

# LEGITIMACY AND THE POLITICS OF STATUS

## An Abortive Legislative Change in Sierra Leone\*

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This paper will describe an attempt to pass legislation which would have equalized the status of legitimate and illegitimate children in Sierra Leone, especially with respect to inheritance rights. The lawyers who drafted the legislation saw it as a means of bringing about harmony between the law and their societal norms regarding children born out of wedlock. Quite explicitly its proponents viewed the legislation as a means of ridding the society of one of the evils which had resulted from the imposition of a foreign law during colonial rule.

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For the purposes of this study the professional group was defined as those persons who held a university degree or equivalent professional qualification, and their spouses. Data were also collected from interviews with a sample of the university students who were attending the two colleges which make up the University of Sierra Leone. Further data were collected in a later study of family law in Sierra Leone (1971-3) and in subsequent research in the Colonial Records which are housed in the Public Record Office, London. For a detailed description of the methods employed in both studies and a discussion of the findings see Harrell-Bond, 1972; Harrell-Bond, 1975; Harrell-Bond and Rijnsdorp, 1975b. Another discussion of the data included in this paper appears in Verfassung und Recht in Übersee, 1975.

The proposed legislation received considerable publicity and generated differing reactions from a variety of social groupings within the society. The controversy which developed became a serious political issue at a time when the government's popularity was already declining (Cartwright, 1967). It was submerged by a number of other critical issues, however, and the attempt to pass the bill was dropped. Nevertheless, the effect of the publicity led the professional group, the persons most concerned with the issue, to believe that the law had been passed. This belief produced considerable changes in attitudes and behaviour among married couples.

Before considering these various issues it is necessary to explain some of the historical background which gave rise to the social divisions and differing values found in contemporary Sierra Leone society. The events described here illustrate how an ethical issue can become a vehicle for political struggle between the groups which polarize over that issue. Gusfield (1972) has developed the concept of "status competition" in his study of the temperance movement in the United States. It is suggested that this concept and Gusfield's related ideas help to make the controversy over legitimacy in Sierra Leone more comprehensible.

#### Establishment of the Colony

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 England, the United States, Canada, and the West Indies. Over the next one hundred years the population of the colony was periodically increased through the arrival of slaves who were rescued from slave ships captured on the high seas.<sup>1</sup> The founders of the colony aimed at developing a utopian community based upon Christian ideals which would ". . . prove an agency for the spiritual and social regeneration of the whole African world" (Porter, 1963:48). The first group of settlers had been exposed to western

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<sup>1</sup>The arrival of a significant number of freed slaves ended about 1860 although a small number continued to trickle into the colony over the next twenty years. We can get some idea of the extreme heterogeneity of the population of the colony by noting that Koelle, a missionary, recorded over one hundred different languages spoken in Freetown in 1850 (Koelle, 1851).

culture during their enslavement, and they assumed a role of superiority towards those who came to the colony later (Porter, 1963).

The church was the central institution in the organization of the life of the colony (Petersen, 1969). Missionaries and administrators co-operated to provide western education and Christian religious teachings to the settlers. Prestige and status were accorded on the basis of the degree of conformity to British standards of civilization and culture. The acceptance of the institution of monogamy was a key symbol of conversion to Christianity and rejection of the pagan life.<sup>2</sup> English law was the informal basis for administering the colony since its founding, although the necessary legislation was passed much later, in 1857.<sup>3</sup> The settlers and their descendants were regarded as British subjects.

The land for the colony had been purchased from the indigenous people living on the peninsula (Fyfe, 1962). However, from the very beginning, relationships between the settlers and the indigenous population were strained. More than once attempts were made by the local tribesmen to destroy the colony. Similarly efforts were made to restrict the number of indigenous people residing in the colony to those required as a labour force. Their presence in the colony and the increasing numbers of indigenous people moving there from the hinterland with their "primitive, pagan ways" were consciously viewed as a threat to

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<sup>2</sup>The population was administered through a system of village managers. Their control over the allocation of housing allowed fairly strict supervision of residence patterns. The number of marriage ceremonies performed were recorded for most years. Any union not sanctioned by such a ceremony would not be approved by the administration. The 1831 and 1833 government censuses provide a detailed analysis of the household composition of the colony (C0267/111/1831 and C0267/117/1833). No household admitted to multiple wives.

<sup>3</sup>"Ordinance No. 60 of 1857 provided that English law as at January 1, 1857 not being inconsistent with a local ordinance of a charter of justice in force in the Colony, shall apply. The present reception date is January 1, 1880 [Courts Act 1965, s.74]" (Joko-Smart, 1970).

the development and maintenance of a Christian community.<sup>4</sup>

The settler community was itself divided by ethnic factions. The largest group was the Aku (of Yoruba descent) and most of them were Muslim. However, the British, especially the missionaries, encouraged the attitude that Islam was a pagan religion. This attitude influenced official policy toward them,<sup>5</sup> and gradually the Christianized population gained most of the prominent positions in the colony.<sup>6</sup> Although Christians have never formed the majority of the settler population, educational and occupational opportunities have consistently favoured them (or those willing to be converted).

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<sup>4</sup>The newspapers printed many editorials concerned with the problem of the presence of the "aborigines" in the colony. One extract is typical of the comments which appeared: "By their gross ignorance and superstition they help to retard the progress of this Settlement . . . At present we know what demoralising effect the heathenish and superstitious practices of these aborigines have on our youth of both sexes" (The Sierra Leone Church Times, 18 March, 1885). Other examples may be seen in The West African Reporter, 11 February, 1882; The Sierra Leone Times, 19 August, 1893; 10 September, 1898; and the The Sierra Leone Agency, 25 January, 1887. Spitzer (1974) also includes a number of examples of passionate outcries by the settlers against the demoralizing influence of the indigenous peoples.

<sup>5</sup>Moreover, the Muslim community had its own leadership and educational system, thus providing a basis for organized resistance to the cultural pressures of the British. They also had more in common with many of the indigenous traders who were Muslims and who operated in and out of Freetown throughout the history of the colony. In 1904 the leadership of this community petitioned the colonial government for recognition of marriage according to Islamic law. This action resulted in the Mohammedan Marriage Act (Laws of Sierra Leone, cap. 96 (1960)), which recognizes Muslim marriage, divorce, and inheritance (Koroma, 1973).

<sup>6</sup>Health conditions were so hazardous during the early years that there was always a shortage of British administrators, so it was necessary to rely on educated settlers to fill many important leadership roles as well as to serve as interpreters, clerks, etc. in the civil service.

About the end of the nineteenth century a community of elites emerged who began to call themselves "Creoles." By about the 1920's the Creoles were distinguished from the rest of the population; they were Christian, educated, and self-consciously westernized in their "style of life." That is, they attempted to organize their family life around Christian ideals, attended church services, wore western clothing, promoted the use of the English language over their own lingua franca, Krio, and looked towards England as their homeland (Porter, 1963; Spitzer, 1974).

The colonial government gradually turned its attention towards the economic potential of the hinterland of Sierra Leone and the Protectorate was annexed in 1896. It was the intention of the government that the population of the colony should continue to be administered under English law while, according to the principle of indirect rule, efforts would be made to retain the structure and content of native law and custom in civil matters in the Protectorate. Native courts were allowed to function there in the traditional manner under the leadership of the chiefs.<sup>7</sup> Issues which were beyond the competence of native courts were to be covered by legislation specifically introduced for the Protectorate (Joko-Smart, 1970). The court system, based on the English model, was extended to the Protectorate. However, because there were many settlers (i.e. British subjects) resident in the Protectorate, numerous problems arose over the jurisdiction of the native courts. The population was divided into "natives" and "non-natives" for the purpose of deciding which legal system was to have jurisdiction; non-natives were governed by English law regardless of where they lived.<sup>8</sup>

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<sup>7</sup>In the 1950's the chiefs were relieved of their judicial functions. Court presidents were appointed to administer customary law. Still later the former native courts were renamed Local Courts. More recently, these Local Courts have been linked to the higher courts through an appellate system. The jurisdiction of the Local Courts has been extended to include some statutory law (Joko-Smart, 1969; Joko-Smart, 1970; Harrell-Bond and Rijnsdorp, 1975b).

<sup>8</sup>On the other hand, natives resident in the colony were regarded as aliens. These legal distinctions exacerbated tensions between the indigenous people and the settlers. The settlers, or non-natives, took advantage of their immunity from the control of the chiefs in a variety

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Throughout the history of the colony activities aimed at development and improvement of the population were concentrated in Freetown and were primarily for the benefit of the settlers.<sup>9</sup> After the annexation of the Protectorate educational opportunities began to be extended to the Provincials, as the indigenous people have come to be called. 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. Although the Creoles no longer held a complete monopoly of the professional roles, they retained their higher status predicated upon their close identification with the British way of life, their dominance of the professions and the civil service, and their control of the educational institutions.

Thus, 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, 1967:262-4; Harrell-Bond, 1975). The old-established Creole families have become the reference group for the behaviour and attitudes of the educated members of the indigenous population. Because of the emphasis in missionary teaching from the earliest days of the colony, conformity to the Christian model of monogamous marriage became a primary measure of being civilized. The rejection of "primitive" ways, especially polygamy,

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Footnote 8 continued:

of ways. The distinction between native and non-native was itself highly arbitrary as there was considerable intermarriage between the settlers and the indigenous population. Moreover, a large number of natives had identified themselves as part of the settler community. The British were hard pressed to find a consistent basis for applying legal distinctions. The history of the development of differing policies of administrative and judicial control and the ethnic rivalry and social distinctions which they encouraged is the topic of my ongoing research.

<sup>9</sup>For example, Fourah Bay College, the only institution of higher learning in West Africa until the 1940's, was founded in Freetown in 1827.

became significantly bound up with status and prestige in urban life.<sup>10</sup>

After the Second World War the colonial government began to prepare Sierra Leone for independence.<sup>11</sup> Because of the numerical superiority of the Provincials, it was obvious that they would be in political control. For the Creole community this was a very bitter reality. Independence was granted in 1961; it might well have come sooner, but for the resistance of a section of the Creole community who saw the withdrawal of the British as a threat to their dominant position (Spitzer, 1974). Today the Creoles number less than two per cent of the population, yet in 1969, sixty-four per cent of the professional group was Creole (1963 Census of Sierra Leone, 1965; Harrell-Bond, 1975). Although the majority of university students are Provincial, opportunities for overseas scholarships and post-graduate awards continue to favour the Creole applicants (Jordan, 1971; Harrell-Bond, 1975).

The legal and administrative policies laid down during colonial rule have not altered significantly since 1961. Today the country is divided into four administrative areas: the Western Area encompasses the former colony; the former Protectorate is divided into three Provinces. The legal distinctions between "native" and "non-native" have been retained, and the Local Courts, which administer customary law, remain under the Ministry of the Interior.

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10. Administrators shared the values of the missionaries to a very great degree. In 1822 Governor McCarthy, in a letter to the Secretary of State, remarked on the greater progress of one group of former slaves. They ". . . not only have been a longer period under the same system, but are inhabited by a more equal proportion of women, and consequently enjoy that first basis of all civilisation, Christian marriage. . . ." (Dispatch No. 265, Jan. 14, 1822, Co 267/56/1822/Vol. I). 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 in the nude. This legislation was encouraged not only by the missionaries and administrators, but by the leaders of the settler community.

## Marriage Law

Three systems of marriage obtain in Sierra Leone today: statutory marriage based on English law; Muslim marriage; and marriage according to native law and custom. Ideally, these three systems of marriage law would have coincided with the requirements of three separate groups in the population, but from the early years of the colony there have been problems. Marriages were formalized by the missionaries long before the official reception of English law in 1957. Missionary activity was not limited to the settlers; and the missionaries, who made the acceptance of monogamous marriage a central issue, urged the colonial government to extend the provisions of the law to include natives. The Christian Marriage Ordinance of 1907 (Laws of Sierra Leone, cap. 95 (1960)) made provision for natives to marry, although special restrictions were placed on them.<sup>12</sup>

In the discussion leading up to the passage of this legislation administrators were concerned with a number of issues. It was explicitly decided not to recognize marriage by native law and custom (s.17). It was agreed that nothing should be done ". . . to give the natives ground for thinking that their marriage and the white man's marriage are on a par" (MP, Despatch No. 157, CO 267/472/1904). There were other reasons for avoiding the recognition of marriage by native law and custom. The Minute Paper cited above refers to the "semi-educated native traders [in this case the reference being to the settlers] who swarm in the Sierra Leone Protectorate . . . would be placed in a very awkward position if the practice of having a Xtian (sic) wife in Freetown and native wives in the Protectorate were made a penal offence" (Id.:Despatch No. 35). It was concluded that it would be best to leave the situation as it was: ". . . in the eye of the law of the colony persons so married are living in concubinage and their children are illegitimate" (Ibid.). Although it was now possible for natives to marry according to the Christian Marriage Act, they were specifically prohibited from marrying under the Civil Marriage Act (Laws of Sierra Leone, cap. 97, s. 4 (1960)). The Mohammedan Marriage Act (Laws of Sierra Leone cap. 96 (1960)) recognized marriages and divorces of persons professing the "Mohammedan faith" domiciled either in the Colony or the Protectorate, when those were performed under the supervision of the Muslim

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<sup>12</sup>Natives had to publish banns (s.3).



community leaders and registered. The devolution of property in the case of intestacy was also provided for under this Act.

In the late 1950s efforts were made to raise the status of marriage by native law and custom. A model by-law for the registration of marriages and divorces was circulated among the chiefdoms, to be enacted by each under the Tribal Authorities Act (Laws of Sierra Leone, cap. 245, s. 16 (1960)). Recognition of customary marriage by this means was not, however, extended to the Western Area, but was limited to the Provinces.<sup>13</sup>

In 1965 the Christian and Civil Marriage Acts were revised. The most radical change was that the Christian Marriage Act now made a marriage to one woman by native law and custom an obstacle to marrying another under its provisions (Christian Marriage (Amendment) (No. 2) Act of 1965). The Civil Marriage Act was amended to allow natives to marry under its provisions, but it did not exclude persons married under native law and custom (Civil Marriage (Amendment) (No. 2) Act of 1965). Moreover, neither the Bigamy Act (Laws of Sierra Leone, cap. 95 (1960)) nor the Married Woman's Maintenance Act (Id.:100) was revised, and these Acts do not recognize marriage by native law and custom.

### Inheritance law

As with marriage, there are three systems of law affecting the inheritance of property in Sierra Leone. The deceased's property, unless he has made a will, devolves according to the rules of his personal law.<sup>14</sup> Personal law is determined according to ethnic background, religion or place of birth (Joko-Smart, 1969). And, as Joko-Smart has pointed out, the matter of determining personal law is fraught with difficulties. The personal law of "non-natives" is the statute and common law of

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<sup>13</sup>The provision for registration of marriage by native law and custom has not been widely utilized. For a full discussion of this problem see Harrell-Bond and Rijnsdorp, 1975a.

<sup>14</sup>Although everyone, native and non-native alike, has the right to make a will, there are a number of problems involved when a native does. (Harrell-Bond and Rijnsdorp, 1975b).

Sierra Leone, much of it received from England; the personal law of natives is that of their own tribe; and the personal law of Muslims is Islamic law.<sup>15</sup> Marriage under native law and custom between two natives of different ethnic groups does not affect the personal law of the husband, but it does alter the personal law of the wife to that of her husband.

Being regarded as a chattel of the husband the woman herself together with her property becomes an accretion to the husband's estate. Nonetheless, no change in the husband's position is effected by the marriage and his property at all times remains his own and descends on his death just as if he had never been married (Joko-Smart, n.d.).

All the tribes in Sierra Leone are patrilineal.<sup>16</sup> The position of a child in the family, and his inheritance rights, are determined by the acknowledgement of paternity by his father. A child who is fathered by a man other than his mother's husband and who has been explicitly rejected by him, has, strictly speaking, no inheritance rights. In most cases, however, such children are reared by the wife's family and will receive their rights to farmland through them.<sup>17</sup>

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<sup>15</sup>Although Islam is the religion of the majority of natives in Sierra Leone, it has had relatively little effect upon customary law practices (Harrell-Bond and Rijnsdorp, 1975b).

<sup>16</sup>The principles of family law among the various ethnic groups are very similar (Joko-Smart, 1969; Harrell-Bond and Rijnsdorp 1975a, 1975b).

<sup>17</sup>In traditional society family property, which consisted mainly of farming land, was vested in the head of the family. In the past there was a very limited amount of personal property to be inherited. The role of the head of the family was the only position to succeed to and usually the successor to this role was the brother of the deceased or some other elderly male member of the family. He assumed the responsibility of the family and property rights were vested in him. A father who was not head of the family would have his own personal rights over land to pass on to his successors but competition for the position of head of the family is spread over a wider group than one man's

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The Mohammedan Marriage Act alters the personal law of a non-native who marries under it to Islamic law. The law does not provide for a change in the legal status or personal law of a native who marries under the Mohammedan Marriage Act. In fact, the colonial government enacted this legislation in response to the demands of the non-native Muslim settlers (Koroma, 1973), and it was not intended to apply to natives, since the government's policy was non-interference with customary law. However, when Islamic law is applied today, the question of whether the parties are native or non-native appears not to be considered except when the estate is settled in court.<sup>18</sup> Instead, the right to inherit in Muslim families also follows customary law.<sup>19</sup>

In contrast to most other countries in Africa, a marriage under the Christian and Civil Marriage Acts does not alter the personal law of the parties as regards devolution of property (Joko-Smart, 1969). There is, however, general ignorance of this fact (Harrell-Bond, 1975).

#### Illegitimacy: the scope of the problem

In Sierra Leone when a child's birth is registered his status as a legitimate or illegitimate child is

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Footnote 17 continued:

household. Children, then, were part of a much wider group. Given that there was no shortage of land the problem of absorbing another member into the family presented no great problem. A child's paternity would be questioned only if the family was selecting a member to contest for chieftaincy. Otherwise, such a child could obtain favour and position in a family through his conscientious attitude and his willingness to assume the responsibilities of family membership.

<sup>18</sup>Few cases come before the courts; when this does happen, a number of problems emerge. For example, land in the Provinces is "inalienable" so the principles of Islamic law contradict customary law in this and in other aspects (Harrell-Bond and Rijnsdorp, 1975b).

<sup>19</sup>When questioned, staunch Muslims contend that a child who was not fathered by a woman's husband would be strictly excluded from the family and denied a right to inherit. In practice, however, it appears that such a child, if not accepted by his mother's husband, is absorbed into his mother's family.

indicated. Therefore, in order to ascertain the number of persons who would have been affected by any legislation changing their status of illegitimacy, it was necessary to examine birth registrations. Although provision has been made for the registration of births everywhere in Sierra Leone (Births and Deaths Registration Act, and Births and Deaths (Protectorate) Registration Act, Laws of Sierra Leone, caps. 92,93 (1955)), birth registration in the Provinces is very uneven. But since it is necessary to present a birth certificate when enrolling a child in school in the Western Area, most persons there do register their children's births. Our consideration of the problem of illegitimacy will therefore be restricted to the Western Area. This is not inappropriate for two reasons. First, illegitimacy is a matter which primarily affects persons married under statutory law. Some 80 per cent of the women and 71 per cent of the men who married under statutory law between 1961 and 1968 were resident in the Western Area. Secondly, under customary law, as explained earlier, illegitimacy does not have the same implications that it has under statutory law. Moreover, Registrars in the Provinces are instructed to register the birth of a child under its mother's and her husband's name, regardless of who is the biological father, thereby obscuring illegitimacy.<sup>20</sup>

Births are registered under four possible headings: legitimate children born to couples married under statutory law (these include children born to couples who married under the Mohammedan Marriage Act); legitimate children born to couples married by native law and custom;<sup>21</sup> illegitimate births where the father has signed the register or permitted his name to be recorded; and, finally, illegitimate births where only the mother's name is recorded. Although, by law, children registered in the third category are illegitimate, the situation may actually be more complicated. Children are commonly registered in this category where the putative father has acknowledged paternity and agreed to the entry

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<sup>20</sup>Marriages according to native law and custom include the transfer of rights over the child-bearing capacities of a woman from her family to her husband and his family. Whether or not a marriage by native law and custom is registered does not affect birth registration.

<sup>21</sup>The registrar must rely on the information given by the parents regarding the status of their marriage in the case of marriages to native law and custom.

of his name in the register. In many cases such putative fathers come to the office of the Registrar 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 an 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 native law and custom is regularized by the presentation of marriage payments to the family of the girl. In many cases these payments may be made in instalments over an extended period of time. Until payment is complete, the families involved will not regard the marriage as legal. In Freetown this kind of union among Provincial people is becoming very common (Harrell-Bond and Rijnsdorp, 1975b). Young people are entering into relationships on the basis of their own choice rather than that of their families. Formal proceedings usually take place only after the girl is pregnant. Because marriage payments must be returned if there is a divorce, and because these unions are notoriously unstable, parents are loathe to accept the marriage payments in full. Often, of course, the young man does not have the resources himself to pay them all at once. If the couple drifts apart, the child's fortunes depend largely on his mother and, perhaps, the good will and acceptance of her relatives. However, under customary law, once the union is regularized by the completion of marriage payments, the children are regarded as the legitimate offspring of the union.<sup>22</sup>

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<sup>22</sup>This raises an interesting question: if a child is registered as illegitimate, and his father subsequently completes the marriage payments for his mother, what is his status, since present law does not permit the post facto legitimation of an illegitimate child?

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

Table 1. The Number of Legitimate and Illegitimate Births Registered in the Western Area, 1961-1968

Year	Legitimate		Illegitimate			
	Number	% of all births	Father's name given or signature present		Only mother's name given	
	Number	% of all births	Number	% of all births	Number	% of all births
1961	3 112	56	1 036	18.7	1 406	25.3
1962	4 167	68.6	928	15.3	977	16.1
1963	4 670	70.1	980	14.7	1 010	15.2
1964	4 109	68.4	1 040	17.3	859	14.3
1965	4 652	68.2	1 145	16.8	1 022	15.0
1966	4 984	70	1 125	15.8	1 007	14.2
1967	4 513	70	872	13.5	1 064	16.5
1968	4 939	74.2	744	11.2	974	14.6
Totals	35 139	68.5	880	15.3	8 319	16.2

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, 1965: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 about 30 percent of all births in the Western Area.<sup>23</sup> The drop since 1966 in the number of children born out of wedlock whose fathers acknowledged paternity most likely reflects recent legal changes which increased the putative father's financial obligations to his illegitimate children. In 1961 the law was changed to

<sup>23</sup>Very few data are available to make meaningful comparisons with legitimacy rates in other countries. An attempt by the United Nations to produce comparative statistics on the problem of illegitimacy produced unsatisfactory results (Saario, 1967:7-9).

increase substantially the maximum amounts awardable for the maintenance of these children from five to thirty shillings a week. (Bastardy Laws (Amendment) Act (1961) and Bastardy Laws (Increase of Payments Act) (1961)). The courts are now more severe in their treatment of these cases and mothers of illegitimate children have become increasingly aware of their legal rights.<sup>24</sup> Between 1961 and 1968 the number of maintenance cases filed under this law almost doubled (Harrell-Bond, 1975).

Because of the prestige in traditional society associated with large numbers of children, an attitude which has persisted among educated families, it would have been unthinkable for a father not to acknowledge a child as his own. Today, however, there is a growing tendency for men to refuse to acknowledge paternity (Harrell-Bond, 1975). And some disputes over paternity result from the attempts that women make to impose the responsibility for their child's support on the man most able to afford it, especially if paternity is uncertain. The awareness of the advantages of having a child fathered by a financially able man is reflected in the Krio saying, "It's only a rich man who gets children" (No gentry man de bən pikin).<sup>25</sup>

Although the tendency to deny paternity in order to escape the financial responsibility for an illegitimate child may have intensified as a result of the change in the law and the wider knowledge among unwed mothers of their right to support, illegitimate children pose a greater problem to a man than simply being a drain on his monthly income. Today they threaten the prestige of the institution of Christian monogamous marriage.

It is not possible to ascertain how many illegitimate children are fathered by men who are married under statutory law. To ask persons in the professional group if they had

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<sup>24</sup>In my subsequent research on family law (1971-3) I investigated maintenance cases in more detail. It became apparent that many women are 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 advantage of ensuring that each of their illegitimate children is fathered by a different man.

<sup>25</sup>Krio is the lingua franca of Sierra Leone. It first developed as a trading language on the west coast of Africa and now, in Sierra Leone, is identified as the language of the Creoles, although it is very widely spoken in the country.

such children would have produced considerable antagonism. 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 which were Creoles). In view of the extreme sensitivity of the topic, we can be certain these results do not exaggerate the number of persons who have children outside marriage.<sup>26</sup> It does not, however, tell us how many children are involved. For example, one wife admitted her husband had one "outside" 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.<sup>27</sup> Another husband had seven illegitimate or "outside" children; such examples are not unusual. So while it is not possible to know how many of the 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 that they pose to the status of the institution of monogamous Christian marriage and to the prestige of those who have grounded their high position in society in significant part upon conformity to this institution.

#### The social position of the child born out of wedlock

It cannot be overemphasized that the fashioning of one's family life along the lines of the western model of marriage has come to assume profound importance in supporting first the Creole's and now the educated Provincial's image of himself as educated and civilized. Nevertheless, the deep-seated traditional desire for large numbers of children persists, and still has importance for status. Men establish liaisons with women outside marriage and have children by them in addition to those produced within their marriage.<sup>28</sup> These women are referred to as "outside wives" and their children as "outside children" (Baker and Bird, 1959; Crabtree, 1950; Izzett, 1961; Jellicoe, 1958; Little

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<sup>26</sup>Some 43 per cent of the Creoles in the professional group indicated that their fathers had outside children.

<sup>27</sup>A wife views this as quite a different problem from that of a child born out of wedlock after her marriage. Both represent economic problems but the latter threaten her social position as a married woman.

<sup>28</sup>The number of children born within the marriage is usually strictly limited (Harrell-Bond, 1973).



and Price, 1967). This institution dates back to the early days of the colony, although there is a 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 the 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 economic independence, 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 today through their educational and occupational achievements, women continue to be assessed in terms of their family background, and their social position continues to be closely bound up with their marital status. An examination of genealogies of several prominent Creole families and later investigation of the problem of maintenance cases revealed a definite pattern of daughters of outside wives following their mothers' example by themselves becoming outside wives. It is not possible to ascertain what the position of the unwed mother was in pre-colonial times, but traditional practices may still be observed in the Provinces, and there, ideally, every girl who has reached puberty is married.<sup>29</sup>

Although Sierra Leoneans may admit that the women who bear illegitimate children suffer loss of status, they contend that the children themselves are not stigmatized. As they say, children in Africa are always welcome, regardless of the conditions of their birth. It is possible to examine the extent of the legal discrimination which

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<sup>29</sup>A girl is initiated into the Bundu society, a closed association for women, just after puberty. If she is not found to be a virgin her family will be fined by the head of the society and will suffer community disgrace. Upon graduation from the society a girl is handed over to her husband within a very short period of time. Thus the problem of children born out of wedlock is largely circumvented.

illegitimate children suffer, 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 is the social position of their biological father and the extent to which he and their mother are able to provide them with financial security. The willingness and ability of fathers to maintain their outside children and to pay their school fees varies widely. Teachers observe that outside children have more difficulties with their studies than do the other children. Frequently they find themselves in the same school or class with half-siblings from the "married" home, with the attendant stresses. Since the married woman and her children are accorded the highest status, outside children are often an embarrassment when they turn up as classmates of their "legitimate" siblings. Certainly outside children are deprived of a close relationship with their father. The relationship between the outside child and his father's wife is most likely to be fraught with tension. Wives usually pretend ignorance of outside wives, and would not countenance the latter's appearance in their household.<sup>30</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 bən yu nɔmit kot behən 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 on weekdays. This rule is sometimes relaxed if the father of the illegitimate child is a very prominent man.

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<sup>30</sup>From the husband's point of view the best arrangement for the care of his illegitimate children is for his wife to allow him to bring these children home to be reared. Although this does very occasionally happen (and sometimes the wife is even willing to rear her husband's illegitimate children), usually women refuse to agree to such an arrangement. According to married men, the ideal wife would be one who overlooked her husband's indiscretions and welcomed his offspring into the family circle. Wives, on the other hand, say they would regard any woman who would do this as "a fool."

## Women's attitudes towards their husbands' extra marital affairs

In my interviews with the professional group and with university students, both men and women ranked arguments over men's extra-marital affairs as the greatest source of marital conflict. My own observations bore out the validity of their statements. Indeed, it is safe to say that men's extra-marital relationships are the most significant factor influencing family relationships and the organization of the household.<sup>31</sup> Nevertheless, despite the widely ramifying and disruptive effects on their marriages, men continue to establish liaisons and to have children outside marriage, and women appear to accept this situation as inevitable. As one Creole gentleman put it:

. . . 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 current girlfriend) 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. He maintained that they are different.

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 (and 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.

Men's tendency to engage in extra-marital relationships cannot be understood without appreciating the status

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<sup>31</sup>In fact it is the key issue to understanding the role relationships in professional marriages (Harrell-Bond, 1975).

associated, with large numbers of children and its importance vis-a-vis his male friends, despite the long association of the educated with western, Christian ideas. Although a great deal of trouble may occur within his marriage as a result of his wife's discovering the birth of an outside child, a man receives the hearty congratulations of his friends and also of his relatives who welcome the new addition to the family. While the outside child may not be welcome in the married home, his "granny" and his "aunties" on his father's side almost always accept the child. They may even be the ones who rear him.

Moreover, the unmarried women who bear these children achieve considerable prestige through unions with educated men. Unmarried girls, especially those who have little hope of getting married to any high-ranking men in the community, are often quite willing to become their mistresses or outside wives, rather than marry men of their own social status. As one social worker observed:

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 of 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 or £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.

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

#### SHOCKING REPORT - WE NEED LEGISLATION

Dear Editor: First of all I must congratulate Kongosa Bench<sup>32</sup> for taking such a keen interest in the situation surrounding the behaviour of

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<sup>32</sup>"Kongosa Bench" is a regular column appearing in the Sierra Leone Daily Mail. "Kongosa" is the Krio word for gossip.

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 (sic) our 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 no 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 this state. But, of course, those who should or are expected to give the protection are the offenders in the first degree (Letter to the Sierra Leone Daily Mail July 17, 1968).

Yet despite such criticisms not only men, but also married women, seem to accept the situation as natural and few girls enter marriage expecting their husbands to be faithful. In the 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 not expect any accurate measure of either attitudes or behaviour from such a question; the discussions following were of more interest to the inquiry. However, despite the inadequacy of the question, 15 per cent

of the women responded that they agreed, they would not expect sexual fidelity. Another 5 per cent thought they would tolerate sexual infidelity only if they had no children themselves. The responses of the Creole women compared with those of the Provincial women showed significant differences: only 9 per cent of the Creole women agreed, compared with 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 statement. This difference in attitude may reflect a greater acceptance of the "polygamist nature" of men by the Provincial women, when compared with Creole women who have identified their social position with the practice of monogamous Christian marriage for a longer time. But it also reflects another problem, that of the legal status of illegitimate children, a matter of recent concern among the professional group. I shall return 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 adopting children as the only acceptable alternative, the usual attitude is that childlessness fully justifies a man having children with another woman. The conflict between the importance of children and the difficulties associated with having them outside marriage is shown in the responses of men and women 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."

	Male		Females	
	<u>Professional</u>	<u>Student</u>	<u>Professional</u>	<u>Student</u>
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
	No. 85	142	72	97

To understand 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 recent attempt to revolutionize their position in the society. At least one aspect of the problem can be summed up in the Krio saying, "Before the body is even cold, the fight for property begins" (Di b>di n>kol yet, d>n d>n bigin 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>33</sup>

This comment, made during the settlement of a disputed will, reflects one of the main concerns which results in the outside child being seen as such a threat to the security of the married woman and to her children, property and inheritance rights. In Sierra Leone illegitimate children have no inheritance rights from either of their parents. This fact became the subject of heated public debate in 1965. A bill was drafted which would have eliminated the notion of illegitimacy and equalized the inheritance rights of all children. Copies of the proposed legislation were circulated among members of the Bar Association, the National Women's Federation, and leaders of the various church organizations for discussion and consideration. There were a number of 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 the issue.

Sir Albert Margai, the Prime Minister (a Provincial) publicly supported the bill and in Freetown, among the elite, it was concluded that he was the author of the bill. Critics said that he had instigated the bill primarily to justify his own chaotic marriage situation. Sir Albert is a Catholic but, in addition to the woman he married under the Christian

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<sup>33</sup>Geroge v. Geroge and Four Others, Sierra Leone Court of Appeal, Civ. App. 20/66 (3/13/67).

Marriage Act, he also has children by a number of other women.<sup>34</sup> Most important, his interest in the bill was construed by the Creole elite as part of a general effort to corrupt Christian Freetown society with the traditional (i.e. primitive) practices of the natives of the Provinces. The struggle to stave off the influences of traditional practices on Freetown society in order to preserve the prestige role of those who conformed to Christian and so-called Western behaviour has been a continuing one since the early years of the colony. The redistribution of political power since independence in favour of the majority who were Provincial and not westernized had increased the saliency of this general issue for the Creoles. The controversy over the proposed legislation shifted immediately into the political sphere. Sir Albert's popularity with the Creoles had already waned.<sup>35</sup> Opposition was so effective that the bill was dropped before it even passed the draft stage, and was never brought to a vote before Parliament. Nevertheless, the widespread publicity given to the entire issue 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 that he had initiated the attempt to pass such a law.<sup>36</sup>

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<sup>34</sup>People often joke about the fact that when Margai was invited to London to be knighted he had a difficult time deciding which woman to take along as "Lady Margai." While Margai may have formalized these other relationships according to customary law, this would not, however, have helped his public image, since polygamy is regarded as a mark of being uncivilized.

<sup>35</sup>The Creoles had supported Margai and his party, the Sierra Leone People's Party. However, once in power, Margai was blatant in promoting Provincial civil servants over Creoles who had more seniority. Members of his party were openly "anti-intellectual" and often openly derided the Creoles and their education with such phrases as, "So you understand books? Well, even so, you can be pushed out" (a le yu sabi buk te). The Creole establishment became totally disillusioned and shifted their support to the All People's Congress, a party headed by Siaka Stevens. (See Kilson, 1966, for a discussion of the events leading up to Margai's downfall, which finally occurred in 1967).

<sup>36</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 denied that the opposition to the bill had anything to do with the fact that it was dropped. He said that "more difficult and pressing political events had to take precedence at this time."



Interest among members of the judiciary arose in quite a different way. 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, 1967:183). This commission circulated among member nations an outline for the collection of information about the position of children born out of wedlock. The collection of these data began in 1963 and extended over the next two years (Id.:184).

When the 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 perceived to be the social status of illegitimate children and their present legal position in the country. They were 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 (Ibid.).

Sierra Leone's response to this question was to state, simply: "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.") Again, the inquiry asked if there 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" (Ibid.). Even if lawyers had sincerely held these beliefs, their subsequent review of the legal status of these children revealed quite a different picture.

In response to the questions regarding the legal status of children born out of wedlock, the Attorney General's office reported the following. In Sierra Leone a person is considered to be illegitimate if his parents were not married at the time of his birth. 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>37</sup> Although the annulment of marriage does not make a child illegitimate, and there is no specific procedure for the disavowal of paternity, a child born to a married woman 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 no legal familial relationship with his mother, although the law makes her liable for his maintenance. Nor is he legally related to his father, though the latter is also liable for maintenance if paternity is established. There is 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

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<sup>37</sup>The description of the legal status of children born out of wedlock is drawn from a typescript copy of the report to the United Nations, "Answers to the United Nations Questionnaire. Persons Considered to be Born out of Wedlock," prepared by and obtained from the Attorney General's office. This statement included no documentation. However, statutory law in Sierra Leone is based upon English law and we can only assume that the statements reflected the Sierra Leonean lawyers' understanding of the law relating to illegitimacy in England at the time of its reception in Sierra Leone. Macpherson (1841) and Matthews (1895) both discuss the position of an illegitimate child under English common law and include some of the points covered by the document drawn up in Sierra Leone. Cretney (1974) points out other aspects of the position of the illegitimate child in England prior to 1926. In the Laws of Sierra Leone (1960) illegitimacy is specifically mentioned in Cap. 44, s.27; Cap. 92, ss.11 and 15; and Cap. 102, ss.3 and 19.

Sierra Leone" and for this purpose the term "father" includes a natural father.<sup>38</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 the mother's relations. The court has, however, the power 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 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

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<sup>38</sup>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 a Lebanese father are viewed as a growing political economic threat within Sierra Leone because it is believed there are many such children now being educated in the Lebanon who will return to dominate political affairs in Sierra Leone. Hence, nationality, for the purpose of limiting membership of Parliament, was defined in this manner. This ruling was set aside by the revision of the constitution which specifies that a person is eligible for membership in Parliament if either of his parents is a person of Negro African descent (The Constitution of Sierra Leone, Sec. 21, April 19, 1971).

certainly does face considerable legal discrimination. It is little wonder that members of the judiciary sought to remedy the situation with new legislation. 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, September 3, 1965.)

Despite this headline describing the proposed legislation, it should be noted that it was not intended to be retroactive. That is, the law would affect only the children born after it was passed and would not legitimate the group of persons already born out of wedlock. The aims were stated as follows:

The object of this Bill is firstly to declare all children of 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 which appeared in Flamingo magazine:

Good news for the kids - 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 civilization in Sierra Leone particularly, did not recognize 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. (Bangura, 1965.)

The argument that the notion of illegitimacy developed as a result of western colonial influence and was not part of traditional African society is not, as we have shown, actually true. 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 little evidence of social discrimination against the illegitimate child.

However, concern over inheritance and succession did have considerable effect upon relationships within the traditional household, and it continues to do so in the

household of the couple married under one of the Acts.<sup>39</sup> The status of the legally married wife is analogous to the position of the head wife in the polygamous household.<sup>40</sup> Ideally, in the traditional polygamous household, the head wife enjoys the position of highest prestige and authority, compared with her husband's other wives. Her son should succeed to the position of his father. However, more often the father does not get around to considering the question of succession until he is old, and then often names 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 toward their sons continues over a very long period.<sup>41</sup>

However, in the case of the woman married under the statutes the question of inheritance was thought to have been resolved, once and for all. Only the children of that union would inherit from the father, unless he happened to make a will which explicitly included his illegitimate children. As we have seen, however, this is true only in the case of persons whose personal law is "general" or English-based law--the non-natives. Marriage under statutory law does not change the personal law of the partners with respect to inheritance. But, as was noted above, ignorance of this fact is quite general; even many lawyers are mistaken. For example, one Mende lawyer explained that he had not married his wife in the church for fear that then she and her children would inherit his property, rather than the members of his male lineage according to customary law.

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<sup>39</sup>See n. 17, supra.

<sup>40</sup>Baker and Bird (1959) make this same comparison.

<sup>41</sup>When a man is old he will inform the elders whom he has chosen as his successor. The name is not divulged until after his death. If his choice had deviated from the rules of customary procedure he would have been advised to name someone in conformity with the norms. Subsequent research showed a tendency for Local Courts to ignore any will which failed to conform to the rules of devolution under customary law (Harrell-Bond and Rijnsdorp, 1975b).

## Reactions to the proposed legislation

Not surprisingly, the church organizations of Sierra Leone bitterly opposed the proposed legislation on the grounds that it would destroy the sanctity of the Christian home by promoting infidelity and increasing the number of illegitimates. The Bar Association also opposed the bill. They argued that while family law was in need of reform, this was a very inadequate way to proceed with the problem. The members of the National Federation of Women were also adamant in their opposition to the bill. Preferring to attack the problem at its source, they passed a resolution at their annual convention which ". . . called for a stop to the number of children born out of wedlock" (Daily Mail, August 31, 1965).

In my interviews with the professionals 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 responses to this statement.

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

	Males		Females	
	<u>Professional</u>	<u>Student</u>	<u>Professional</u>	<u>Student</u>
Agree	75	57	50	49
Disagree	23	40	48	49
Other	1	2	2	1
Totals	% 100	100	100	100
	No. 85	142	72	87

The professional men clearly favoured equalizing the inheritance rights of all children while women revealed their ambivalence regarding the issue. Many women commented that it was unfair that children should suffer for the actions of adults, but found it difficult to accept that their husbands' illegitimate children might have equal status with their own children. The university students revealed similar conflicts between men and women.<sup>42</sup>

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<sup>42</sup>The attitudes of university students were generally more "pro-western" than those expressed by the professional group (Harrell-Bond, 1975).

More interesting than the responses to the question is the fact that the respondents thought they were being asked to express an opinion on a law already passed. With very few exceptions the informants answered the question and then patiently explained to me that I might not know it, but today this was the way the law in Sierra Leone stood. They related how legislation had been passed a few years earlier 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 learned the final outcome.

The Administrator General reported his experiences with clients who came to him about the distribution of an estate. Time and again, he said, a widow would come to his office about the settlement of her husband's 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." Although these interviews were conducted in 1968-9, when I returned to carry out research in 1971-3, I found that this belief that the law had passed was still very general. I recently lectured university students from Sierra Leone who were studying in Britain and they were amazed and incredulous when I pointed out that the bill had never been made a law.

This belief has had important and continuing social consequences. There has been an increase in paternity disputes (Harrell-Bond, 1975). Paternity disputes were unheard of in traditional society, since everyone welcomed more children in the family. Even though the residents of the Colony were striving to emulate Christian, western ideas of the family, children born out of wedlock still were welcomed by the husband's side of the family. The threat to the inheritance rights of legitimate children has increased tension between spouses over the practice of married men establishing extra-marital liaisons. Although there is no evidence to suggest that men have less interest in engaging in extra marital affairs, there is considerable evidence that they are less eager to father illegitimate children.<sup>43</sup>

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<sup>43</sup>In fact, the growing reluctance to have children outside marriage has encouraged the use of contraceptives by married men in their relationships outside marriage. (Harrell-Bond, 1975).



The belief that the law has been passed has effectively eroded the sense of security that married women formerly had in what was unquestionably their superior role vis-à-vis other women in the society, particularly in relation to the "other women" in their husbands' lives. This insecurity has had a far-reaching effect upon marriage relationships and the organization of the family.<sup>44</sup>

### Conclusion

The legal system imposed 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 and prestige. The colonial period survived long enough for a segment of the population to be convinced of the superiority of the foreigners' ways. This group became committed to and identified with the new system of marriages and their prestigious position in the society came to be equated with it. 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 conform more closely with the common practice of having children outside marriage, the prestige of the elite was threatened and the issue immediately ramified into the political sphere.

The authors of the bill that would have eliminated legal discrimination against children born out of wedlock must have known that they would encounter fierce opposition from some groups. (At least they knew their own wives would object violently.) Perhaps they had hoped that the fact that the United Nations had initiated such a study of discrimination against children born out of wedlock would encourage the members of Parliament to vote favourably on the bill.

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<sup>44</sup>The recent changes in the maintenance law together with the belief that illegitimate children have been given equal status with legitimate children have apparently increased the confidence of unmarried women who are having affairs with married men. There is a growing tendency for these women to confront the wives in public places, reminding them that while the wife might have the ring, they "have the man". Married women dread such confrontations for they cannot be ignored and lead to serious disruption of the marriage, if not divorce (Harrell-Bond, 1975).

Certainly, as far as married men were concerned, the new law would have improved the presently unequal position of these children. In view of the number of children born out of wedlock and the extent to which they appear to be socially accepted, the present law relating to illegitimate children obviously does not represent the values and practices of the whole society. The fact that the professionals, both men and women, so readily accepted the proposed law as an accomplished fact suggests that it may well have come very close to representing the values they had internalized, which condemned the inequalities these children suffer.

In Sierra Leone we have seen how the dispute over this issue exposed a number of conflicts of interest between opposed segments of the population. It revealed the conflicts between men and women, as women seek status security for themselves and economic security for their children and men seek prestige and status through having many children. It revealed the opposition between married women and unmarried mothers in their separate struggles for economic security and status. The importance for women of being married under statutory law is shown by noting just how few women actually achieve such a marriage. Banton (1957) found that the number of marriages under statutory law averaged 353 per year. I recorded the same statistics for the years 1961 to 1968 and found an average of 305 marriages per year, a significant drop in numbers. Moreover, a review of the annual reports from the colony since 1823 shows that the number of marriages per year has remained just about the same.

Most important, the dispute revealed the political struggle between the Creoles and the Provincials, who identified with conflicting symbols of status and prestige: western, Christian marriage and the customs of traditional society. The political struggle between them has been a long and bitter one. Independence settled once and for all that the Provincials, by virtue of their superior numbers, would control the government. Although the Creoles continued to hold most of the senior positions in law, education and the civil service because of their educational superiority, their former dominant position in the society was severely undermined.<sup>45</sup>

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<sup>45</sup>Since the success of the bill would have represented one more indication of their political defeat, perhaps the acceptance of the idea that it had become law expressed a general acquiescence in the inevitable.

Gusfield (1972), in his study of the temperance movement in the United States, has considered the cultural basis of political loyalties and animosities. He discusses how issues of morality can be utilized by a cultural group to preserve, defend, or enhance the dominance and prestige of its own life style in the total society. As in American society, where drinking or abstinence has been one of the significant characteristics which has differentiated one subculture from another, in Sierra Leone, outward conformity to monogamous statutory marriage has distinguished the elite from the rest of the population. Gusfield has shown how, in New England, "Temperance was one way in which a declining social elite tried to retain some of its social power and leadership" (Id.:5). Similarly, by upholding the virtues of Christian marriage, the professionals in Sierra Leone attempted to bolster their own weakened position.

It is interesting to note that those who supported the bill attempted to appeal to the sense of pride in African culture. They maintained that the idea of illegitimacy was imported to Sierra Leone by Britain, and that to rid the society of the concept would also rid it of one symbol of the intrusion of a foreign culture. Those who opposed the bill, on the other hand, appealed to the virtues of Christian marriage and to the superiority of the culture of the elite who had identified with British culture. Because the issue became one of status competition, the professional men were forced to put aside their personal views regarding the equity of the bill in order to prevent any further loss of face in their losing struggle against political domination by the Provincials.

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