

English Law and Illegitimacy

As one would assume, colonial and early American laws were rooted in English law. Understanding English law helps provide context for the viewpoints expressed concerning particular issues, such as illegitimacy. Sir William Blackstone (1723-1780), one of the most influential eighteenth century English legal scholars, believed that since man was created by God, man must incorporate Judeo-Christian principles, particularly the Ten Commandments, into the legal system. Between 1765 and 1769, Blackstone wrote *Commentaries on the Laws of England*; his work served as the textbook for many American lawyers. In “Of Parent and Child”, the sixteenth chapter of Blackstone’s first book in the series, he outlines the duties of parents and children to one another. More importantly, Blackstone categorizes children and the consequences of such designations.

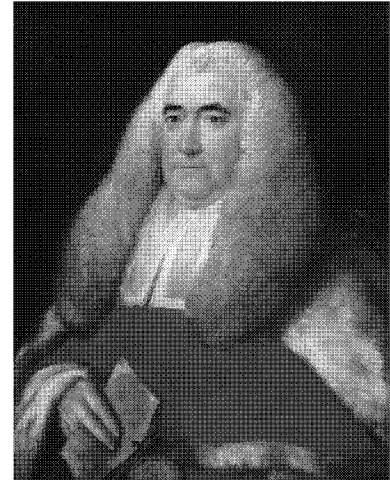


Figure 1 Sir William Blackstone

“CHILDREN are of two sorts; legitimate, and spurious, or bastards...”

“II. WE are next to consider the case of illegitimate children, or bastards... WHO are bastards. A bastard, by our English laws, is one that is not only begotten [conceived], but born, out of lawful matrimony. The civil and canon laws do not allow a child to remain a bastard, if the parents afterwards intermarry: and herein they differ most materially from our law; which, though not so strict as to require that the child shall be begotten, yet makes it an indispensable condition that it shall be born, after lawful wedlock.”

Blackstone continues by explaining the superiority of English law to the Roman laws concerning the issue of illegitimacy. Here, he makes it clear that the goal of the English law is to promote matrimony *prior* to the child’s birth for the protection and wellbeing of the child during its youth and adolescence, as well as ensure inheritance rights and claims.

“THE method in which the English law provides maintenance for them [bastards] is as follows. When a woman is delivered, or declares herself with child, of a bastard, and will by oath before a justice of peace charge any person having got her with child, the justice shall cause such person to be apprehended, and commit him till he gives security, either to maintain the child, or appear at the next quarter sessions to dispute and try the fact. But if the woman dies, or is married before delivery, or miscarries, or proves not to have been with child, the person shall be discharged: otherwise the sessions, or two justices out of sessions, upon original application to them, may take order for the keeping of the bastard, by charging the mother, or the reputed father with the payment of money or other sustentation for that purpose. And if such putative father, or lewd mother, run away from the parish, the oversees by direction of the two justices may seize their rents, goods, and chattels, in order to bring up the said bastard child.”

“The rights [of a bastard] are very few, being only such as he can acquire; for he can inherit nothing, being looked upon as the son of nobody... A bastard may, lastly, be made legitimate, and capable of inheriting, by the transcendent power of an act of parliament, and not otherwise...”

References:

Figure 1, Carnegie Mellon University Library (Online):

<https://libwebspaces.library.cmu.edu:4430/posner/sp09/subcontents/images/SirWilliamBlackstone.jpg>

For transcriptions and online viewing of Blackstone’s Book 1, Chapter 16, please visit “The Laws of Nature and Nature’s God” website: (<http://www.lonang.com/exlibris/blackstone/bla-116.htm>).