

6 THE PROBLEM OF ILLEGITIMACY

For this one good reason every child born into this world has a God-given right to be brought up as well as procreated by its natural parents. It is this right of the baby which makes conception out of wedlock a sin against God as well as the baby. It is significant that only human beings can be conceived and born "illegitimate." A generation ago Bronislaw Malinowski formulated the Rule of Legitimacy, which asserts that every society has a rule that each child should have a legitimate father, to act as its protector, guardian, and representative in society.⁴¹ Like all other rules, this one is increasingly violated today. But wherever and whenever the rule has been strongly enforced, the illegitimacy rate has been low, and individuals who have not conformed, together with their unfortunate offspring, have been made to suffer severe sanctions. The regulations form and sustain the family function to move eligible young men and women to unite in marriage before enjoying sexual intercourse with each other, so that in the event of a baby being born it will occupy a definite position in a family unit within the social structure. Such regulations also fix responsibility for the child's maintenance and socialization. These regulations define "legitimacy" in society, and thereby "illegitimacy" as well. In his *French Revolutionary Legislation on Illegitimacy* Crane Brinton has epitomized the close relation between legitimacy and illegitimacy:

Bastardy and marriage in this world are quite supplementary - you cannot have one without the other. In another world, you may indeed separate the two institutions and eliminate one of them, either by having marriage so perfect - in various senses - that no one will ever commit fornication or adultery, or by having fornication so perfect that no one will ever commit marriage.⁴²

Such a view of illegitimacy has important implications. One is that the apostate liberal notion is incorrect which suggests that the "problem" of illegitimacy may be easily "solved" if the law defines all children as legitimate, or the birth certificate omits any information about illegitimacy, as thirty-three American states did in 1956. Of this inhuman humanist legal fiction William J. Goode rightly points out in his excellent contribution to *Contemporary Social Problems*:

As long as no family unit has been established according to the norms of the society, the child's status is unchanged, and there will be considerable ambiguity as to the father's, mother's and blood relatives' role obligations toward him or her.

The answer to the questions, "Why illegitimacy?" and "Why legitimacy?" are the same-that the maintenance of the social structure requires that the obligation to create the next generation biologically and socially be assigned to a socially approved family unit....

In the United States and in Western society generally, illegitimacy is condemned partly because it is evidence of sexual relations outside marriage. However, this connection is not usual, for some degree of premarital sexual license is found in about 70% of the societies for which we have information available, but childbirth outside marriage is not approved in those societies. This fact suggests that most societies are more concerned with illegitimacy than with sexual intercourse outside marriage... .

Thus the question posed by Kingsley Davis must be asked: Why does society not "solve" the problem by requiring the use of contraception, and when this fails, abortion? His answer is that to break the normative relations between sexuality and the family, so that adults would as a matter of course decide rationally whether they would enjoy sex within or outside of the family, would also reduce the strength of the motive to marry and found a family. The radical changes necessary to eliminate illegitimacy almost completely would very likely come close to eliminating the family system too. ⁴³