Illegitimacy in Renaissance Florence

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For my parents

Preface

This book began years ago, as I completed study of emancipation, by which a child was removed from the legal power and the family of the father. The logical and natural counterpart to that study was an examination of a process by which persons were subjected to paternal power. Only adoption and legitimation in civil law had the capacity to manufacture *patria potestas* where there had been none. As a subject for investigation, however, adoption had a distinct disadvantage. It hardly ever happened—not in the full formal, legal sense (as opposed to fostering a youngster in one's household). Adoption continued to be discussed as a legal institution in the law schools. It even happened once in a great while. But it simply was not possible to study adoption as a viable social and legal institution for Renaissance Florence or anywhere else.[1]

Compared to adoption, the rare act of legitimation seems almost common.[2] Legitimation necessarily deals, as does emancipation, with children and their natural father. Legitimation thus points to a pool of possible candidates—illegitimate children, the irregular circumstances of whose birth and paternity were a matter of public record. Recognition of paternity and its responsibilities did not inevitably entail legitimation, but legitimation could not occur without it. So to study legitimation at all seemed to require first locating and studying this pool of candidates, to find out who they were socially and to figure out why they found their way to legitimation. Thereafter one could begin to take stock of effects, legal and otherwise, of legitimation. The very process of legitimation—or indeed the very existence of an illegitimate within society and family—

1. Cf. my "L'Adoption à Florence à la fin du Moyen Âge," *Médiévales* 35 (1998): 69–81.
2. As my "Reading between the Patrilines: Leon Battista Alberti's *Della Famiglia* in Light of His Illegitimacy," *I Tatti Studies: Essays in the Renaissance* 1 (1985): 161–87, now in my *Law, Family, and Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago, 1991), chap. 6.

entailed much more than emancipating a child (something paternal death would accomplish in the normal course of events). An outcast was given a social identity and personhood more in line with that of others. It was the acquisition and the dimensions of that personhood that forms the story in this book.

Study of illegitimacy allowed investigation of a second matter, no less important, that also arose from my study of emancipation—the roles of law and jurists in a Renaissance city-state. The legal situation was undoubtedly complex. On the one hand there were the texts and terms of a learned law expounded in schools, which aspiring jurists had to attend. These were texts of Roman law as compiled at the command of the emperor Justinian in the sixth century, to which were added other bits (like feudal law); and there was the equally important and still-developing body of canon law. On the other hand were the local acts of legislation and custom, unlearned and partial in comparison to what became known as *ius commune* (common law), but undeniably a type of positive law bound to functioning courts and administrative bodies that were the actual sites in which jurists could hope to exercise influence.

Illegitimacy was necessarily a difficult area of law, setting off a vital concept (legitimacy) and touching on an extremely vital area of social and legal life (inheritance). In an era of weak (though slowly strengthening) government, jurists were called on to use their expertise to make sense of legal confusions and apply the law in comprehensible fashion to the problems that arose in practice. They operated with their sense of the law while facing competing social, economic, and political interests they could also understand and share. This book is also the story of the "lawmakers" (jurists, legislators) who facilitated, or not, the interests of social actors, while validating certain results or avoiding others. It became the story of the ways in which illegitimacy was partially overcome and never really forgotten, how a social and legal paradox was carefully managed and maintained.

In her philosophical study of illegitimacy, Jenny Teichman remarks that "the legitimacy/illegitimacy distinction is situated at a multidimensional interface of human institutions and natural facts about human beings."[3] Sexual reproduction, kinship, inheritance and property, as well as morality are all involved in illegitimacy. Illegitimacy thus impinges on vast areas of social life, many of which are of current interest to histori-

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3. Jenny Teichman, *Illegitimacy: An Examination of Bastardy* (Ithaca, N.Y., 1982), 10.

ans. What began for me as an interest in a legal institution with parallels to emancipation has broadened into an investigation of dimensions of law and legal practice, social and cultural life, theory and practice.

Illegitimacy and legitimation (so also emancipation) were a means for people to craft an ambiguity—the child who was, but also was not, part of a family—that could be used to advantage. Creative manufacture, maintenance, and management of such ambiguities was one of the hallmarks of life in a Renaissance city-state, if not of all societies. It was related to the more celebrated creativity of a city like Florence in the arts and humanism, and not simply because some of the best-known artists and humanists (Boccaccio, Alberti, da Vinci) were themselves born illegitimate. At the core of illegitimacy lay the seeming inconsistency that a penalizing and shameful status fell on the child as a result of parental acts that themselves were illicit but not unnatural. Strictly speaking it was not the guilty—or the guilty alone—who were punished. The parents' experience resulted in a child come into the world in an "irregular" manner, tangible evidence of parental transgressions. The child of sin, or love, was itself seen as sinful. On the other hand, the child had come into the world and was not necessarily or totally a social outcast. Parents might be intent on treating the child as an object of value, as a social person. The apex of value was to be treated as legitimate, but making an illegitimate into a legitimate carried conceptual costs, at the least.

As a life without honor was considered a living death,[4] the dishonor of illegitimacy had to be denied or circumvented. If shame could not be removed either by getting the seducer to marry his victim or simply by denying the illicitness of the procreative sexual act, there was little choice but to abandon the child. But some chose another way that resulted neither in the removal of the child nor the denial of illegitimacy. It becomes intriguing to see some men both acknowledging illegitimate paternity (thus also fixing the mother inalterably as a bastard-bearer) and yet keeping that child, with that status. Why bring an object of shame near, recognize that shame, and yet in some respects treat him or, less often, her as any other child? How could the contradictions between shameful status, in and beyond the law, and association with the father, his family and property, be reconciled? Were they? These are intriguing questions.

One is constrained to take what the sources give, and that is not much. Even in periods like the present when illegitimacy is relatively common

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4. Cf. Francis William Kent, *Household and Lineage in Renaissance Florence: The Family Life of the Capponi, Ginori, and Rucellai* (Princeton, N.J., 1976), 201.

and carries little social stigma, it has never been something people admitted easily. It has always been tainted with sin and/or dishonor in varying forms and intensities. The subsequent reticence of the sources makes it a difficult challenge actually to locate and study illegitimates.

The general sense of what illegitimacy means to a society has shifted broadly over time. Projected back to the Renaissance, the bastard child was socially dangerous and disruptive. He was Edmund in *King Lear,* capable and ambitious, but caught "in the plague of custom," while perhaps of "more composition and fierce quality" than the less passionately generated legitimate son, and whose desire to usurp the legitimate heirs' place brings tragedy, loss, and dishonor. By the Enlightenment the bastard had become Diderot's quietly desperate characters of *Entretiens sur le bâtard* and *La religieuse,* whose subjection to exclusionary and discriminatory treatment becomes an indictment of hypocrisy and the demands of family stifling individual talent and initiative. In the nineteenth century and on into the late twentieth, illegitimacy is a social pathology. Not only was there sexual transgression behind illegitimacy— as there always was before—but there is no provision for careful familial nurturing. The illegitimate child becomes the dangerous adult now not because of the circumstances of procreation but because of the disadvantaged circumstances of socialization. Modern illegitimacy is about "unwed mothers" ostensibly, but it is really about absentee fathers, a larger matter to which divorce and desertion contribute.[5] It is about household poverty and social maladjustment. Failure to follow the legal niceties of formal marriage makes little social difference where the couples cohabit and raise their children.

Illegitimacy in a late medieval Italian city-state was about something else. It was about the honor of father and mother; it was about lines of kinship and inheritance; it was about abandonment or raising by a father. It too was about possible household poverty and social maladjustment, about social paternity, but it could be resolved by abandonment to foundling homes. Illegitimacy most mattered, however, when the illegitimate mingled with legitimates or was found where they were expected—in the paternal household.

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5. For one interesting perspective on twentieth-century concerns, see Janet Fink, "Natural Mothers, Putative Fathers, and Innocent Children: The Definition and Regulation of Parental Relationships outside Marriage, in England, 1945–1959," *Journal of Family History* 25 (2000): 178–95.

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