was now the way the law stood in Sierra Leone. I was informed how legislation was passed a few years ago which provided just such inheritance rights to all outside children. Only lawyers (not even their wives) and a very few other professional people in the sample realized that this attempt to pass the law had been dropped. The publicity surrounding the issue apparently had had considerable impact on them but they had not followed its development. The Administrator General reported his experiences with clients who came to him about the distribution of an estate. He told me that time and again widows had come to his office about the settlement of their husband's

20 See Smart 1970 and Harrell-Bond 1975 for a complete discussion of the laws of inheritance and of the confusion resulting from attempts to solve the problems arising from marriages between members of different ethnic groups.

estate assuming that it would be divided among all his children. "You can imagine their relief," he said, "when they discover the law was not passed!"<sup>21</sup>

As a result of the belief that the law had been passed, quarrels between couples over husbands' extramarital relationships have increased. Perhaps this belief, together with the stiffening of the maintenance laws for children born out of wedlock, has encouraged men to avoid pregnancies in these outside relationships, as I found that married men were far more likely to be using contraceptives (or encouraging their use) with women outside marriage than with their wives<sup>22</sup>. Perhaps the belief that this law had been passed, which increased conflicts within households over extramarital relationships and outside children, had already served to decrease the number of children, fathered by married men, born into this stigmatized social category.

The authors of the bill that would have eliminated the legal discrimination against children born out of wedlock must have known they would encounter fierce opposition from some groups. Nevertheless, they must have also been convinced that such legislation would bring the law into line with general social practice and would be supported by the majority.

The legal system prescribed by the colonial government could hardly be described as representing the consensus norms of the society as a whole at any time in the history of Sierra Leone. In the area of family law the imposed legal system outlined the structure for the transformation of the institution of marriage and provided a model for a new basis for the measurement of status. The colonial period survived long enough to convince a segment of the population of the superiority of the foreigners' ways. This group became committed to and identified with the new system of marriage and their prestigious position in the society came to be equated with it. As we have seen, these values could be manipulated in the interest of the elite who had inherited the positions of power from their colonial predecessors. And, as we have seen, when an attempt was made to change the law to be more in line with the common practice of having children outside marriage, we find such proposals immediately ramifying into the political sphere.

In view of the numbers of children born out of wedlock and the extent to which they are socially accepted, obviously the present law relating to illegitimate children does not represent the values and practices of the society as a whole. The fact that people so readily accepted the proposed law as an accomplished fact suggests it did come close to representing even the professionals "internalized norms or the customary law" in Pospisil's terms (1971, p. 196—197).

However, the law as it stands today protects the interests of a tiny segment of the population (the Creoles and educated, Christian provincials) who have identified their superior position in the society with the practice of Christian monogamous marriage. Of course, although the law conflicts with the actual behaviour of these same people, it does reflect their values regarding economic matters. By restricting inheritance rights to legitimate offspring a couple may limit the dispersion of their economic resources, permitting them to build up and control wealth and property.

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21 Although these interviews were conducted in 1968—69 and considerable publicity about the matter has occurred since (for example, I was interviewed on a radio broadcast along with the Administrator General and this was the main point of our discussion) ignorance regarding the fact that the law did not pass persists. The Administrator General still finds most widows do not know that their husband's estate will not have to be divided among his outside children. I recently gave a lecture to Sierra Leone students in Britain. They were amazed to learn that the law was not in effect. Two were especially concerned since they were law students and had planned to refer to the law in papers they were writing for their tutors!

22 A detailed examination of the influence of the belief that the law had been passed on marital and extra-marital relationships may be found in Harrell-Bond 1974 and 1975.

It could well be argued that responsible fathers still have the possibility of providing for their illegitimate children through a will. As we have seen, this small group of persons wield tremendous power and influence in the country and they are in the position to impose an "authoritarian type" law (Poposil 1971). Such findings reveal the close connection between the law and political power. Barnes (1969) also found this relationship in his examination of Ngoni Native Courts.

"Each subculture provides its own set of legal norms, and within a plural society the norms of one segment may conflict with those of another. The important characteristics of plural societies is, however, not the mere diversity of legal norms and other aspects of culture. Characteristically, one segment imposes, or endeavours to impose, its norms on other segments that do not accept them but are coerced into partial conformity" (p. 102).

Perhaps the belief that legal systems are completely insulated from political factors, or our "Utopian model" as Barnes (1969) puts it, has obscured investigation into the manner in which political power is maintained and manipulated through legal institutions.

In Sierra Leone we have seen how the dispute over the legal status of children born out of wedlock exposed a number of conflicts of interest between opposed segments of the population. It revealed the political struggle between the Creoles and the provincials, the conflicting systems of status and prestige as represented by the traditional society and that of those who try to follow western patterns, the conflicts between men and women as women seek economic security for themselves and their children, and husbands seek prestige and status through having many children, and the opposition between married women (or "principal wives") and unmarried mothers in their separate struggles for economic security and status. It is noteworthy that both those who promoted the bill and those who fought against it, in order to buttress their arguments appealed to values imposed during colonial rule. On the one hand, supporters blamed western values for introducing the idea of illegitimacy, creating a group of persons who are discriminated against. On the other hand, those who rejected the bill defended their position by appealing to Christian ideals regarding the sanctity of monogamous marriage.

Moore (1970), cited earlier, noted that laws are passed because legislators presume they will affect behaviour. As she points out, laws do not always have the intended effects, but the observation of behaviour after a change in legislation may help us to know more about the relationship of ideas to social action. Although the attempt to change the legal status of children born out of wedlock failed, the people who would have been most affected by its passage believed that the law had been passed. The result is a kind of experimental situation which allows us to look at the effects of the law. Those who fought the bill presumed its passage would have a detrimental effect upon Christian monogamous marriages, encouraging promiscuity among married men and an increase in outside children. It appears, however, that they were quite incorrect in their assumptions. Such a law could, in fact, effect a reduction in illegitimate children and perhaps might eventually strengthen marital relationships.

The belief the law was passed, together with the stiffening of maintenance laws, resulted in an increase in paternity disputes. Paternity disputes were unheard of in traditional society, since everyone welcomed more children in the family.

The threat to the inheritance rights of legitimate children increased tension between married couples over the practice of married men establishing extra-marital liaisons. Men have become less eager to father illegitimate children and have even begun to use or encourage the use of contraceptives in their relationships outside marriage (although, for other, more complicated reasons, they are less willing to encourage their wives to use them<sup>23</sup>). Finally, the belief that the law has been passed has effectively eroded the former sense of security married women had in what was unquestionably their superior role vis-à-vis other women in the society and particularly in relation to the "other women" in their husbands' lives. This insecurity has had a far-reaching effect upon marriage relationships and is central to the understanding of many aspects of the organization of family life.

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<sup>23</sup> Harrell-Bond 1974.