

From: Peter Laslett, Karla Oosterveen and Richard M. Smith (eds.), *Bastardy and its Comparative History* (Arnold, 1980)

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## Illegitimacy and illegitimates in English history

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'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. (1) Thus commences one of the classic sociological analyses of the types of illegitimacy, and it immediately poses three problems for the anthropologist and the historian concerned with this topic in Britain. What was the rate of illegitimacy in our country before civil registration began? What was the attitude to those who bore and begat bastards? What was the attitude to the bastards themselves?

The first of these questions has been given a preliminary answer for England in the figures contained in Peter Laslett's introductory chapter. In this initial study in the British section of the book I want to tackle the other two questions. I shall, however, consider at some length the incidence of illegitimacy in a particular parish, Earls Colne in Essex, in relation to the overall estimates of births and baptisms of bastards contained in the figures published by the Cambridge Group for the History of Population and Social Structure. Sources for the study of bastardy other than the registers makes such an assessment possible, and it is from these sources also that we can begin to try to answer our two further questions.

'Try', because as the reader will notice, research into the minute details of social life in Earls Colne is still in progress. (2) Most of our statements, particularly about the sociology of bastardy in English historical development, will take the form of queries rather than conclusions, and the reader may turn to the chapters which follow with a questionnaire in his mind. On one of the recurrent themes of this section, however, he will have a preliminary body of evidence provided for him, and this is the possibility of a bastardy prone sub-society, which has already been referred to in chapter 1 and which is the subject of chapter 8.

For the social anthropologist interested in the family life of people in the past and in the present, the outstanding feature of the English historical record is that so many people had to wait for so many years between sexual maturity and fully sanctioned sexual intercourse within marriage. Some of them indeed, particularly perhaps the servants and the younger children in families, may never have been able to marry at all. How then is this reflected in the bastardy rates and in the

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1. Kingsley Davis, 'Illegitimacy and the social structure' (reprinted 1964), p.21.

2. The Social Science Research Council and King's College Research Centre, Cambridge, have provided support for the collection and analysis of the local records relating to the parish of Earls Colne described in this chapter. I am most grateful to them, and to my colleagues, Cherry Bryant, Sarah Harrison, Charles Jardine, Tim King, Iris Macfarlane and Jessica Styles, who have all assisted in many ways. A fuller account of the sources used and the methods employed is contained in Alan Macfarlane, Sarah Harrison and Charles Jardine, *Reconstructing historical communities* (1977), and

a further discussion of sexual behaviour in Earls Colne in the late sixteenth century in 'Historical Anthropology' (1977). The original essay upon which this chapter is based was more than twice this length; I would like to thank Peter and Janet Laslett for encouragement and help in reducing and improving it.

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attitude to illegitimacy? Was it permissible to have bastards, although one could not marry? Is there evidence from the number of bastards that extra-marital sexual intercourse was frequent? The topic is of special interest and importance for two reasons. Firstly, because it illustrates a clash between the accepted morality and actual behaviour, and hence is used by many commentators as a social strain gauge', and index of 'anomie' or social breakdown. There are, as we shall see, dangers in doing this. Nevertheless, bastardy rates reflect indirectly many other features of the society. Again, bastardy is so visible an offence, leaving its mark in the shape of a child needing provision, that it appears very much more often in the records than other offences.

Incest and bestiality may abound and not be noticed. But, with certain exceptions, such as the aborting or killing at birth of bastards, acts of intercourse leading to illegitimate births are very much more likely to be recorded. Moreover, while brides pregnant at marriage can be traced in two sources only - the parish registers and ecclesiastical court records illegitimacies will appear in a wider -range of records. Economic provision for the child was of direct concern to parish officials and to justices of the peace, so that quarter sessions files, accounts of overseers of the poor, wills and other documents will all throw light on the attitude to and the maintenance of bastards.

Cases of bastardy can therefore be used to test the outlook on sexual offences as well as their incidence. Furthermore, they are a useful check on the difference of attitude of different sets of people: local villagers, churchwardens, court officials., justices of the peace. It is possible to study not only specific cases. but also. at the statistical level, the actual incidence and distribution of a particular offence over time and between different social groups.

Except indirectly, in their general study of kinship and paternity, anthropologists have not contributed greatly to the problems surrounding the topic of illegitimacy. They have shown that the attitude differs from society to society., for though illegitimate children are nearly always penalized, as Malinowski has pointed out, (3) there are societies where illegitimacy carries little stigma .(4) With inadequate data, anthropologists have been unable to produce any numerical estimates of the extent of bastardy, and hence any theories concerning change over time, or differences between sub-groups in the population. Sociologists have been much more interested in the topic and have not only provided some interesting comparative rates but have also tried to devise various frameworks to analyse types of illegitimacy: thus Goode distinguishes fourteen major kinds of illegitimacy., from consensual unions and concubinage to various types of incestuous association.(5) The historical data, when assembled, should be useful in refining and developing their hypotheses.

In England bastardy has been studied for some considerable time. In the last century Leffingwell attempted to analyse the geographical and social distribution of illegitimacy.(6) But, with the exception of an interesting essay on bastardy in a Warwickshire village by A. W. Ashby in 1912 (7) relatively little progress has been

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3. B. Malinowski, *Sex and repression in savage society* (1960), pp. 21, -,13.
  4. For example, in parts of Nepal, C. von Furer-Haimendorf, *Sherpas of Nepal* (1964), p.41; or Sri Lanka, E. R. Leach, *Pul Eliya: a village in Ceylon* (1961), p. 91.
  5. W. J. Goode, *The family* (1964), p. 23; chapter 3 summarizes much of the relevant sociological literature, particularly the work of Kingsley Davis.
  6. *Illegitimacy and the influence of seasons upon conduct* (1892).
  7. 'One hundred years of Poor Law administration in a Warwickshire village'
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made until recently, when the research undertaken at the Cambridge Group for the History of Population and Social Structure began to be published.

## **2 The legal situation relating to bastardy**

There was great ambiguity and conflict in the legal definition of bastardy in England in the past, which makes it impossible to give a simple summary of the position. One of the crucial distinctions was between what was termed 'general bastardy', where the parents did not marry after the birth of the child, and 'special bastardy' where, espoused or not at the time of the birth, they later married.<sup>(8)</sup> When 'general bastardy' was disputed, it could be tried in the ecclesiastical courts as such, but 'special bastardy' could only be tried in the common law courts, for it was not recognized as 'bastardy' by the church (Burn, I, p. 112).<sup>(9)</sup>

By the law of the church all those born of parents who married, no matter when the marriage took place, were legitimate (Burn, I, p. 112). According to the thirteenth-century Bishop Grosseteste, there had been an earlier custom that any children born before marriage were placed beneath the care-cloth at the wedding service and were held to be legitimate. <sup>(10)</sup> Another disagreement between different branches of the law was over inheritance by bastards. On the one hand, by canon law and common law, bastards received no automatic inheritance in land. In manorial law generally, in theory 'a bastard can never be heir unto any man, nor yet have heir unto himself but his children.' On the other hand, 'the Parents of a Bastard may by Deed executed in their Lifetime, or by last Will, give or devise their Lands to their Bastards.' <sup>(12)</sup> It is clear that both the legal and de facto position, and particularly the treatment of bastards in wills., needs further analysis and investigation.

Another ambiguity lies in the treatment of parents. The 'bastard' was clearly penalized by disadvantages in inheritance and other spheres, but how were the offenders themselves punished? A curious fact, pointed out by Ashby (p. 84), emerges here, namely that 'the begetting or conceiving a so-called illegitimate child were acts not punishable under English law.' The position in the secular code is illustrated by the statute of 7 James, cap. 4 (1610), which stated that:

Every lewd woman which shall have any bastard which may be chargeable to the parish, the justices of the peace shall commit such woman to the house of correction, to be punished and set on work, during the term of one whole year [Burn, I, p. 120].

But this only applied to those who had a bastard 'which may be chargeable to the parish'. If the paternity was acknowledged, and the father could provide maintenance, the offence would not

come before the civil courts at all. The very considerable material concerning the punishment of parents and provision for bastard children arises therefore out of the need to assure maintenance and to

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8. See the discussion in Richard Burn, *Ecclesiastical law* (1788) 1, pp. 117-19.

9. Burn, I, p. 112; the relations between secular and ecclesiastical courts are complex and only an over-simple account of the changing legal position can be given here.

10. Cited in G. C. Homans, *English villagers in the thirteenth century* (1941), p. 172.

11. *The order Of keeping a court leet and court baron, 1650* (1914), p. 41.

12. Henry Swinburne, *A briefe treatise of testaments and last willes* (1728), p. 288. On pp. 350-55 Swinburne discusses three major kinds of illegitimacy and the rules concerning executorship and legacies concerning illegitimates.

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prevent the bastard 'falling on the parish'. It was ordered, for example, that midwives at childbirth should try with every means in their power to extort the name of the genitor out of the unmarried woman. (13)

The actual 'punishment', if there was no problem of maintenance, was on a par with other sexual offences. namely public penance in church during a service. It is not even clear whether the father was meant to undergo the same penance as the mother. It appears that the time at which the church punishment was to take place was at the 'churching' of the woman after childbirth. Thus in the articles for York Province issued by Archbishop Sandys in 1578 it was enquired:

Whether your minister do church any unmarried women after they have been delivered of their children begotten unlawfully, before they have acknowledged their faults openly according to the order prescribed by the Ordinary or his deputy? (14)

Overall, the impression is that bastardy was treated by the church courts as the logical outcome of, and morally equivalent to, fornication. Only a detailed comparison of sources, for instance to see whether bastards registered in the parish registers were also presented at the ecclesiastical court, will begin to tell us what happened in practice.

There are many other difficult points of law and definition to decide in relation to bastardy. If a couple married and it was subsequently discovered that the marriage had to be annulled because of some bar, precontract or affinity, for example, were their offspring illegitimate? The position seems to have been that both by canon and common law, as long as they had a full church wedding, and it could be shown that at least one of the partners could be proved to have been in ignorance of the obstacle to marriage, then the children were still legitimate though the parents were not really married. (15) These were known as 'putative' marriages.

Again, if the husband had been absent from his wife for a number of years, and she had a child in his absence, was it a bastard? According to Coke, as long as the father was alive and in England, the child was his and legitimate (Burn, I, p. 110). Or, what was the position of a woman impregnated by one man who then proceeded to marry another man and the child was born after the wedding to the latter? It was apparently believed that the child was legitimate and must be accepted as his by the man who married the pregnant woman. (16) If there was doubt about the paternity, but both 'paters' were legitimate, when a husband died and the wife remarried, for example, then the

child could choose which husband was to be his lawful 'father' (Burn, I, p. 110). Thus there seems to have been an attempt to ensure that the child had a legally recognized father wherever possible, even though it might be well known that he was not the genitor.

The situation is quite different in certain African societies where the physical genitor is of very little importance and where illegitimacy in the European sense is

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13. Articles for 1575 for Winchester, for example, containing such instructions are in the Bodleian Library, Oxford, Vet. Al. e. 38, article 46.

14. Reprinted in W. P. M. Kennedy, ed., Elizabethan episcopal administration (1924), p. 95. An 'Ordinary' was the bishop or bishop's deputy.

15. G. E. Howard, A history of matrimonial institutions (1904) 1, p. 356. Chapter 7 of Howard's essential work summarizes the complex legal position concerning the church's view of legitimacy and marriage.

16. E. Chamberlayne, The present state of England (1673), p. 333.

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practically impossible since the child is always welcome and always belongs to somebody. (17) In these societies bastards are not regarded as a 'burden'. But in England during our period, bastard children, rather than being greeted with delight, were seen as an economic problem, likely to be a drain on scarce communal resources. The quarter sessions of every county are filled with examinations and orders concerning the maintenance of bastards. By an act Of 1576 (18 Elizabeth C. 3), it was ordered that bastards should be supported by their putative fathers, though bastardy orders in the quarter sessions date from before this date. (18) If the genitor could be found, then he was put under very great pressure to accept responsibility and to maintain the child.

### **3 The attitude to illegitimacy**

The attitude to bastards and bastardy is best approached indirectly: through the way bastards were treated, through the subsequent marriage expectations of their parents, and so on. The evidence suggests that there was little emphasis on virginity of brides in traditional English society, at least among the people at large. Although Dr Johnson noted that the chastity of woman was 'of the utmost . importance, as all property depends upon it', (19) in theory at least, we do not know whether, in practice, the bearing of a bastard child carried a stigma for a woman. In Germany, according to Fynes Moryson, those who lost their virginity found it difficult to get a husband, (20) and the contemporary medical belief that all later children would take after the first (the mother's womb being like a mould), would hardly encourage men to marry women who had borne a bastard. (21) Though the dies which follow show that men and women who had engendered bastards did spouses, even some of those who had more than one bastard, it seems likely at their marriage chances were significantly lower than for others of the same "lass and background. It could well be that the mothers of bastards were often ants or younger daughters and at a socio-economic level where marriage was less likely in any case but especially at the average marrying age. In the later eighteenth century a form of illegitimacy resembling the common law unions of contemporary South America was coming into existence and might almost be as a normal institution. These points are discussed further in chapter 8.

A brief survey of seventeenth-century English sources tends to give the impression that bastardy, though its ascription might be libellous . (22) was not greatly of, as long as the child was maintained. Thus one vicar described how a neighbour had a maid who produced four successive bastards, 'yet because

he was a good work woman he kept her still.' (23) Gervase Holles recorded, more with fond indulgence than indignation or horror, that one of his uncles was very enamoured of women and begat several illegitimate children.(24) It seems quite

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17. For instance, in the classic Nuer case, E. E. Evans-Pritchard, *Kinship and marriage among the Nuer* (1951), p. 120.

18. An order from a year before the act is in the Essex Record Office, County Hall, Chelmsford (hereafter ERO), Q/SR/49/27.

19. Quoted in Christopher Hill, *Puritanism and revolution* (1962), p. 384.

20. Fynes Moryson, *An itinerary* (1908) IV, p. 299.

21. This belief, which William Harvey seems to have adopted, is known technically as 'telegony'; there is a brief discussion of it in Richard Lewinsohn, *A history of sexual customs* (1958), pp. 204-6.

22. An example of a bastardy libel is in *Historical Manuscripts Commission Report III*, appendix, p. 119a.

23. T. Worthington Barlow, *Cheshire: its historical and literary associations* (1885), p. 152.

24. A. C. Wood (ed.), *Memorials of the Holles family, 1493-1656* (1973), p. 192.

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likely that sympathy with the plight of the mother and general tolerance of bastardy as a frailty, but not a sin, continued at least until the nineteenth century - Even in that century there are indications of such tolerance in two of the classical accounts of rural life at that time, *Lark Rise to Candleford* and *Forty Years in a Moorland Parish*. (25) It is possible that the situation was similar to that observed in other societies, where there may be a scandal at the time, but afterwards the child, mother and father are accepted back into normal social relations and the affair does not cause shame. (26)

Yet there are also indications that the picture of tolerance and indulgence can be overstressed, especially when it comes to bastardy itself, as is insisted by Keith Wrightson in chapter 6. Lawrence in his diary of the later seventeenth century warned people to avoid the danger of the 'staine of bastardy' on their coat of arms,(27) and there is some evidence that the women involved felt considerable shame. Thus in a Colchester deposition in the early seventeenth century we learn of a woman who had had one bastard and who said that 'she would never come to shame againe' and proceeded to take ratsbane poison in an attempt to kill herself. But this is the only case I have come across where bastardy led to attempted suicide, and the woman involved proceeded to tell the man in the affair, who gave her an emetic. Perhaps she was trying to force his hand rather than to kill herself from shame. Further indication of the actual attitudes will only emerge in the actual treatment of bastard children and their Parents, and in the degree to which people were willing to go to the length of bringing irregular pregnancies to an end before birth.

#### **4 Abortions of illegitimate children**

One way of trying to assess the attitude to bastards at the local level is to examine the life expectation of bastards (this is attempted in a preliminary way by Karla Oosterveen and Richard Smith in chapter 3, below). But even before livebirth, the bastard child might be discriminated against in that the abortion of the foetus was attempted. The success and frequency of abortion is not as yet known for periods in the past, but it is clear that attempts were made to abort illegitimately conceived children. Thus a Colchester woman who was made pregnant in the mid seventeenth century took 'savin' and other 'phisick', but neither was successful. When she again conceived illegitimately, her lover, an amateur physician, 'by phisick often assayed to destroy the same child within her', but again unsuccessfully.(28) Curiously enough it was exactly the same herb that had been used half a century earlier in Essex: the rector of Leaden Rothering in 1574 was supposed to have made a woman pregnant and, she suspecting the same, he 'brought her from London a rough herbe, which he called saven willing her to use it in drink for hindering the child if she should have any'. She proceeded to have a premature child which died 'not having either hair nor nails'.(29) In this case the herb was clearly effective.

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25. Flora Thompson, *Lark Rise to Candleford* (1945), pp. 129-30; Rev. J. C. Atkinson, *Forty years in a Moorland parish* (1891), p. 5.

26. For example, Geoffrey Gorer, *Himalayan village: an account of the Lepchas of Sikkim* (1967), p. 173.

27. G. E. Aylmer (ed.), *The diary of William Lawrence* (1961), p. 6.

28. The whole extraordinary set of depositions is contained in a set of examinations taken on 12 November 1638, in the Colchester Examination Book for 1619-45, at County Hall, Colchester. I am grateful to Mr J. A. Sharpe of the University of York for the reference.

29. The case is in the Consistory Court of London Correction Book for that date, now deposited at the London County Record Office, unfoliated.

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A few years earlier an accused witch at Hatfield Peverel in the same county had confessed that, being pregnant by a man who refused to marry her, and the man dying, she 'willed Sathan [her cat familiar] to destroy it, and he bad her take a certayne herbe and drinke it, whych she did, and destroyed the child forthwyth.'(30) Obviously, in the accusations and cross-accusations of a trial which might well end in a death sentence, we have to treat this sort of evidence with caution. The cases we have considered, however, suggest that abortifacients were fairly widely known and used, and more especially when a foetus was going to be born as a bastard.

Contemporary doctors also believed that abortions were, possible. Andrew Boorde stated that there were certain 'medicines' (i.e. laxatives) which caused an abortion, and went on to suggest that 'light women' might use such medicines if he described them. (31) Other methods were also employed. Modern sociologists 'have pointed out that it is not too difficult to induce abortion by wearing an over-tight belt, and a sixteenth-century case is alluded to where a priest's mistress who was pregnant, 'tightened her girdle & performed exercises with a rolling pin in order to destroy the foetus'. (32)

It would seem that people felt sufficiently opposed to the birth of an illegitimate child to resort to such practices. The problem is that, if abortion was widely and successfully used, the baptism registration in the parish registers would be a less accurate index than might be supposed, thus adding considerable difficulties to -the statistical study of illegitimacy.

## 5 Infanticide of illegitimates

If the foetus did survive to termination of pregnancy, it might still be destroyed at birth. Again, infanticide is extremely difficult to assess. But there is more chance here, since infanticide is recognizably murder, and there was a much larger body to dispose of. That we might well expect a considerable number of bastard children to be murdered at birth is implied by an act passed in 1624 (21 James I, cap. 27), 'to prevent the murdering of bastard children'. The wording is as follows:

Whereas many lewd women that have been delivered of bastard children, to avoid their shame, and to escape punishment, do secretly bury or conceal the death of their children, and often, if the child is found dead, the said women do allege, that the said child was born dead.... Be it enacted ... in every such case the mother so offending, shall suffer death as in the case of murder, except such mother can make proof by one witness at the last that the child . . . was born dead.

Certainly, illegitimate children are destroyed in a number of societies. The Colchester deposition previously alluded to (see note 28) contains several infanticides, by the same mother: she buried one, poisoned another, smothered a third. When a neighbour encountered scruples in the mother as to killing one of them, the neighbour replied: 'Tush, it was not the first she had made away.'

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30. The pamphlet is reprinted in C. L. Ewen (ed.) *Witch hunting and witch trials* (1929), p.318

31. Andrew Boorde, *The breviarie of health* (1575), fol. 8.

32. R. A. Houlbrooke, 'Church courts and people in the diocese of Norwich, 1519-1570' (1970), p. 160. I am grateful to Dr Houlbrooke for permission to quote from his unpublished thesis.

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Since it was a capital offence to murder an infant, it is in the assize courts principally that we encounter infanticide. It should be possible to obtain some idea of the distribution of indictments in different periods and counties from the extensive assize files of the period. But it is in the depositions, occasionally in the quarter sessions papers, but more often in the unique Northern Circuit depositions for the latter half of the seventeenth century, that one obtains a really close insight into the circumstances of illegitimate births.(33)

An example of quarter sessions examinations occurs in Essex in 1645 (ERO, Q/SBa/2/6i), where there are depositions of various persons 'concerning the murdering of a bastard child born on the body of Margaret Cumplin'. The gist of the examinations was that after the birth, the mother and a man (the presumed genitor?) rode up to London from Burnham, and there the man took the infant, saying he was going to place it with a nurse in 'Thames Street', and she never saw it again. How frequent the use of London was as a dumping ground for illegitimate children in this period we do not know. Certainly, there are many descriptions of bastards being abandoned in the City,(34) and an examination of foundling hospital records in the following centuries may show some interesting features.

## 6 Illegitimacy statistics

The figures for England summarized in chapter 1 and those given in other chapters of this book on illegitimacy in Europe before the age of statistics all come from entries of baptisms in the parish



registers. Although the researches at the Cambridge Group have insisted on the limitations of such statistics and the problems which have to be recognized if they are to be used as measures of variations in extra-marital sexual relations,<sup>(35)</sup> little has yet been done to estimate their reliability. No investigation has been made, for example, of contemporary theological opinion as to whether bastards should be baptized at an, and Eversley (1966, p. 62) has written that 'many illegitimate births must have been ignored, because only strong religious convictions would lead one to baptize the child.' It is true that in a proportion of English registers, not yet determined but certainly not negligible, no illegitimates appear in the baptismal registers at certain periods, and in many parishes, especially in the years around 1640, decades go by without a baby being marked as a bastard when it seems very unlikely that none was born. Obviously a great deal more investigation is called for.

The ecclesiastical injunctions of the reign of Queen Elizabeth undoubtedly concerned themselves with the question of bastard bearers. The article already cited ordered that a woman should not be churched after illegitimate child bearing until she had made an open confession in church. But if a woman remained unrepentant, would her child be baptized? A hint that the bastard's religious status was extremely dubious occurs in Thomas Becon's works, where he cites the old law that bastards should not be allowed to enter the congregation of the faithful.<sup>(36)</sup>

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33. The relevant class is in the Public Record Office, Assizes 45. Very interesting depositions are, for example, in no. 7, file 78 and no - 3, file 17. A recent survey of the eighteenth-century evidence is R. W. Malcolmson, 'Infanticide in the eighteenth century' (1977).

34. Cases are given in T. R. Forbes, *Chronicle from Aldgate* (1971), pp. 32-3

35. For example, P. Laslett, *Family life and illicit love in earlier generations* (1977), pp. 108-9.

36. Thomas Becon, *Workes* (1560), DCLII.

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Since baptism was the first step into the congregation, it may well be that there was a widespread view that bastards should not be christened. Their parents may also have been excluded: thus a man of Great Totham was presented at the archdeaconry court in 1612 'for incontineny and bastardy for which cause he hath not beene admitted to the holy communion this last Easter' (ERO, O/ACA/ 34/90v). There is certainly evidence that Puritan clergy felt worried about how the children of unmarried women, especially notorious prostitutes, should be dealt with. Thus a meeting of ministers at Dedham debated the problem of what was to be done with the child of a 'strumpet' brought into the church secretly.<sup>37</sup> The general problem of baptism of unbelievers' children was discussed by Ralph Josselin, the vicar of Earls Colne in Essex in the 1640s and he concluded that unbelievers' children and therefore presumably bastard children should be baptized.<sup>38</sup>

## **7 Earls Colne, Essex**

Let us then take the parish of Earls Colne as a test case for the accuracy of the registration of bastards, both before the Interregnum of the 1650s and during those troubled years. On the face of it, there would have been no reason for rejecting this register for the kind of analysis which the

Cambridge Group has undertaken: the baptisms are complete from 1560, except for a short gap from 1605 to 1606, and continue (with births rather than baptisms) throughout the Interregnum. How accurate would be our impression of bastardy, based on this one source?

While very many of the bastards recorded in the parish register are described the archdeaconry court records, only six ecclesiastical presentments of Earls Colne women for bastardy before 1640 are not mirrored in the register. In at least two of the cases, in 1587 and in 1603, moreover, the bastard births may have occurred some years before, at a time when the woman lived elsewhere. Thus it may well be that only in two or three cases was there no baptism or burial entry at all. The ecclesiastical courts, then, provide a valuable check for the years up to 1640, but in the subsequent years of the Interregnum the courts disappeared, and after 1660 they did not regain their position as a tribunal for sexual offences. We are therefore forced to use more patchy evidence, and this is especially unfortunate since the assumption has been that this was a time of a sustained low level in the English bastardy ratio all over the country. This low level is also apparent in the parish registers of Earls Colne, but since it may merely betray a decline in the recording of illegitimates, it would be helpful to have some independent insight into the accuracy of bastardy registration there. Clues to the situation in the parish are furnished by two sources: Ralph Josselin's diary as vicar from 1641 to 1683, and the quarter sessions records.

If we look first at the period 1640-59, we find that the parish register indicates that five bastards were born or died: one each in 1642 and 1643 and three in 1656. There are hints, however, that other cases occurred which were not mentioned in the parish registers. Two instances are fairly certain. One is to be found in the quarter sessions (ERO, Q/SR/355/30) when Joan Price of Earls Colne was presented for having had a bastard child since the last sessions. The presentment was

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37. R. G. Usher (ed.), *The Presbyterian movement in the reign of Queen Elizabeth* (1905), P. 37. On the Puritans and baptizing the children of the reprobate, see also chapter 6.

38. Alan Macfarlane (ed.), *The diary of Ralph Josselin, 1616-1683* (1976), p. 101, under 26 August.

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in January 1653, yet no bastard or child of this name appears in that year in the register - Nor is there any bastardy recorded in 1645 to correspond to the following account by Josselin (p. 39, 27 April):

Mary Grant a bold wench whose mother had 6 or 7 bastards. Her flesh rotted from her arms, complained she was gotten with child. Oh Lord keep all thine from this scandalous wickedness, humble us for no such abomination ought to benamed among us; the fellow she accused, John Besse run away.

Josselin failed to record whether Mary gave birth, nor did he set down the possible outcome of an adulterous affair described by him as follows (pp. 51-2, 14, 22 and 24 December):

This weeke acquainted with the scandal of Edward Potter in soliciting the chastity of the widow Ward. Lord this ought not to be named among Christians ... Edward Potter bound to his good behaviour for abusing the widow Ward, he put in sureties to discharge the town ... In conclusion the justices had so much against him as to send him to gaol.

Whether a child was conceived we do not know, but the fact that Potter was bound to discharge the town, presumably of the cost of a bastard, suggests that there was a fear that this might happen. Josselin mentions three other bastardy cases, but we would expect none of them to appear in the parish register.

One of these cases does, however, give us a valuable glimpse of the attitude to bastardy:

This weeke John Read's maid went away with child, and accuseth him for father. This man was once a great professor, admired for his parts. But his base corruptions grew too strong, he fell to drunkenness, to neglect God in ordinances.... God may make him to awake by this great fall, which as a crack may amaze him but he keeps out of mans sight in regard of the shame.

The following month John Read's goods were sold up and he left the town (Josselin, pp. 139-40, 2 October; a 'professor' was one who professed the true religion, a godly or devout person).

Unfortunately Josselin cannot be used as a reliable index of bastardy cases since he appears not to have shown much interest in the subject after about 1650. There is no mention in the diary of any of the three cases of bastardy in 1656, though Josselin himself must have noted vital events in the parish register.<sup>39</sup> Nor is the other major source, quarter session records, likely to prove an accurate guide to happenings in the bastardy field.

Of the 68 bastardy cases noted either in the parish registers or the church courts in the period 1560-1639, only five are also recorded in the quarter sessions. The quarter sessions only add one new case where the woman is definitely stated to be of Earls Colne. Even in this case it is not certain that a bastard was actually born, for the women merely confessed that she was great with child (ERO, Q/SR/80/ 35). Yet, while the quarter sessions are no sort of index of bastardy ratios, they do give us a few more cases after 1640 against which to check the parish register.

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39. When Robert Kendall, a bastard, was buried on 3 July 1656, Josselin was away seeing his daughter and preaching in Colchester.

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Leaving on one side the four cases where it is only certain that the man was of Earls Colne, we find that there are only two instances of an Earls Colne woman being brought to court in connection with bastardy between 1640 and 1700. The first of these, in 1653, we have already seen was not noted in the parish register. The second was in 1688 when a Bocking man was to answer to give security for keeping a bastard child begotten of Mary Wiseman of Earls Colne (ERO, Q/SR/ 460/43). There is no record of this bastardy either. This gives a slim impression that after 1650, at least, bastards were not always registered, and it may partly help to account for the long gap in

bastards in the parish register between 1662. and 1692. It also accords with the conclusions of chapter 6 as to the very low level of recorded illegitimacy in the middle of the century being largely a matter of registration.

Several conclusions may be drawn from the discussion above. The first is that up to 1640, when ecclesiastical courts provide a check, the parish register appears to have accurately recorded bastardy: perhaps less than one tenth failed to be registered in their home parish. From the 1640s onwards there is evidence from Josselin's diary and from the quarter sessions records that bastardy was not always registered, though the parish register seems to have continued to be well kept until about 1660. Thereafter, bastards may well have failed to be registered at all; throughout the period, quarter sessions records only picked up a tiny fraction of the bastardy cases. Nevertheless, the evidence does not completely destroy the hypothesis that there was a significant change in bastardy ratios in the first half of the seventeenth century. In Earls Colne the change would certainly appear to have been occurring in the late 1620s and 1630s. The bulge in bastardy of the Jacobean period faded away before the Puritans came formally to power, which is what should perhaps be expected from Keith Wrightson's discussion of that period in chapter 6.

## **8 The sociology of bastardy and the bastardy prone sub-society**

To progress towards some idea of why bastardy rates fluctuated, we have to move to the micro-level of actual cases and personalities. Who were the men and women involved and how did they differ from the rest of the population? Is it in fact possible to find out about such people, or were they part of the 'invisible poor', the highly mobile and record-less section of pre-industrial society? The answers to these questions cannot be given for our village of Earls Colne until a full reconstruction is completed, but a few hints at the type of questions to be asked and some preliminary, tentative conclusions of current research may be provided.

Although there has been practically no investigation of the socio-economic level of those involved in illegitimacy, it is usually tacitly assumed by historians that bastardy was a phenomenon mainly connected with the lowest, or at least the lower, part of pre-industrial society. Thus, for example, the conclusion of the Norwich authorities in 1570, that the poor bring forth many bastards, is approvingly quoted .(40) Let us look in more detail at the Earls Colne bastard bearers. Is there anything we can find out about the wealth of those who begat and bore illegitimates, their occupation, their ownership of land and houses, their geographical mobility, their demographic history and their position in the family?

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40. I. Pinchbeck, 'The state and the child in sixteenth-century England' (1956), p. 283.

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Scattered evidence on these and other points will be found in the studies which follow, and in chapter 8 the whole set of issues is considered in a preliminary way in relation to the hypothesis of a bastardy prone sub society existing over time in traditional English villages. There are indications that such a society may have been present in the early seventeenth century in Earls

Colne, where the evidence seems to resemble that for another Essex village, Terling, only ten miles away to the southeast, discussed by David Levine and Keith Wrightson in chapter 5. The peak of bastard births over the period 1560-1640 occurred between 1600 and 1627, and this was also the time when a number of women had three or more bastards. Of the 33 definite bastards recorded in Earls Colne, no less than 13 were borne by three women only, as follows: Mary Grant, six bastards; Lidia Paine four bastards; Margaret Bunting, three bastards. It was also during these years that another phenomenon, the bastard-begetting male, appears: William Catt begot four bastards and Thomas Allen (on Mary Grant), another four. We may well wonder whether these women were village prostitutes and what sort of women and men these people were in other respects.

We begin with Margery Bunting, daughter of John, baptized in April 1588. Her father seems to have been moderately poor, though he rented a few acres of land at the south of the parish in 1598. He died in 1620 and his wife, Joan, in 1626: thus both were alive during practically the whole of Margery's bastard-bearing career. She appears to have been the eldest of the children; her siblings Nathaniel, John, William, Sara and Joan were baptized in the years 1590-99 and of these William married in 1622 when aged 24 and Joan in 1620 when 21 (both after their father's death). None of them seems to have been accused of sexual offences, but their father may have had a tolerant attitude to bastardy since he was presented in the church court in 1592, because it was noted 'that he keepeth a base child in his home and the father thereof not known' (ERO, D/ACA/20/227). He was excommunicated for non-appearance.

A similar impression emerges of Lidia Paine who was having bastards at almost exactly the same time: namely, that she was from a poor, but not destitute, village family. Lidia was baptized in May 1596, one of the children of Edward Paine who probably married in 1592 and who is said to have been a weaver. This man -appears to have been a different sort of deviant since he was frequently presented in the ecclesiastical courts for not receiving communion. His daughter Lidia seems to have had bastard children at two- to three-year intervals between the ages of 2,3 and 31. After this there is a complete gap in the records, which may suggest that she left or married away from the parish. Certainly there is no record of a burial and Josselin, who mentioned other notorious livers, does not mention her in his diary.

Margery Bunting's bastards were evidently fathered by several men, but Lidia Paine seems to have had several by one man, Thomas Allen alias Grant. She showed forth what may have been a widespread feature of bastardy, where it bordered on consensual unions. Why the pair did not marry it is difficult to say as yet, but the issue could be further explored in the best documented of these cases, that of Mary Grant. There was clearly a close connection between these two women, for the begetter of Lidia's bastards was, in fact, the illegitimate son of Mary Grant. The double surname or alias frequently seems to denote uncertainty or 'double' parentage arising from an earlier bastardy, and hence marks out a bastard strain through time.

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Mary Grant's employment as a spinner puts her into the group described by Roger Harlakenden, the lord of the manor in 1595:

The parish of Earls Colne and divers other parishes thereabouts being much charged with great numbers of poor people, the said people have of a long time been set on work by spinning certain wool of Dutchmen, which they have delivered to the said poor people at the town of Earls Colne

aforesaid, and there received the same from them againe being spun, whereby many of the said poor people have been and yet are relieved and maintained in good sort [ERO, Q/SR/130/421].

In this same year, 1595, Mary Grant had her first bastard baptized in June. Nine months earlier Lawrence Gilott and Mary had been presented for incontinency together, and three months before the baptism she alleged that 'Lawrence Gilott of Earls Colne is the father of her child, wherewith she is with child.' She was excommunicated for non-appearance, as was Gilott, a man whose house we can locate at the furthest end of the village and who came from a poor, but not from the poorest, level of society, and whose brother was also involved in sexual offences.

The accusation against Gilott may not have been sustained for in June Mary Grant was excommunicated again for not appearing to answer the suspicion of being impregnated by another man, Richard Coggeshall of Earls Colne, probably a passing inhabitant as little is known of him. Between 1600 and 1610 Mary proceeded to produce a string of bastards: three of them appear in the baptismal register in 1600, 1604 and 1610 and from ecclesiastical court evidence it is clear that another was born in 1606. (At this time the parish register was defective.) There is a long gap after 1610, but then, in 1620, Mary Grant was again accused of incontinent living. Thus her career had lasted for 28 years. The fact that the head of the household in which she lived was summoned to appear in the first case suggests that she was fairly young when she started to produce illegitimate children. Supposing that she was eighteen in 1592, she would have been 46 at the last recorded instance and 64 when she died in 1638.

There are many issues to be explored in this intriguing case, (41) but it is worth stressing one of them here, namely the continuity of bastardy in families. Thomas Allen, alias Giggers, who was the father of most of Mary Grant's children, may have himself come from a family associated with bastardy, since he had the telltale 'alias' in his name. We have seen the chequered career of Mary's first child, Thomas Allen, alias Grant, who gave bastards to Lidia Paine. Mary's second child, as we may recall from Josselin's note on her, was the 'Mary Grant a bold wench whose mother had six or seven bastards, her flesh rotted from her arms, complained she was gotten with child.' At this time, the daughter Mary was over 40 years of age and still unmarried. The construction of Josselin's comment leaves it open as to whether it was mother or daughter who was probably suffering from venereal disease.

## **9 Reasons for fluctuations in bastardy ratios**

Until a much deeper examination has been carried out of village life in general, with particular emphasis on sexual mores, the structure of kinship and marriage,

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41. Only about a quarter of the material relating to Mary Grant has been mentioned here; the complex web of relationships between the people involved in different cases will have to be explored on another occasion.

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we cannot hope to understand the reasons for the changes in the incidence of bastardy and in the attitudes towards it. A number of hypotheses have been put forward. It is worth listing them briefly.

An obvious suggestion is that bastardy in England was a reaction to sexual frustration, and more directly to the comparatively late age at marriage. In the sixteenth century Stubbes argued that compulsorily to raise the age at marriage would lead to an increase in bastards.<sup>(42)</sup> It is likely correct to suppose that a negative correlation is more probable, namely that bastardy ratios increased in the late sixteenth and in the late eighteenth centuries when age at marriage may have been dropping. To decide the question finally, we would need to know much more about who the bastard-bearers and their partners were, and whether many of them were part of the never-to-be-married group.

Another view is that bastardy is related to a general economic change in the society. It may be argued either that women in times of prosperity are able to earn enough to support children without having to marry or, conversely, that in times of depression a 'crisis of subsistence' breaks down all social norms and sends up the level of bastardy. The second argument which finds no particular support in the evidence we have examined so far, is also attacked by P. Goubert (1960, p. 51). Another view looks at the problem from the other end: the mechanisms of social control and the mechanisms of segregating the sexes. Thus, for example, M. Drake (1969, p.145) suggests that illegitimacy was high where male and female servants were lodged together in outhouses. Smout discusses the same possibility for Scotland in chapter 7. Again, there is not much support for such an hypothesis in the English material, but until further work is done on the persons involved in bastardy and on sleeping customs, it is difficult to be certain. Yet another suggestion is that illegitimacy is related to the failure of social control by kin. <sup>(43)</sup> Certainly there has, as yet, been no evidence that parents, though often alive, disowned or rejected their bastard bearing daughters and there is some support for the belief that there was a minority ethic which did not condemn the practice.

Undoubtedly the major sanctions against sexual deviance during the period in which we are interested were informal the treatment of past offenders and attitudes to deviance at the local, non-judicial level. The problem of deciding whether there was a permissive attitude to bastardy is made more difficult by two further facts. Firstly, that in a stratified society those in one stratum may not see bastardy as a frightful offence, while those in other strata may condemn it fiercely. Secondly, that most of our evidence comes from court records, where the handling of this offence and the degree of severity of the punishment may have borne little relation to the actual feelings at the local level. Nevertheless, it is important to see what treatment was meted out to bastard-bearers, and to try to estimate the proportion of cases which were brought to court at all.

In the studies which follow in the British section, some light is thrown on some of the questions raised in this chapter. But it has to be confessed that they leave us with very little general, reliable and systematic knowledge. And there is a further series of questions which they scarcely touch upon. The first concerns the provision which was made for the economic needs of those bastards who survived. I have already alluded to the somewhat contradictory evidence concerning the

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42. Philip Stubbes, *The anatomie of abuses* (1585), fol. 55v

43. W. J. Goode, *World revolution and family patterns* (1963), p. 185.

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testamentary position of bastards. Did they inherit land or goods and hence did they remain in the community? Scattered evidence from the sixteenth century and earlier shows frequent bequests to bastards in wills. A detailed study of manorial records and wills for Earls Colne should make it possible to discover what happened to the bastards in that village: for example, how frequently do wills mention them, as did the will of John Kendall on 22 February 1600? It should be possible to trace the life history of at least some of the bastard children. We ought to be able to find out whether they migrated, married or stayed single. Were they doomed to economic poverty or did some grow rich? Did they follow certain occupations, usually being bound apprentice early in life?(44) To give meaning to these analyses, comparison with matched groups of non-bastards is necessary and this would require a complete reconstitution of a particular parish.

It should also be possible to get an idea of the way bastards were regarded from the names conferred upon them. In Earls Colne they were given quite ordinary names, except for the years 1625 and 1626 when 'Repentance' Clarke, daughter of Mary, and 'Repent' Sparrow, son of Jane were baptized. Whether this reflected godly or church attitudes we do not know. Another clue to changing opinion would lie in the use of the word 'bastard' as a term of abuse in libels. An analysis of libel cases in the ecclesiastical courts should throw some light on this. One of the problems here is that changing attitudes to bastardy are intimately related to the numbers of bastards. As has been pointed out, the registration and prosecution of bastards may well reflect the attitude to the offence as much as its incidence.

These then are some of the issues which the reader may have in mind as he proceeds to the detailed studies of bastardy which are contained in the next few chapters of the volume. We may not yet be able to answer in any definite fashion the innumerable questions which have come to the fore in the close examination of illegitimacy in our particular village early in the period which most of these studies cover. But it is hoped that to have pointed out both the difficulties and the merit of using legal and other records and the very great amount of interesting material in local archives will be of value. Some knowledge of the legal, administrative and social background is clearly necessary in order to interpret the statistics which have been extracted with great dedication and labour from parish registers.

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44. As had, for example, been suggested by Marie Hartley and Joan Ingilby, Yorkshire village (1953), p. 72.