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THE ILLEGITIMATE'S RIGHT TO BENEFITS
ACCRUING UPON THE DEATH OF HIS PARENTS

The constantly increasing rate of illegitimate births has become a major social problem. Although the number of unmarried females in the United States decreased in the period from 1938 to 1957 there was a noticeable increase in illegitimate births.¹ In 1938 there was an estimated 87,900 illegitimate births, amounting to 3.84 percent of all live births; in 1957 the figure had risen to 201,700 or 4.74 percent of all live births.² A more recent survey indicates that approximately one birth in sixteen is an illegitimate one.³ The incidence in some large cities nears 40 percent of live births.⁴ Constituting a significant segment of our society, the illegitimate has had rights to benefits derived from his parents closely regulated. It is the purpose of this Comment to examine both Louisiana and federal legislation in this area.

A. Federal Legislation

Benefits available to children under federal statutes are usually contingent upon the father's membership in a given class or the father having otherwise earned the benefit. Whether or not an illegitimate child falls within the purview of the term 'child' as used in the statute will be determinative of his right to the benefits afforded by the statute. Some of the statutes have defined the term "child," while others provide that the courts must look to the state law in order to ascertain its meaning. A third group of statutes neither defines the term nor gives any indication as to its import, thereby placing the burden of definition upon the federal courts.

The Social Security Act, while originally providing that state law applicable to the devolution of intestate personal property would govern the definition of the term "child,"⁵ was amended in 1965 to reduce the discrimination against the illegitimate child.⁶ Now a child is afforded the benefits of the act

1. WEBB, *THE PROBLEM OF ILLEGITIMACY* 8 (1961).

2. *Id.*

3. U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES* 47, 51 (86th ed. 1965).

4. WEBB, *THE PROBLEM OF ILLEGITIMACY* 9 (1961).

5. 64 Stat. 511 (1950), as amended, 72 Stat. 1030 (1958), 42 U.S.C. § 416(h)(2) (1958).

6. 64 Stat. 492 (1950), as amended, 42 U.S.C. § 416(h)(3) (1965) provides: "An applicant will be considered the child of the worker if the worker (1) has acknowledged in writing that he is the child's father; (2) has been

if the father has acknowledged the child in writing, has been judicially decreed to be the father of the child, has been judicially ordered to support the child, or has been shown by other evidence to be the father of the child and has been living with or supporting the child.⁷ An illegitimate child seeking benefits under the Veteran's Administration Act must meet the same tests as those provided in the Social Security Act.⁸ The Longshoremen's and Harbor Workers' Compensation Act⁹ definition of "child" includes an "acknowledged illegitimate child dependent upon the deceased."¹⁰ Under the last act it has been decided that the term "illegitimate" is to be interpreted according to state law¹¹ while the term "acknowledged" has been interpreted according to the purpose of the statute and contrary to state law when necessary.¹²

The Federal Employees Group Life Insurance Act¹³ provides that benefits from the insurance be distributed, in order of precedence to the beneficiary, the deceased's widow, his children and their descendants by representation, his parents, his executor or administrator, or his next of kin.¹⁴ The provisions of the Copyright Act¹⁵ which give the "widow, widower or children of the author, if the author be not living, . . . then the author's executors, or in the absence of a will, his next of kin," the right of renewal, are very similar to those of the Federal Employees Group Life Insurance Act.¹⁶ In both acts dependency and loss are not determinative of eligibility. Benefits are awarded simply because the recipient has been designated by the deceased or he is within the required degree of rela-

decreed by a court to be the child's father; (3) has been ordered by the court to contribute to the support of the child because he is the child's father; or (4) is shown by other evidence satisfactory to the Secretary to be the child's father and has been living with or contributing to the support of the child."

7. 64 Stat. 492 (1950), *as amended*, 42 U.S.C. § 416(h)(3) (1965).

8. 38 U.S.C. § 101 (1958).

9. 44 Stat. 1424 (1927), 33 U.S.C. §§ 901-50 (1958).

10. 44 Stat. 1425 (1927), 33 U.S.C. § 902(14) (1958).

11. *Ellis v. Henderson*, 204 F.2d 173 (5th Cir.), *cert. denied*, 346 U.S. 873 (1953). There the wife of the deceased lived openly with another man who was apparently the father of her children. The court allowed recovery under the Longshoremen's Act, since all nine children were "conclusively presumed" to be the children of the husband under Louisiana law.

12. *Weyerhauser Timber Co. v. Marshall*, 102 F.2d 78 (9th Cir. 1939). There the state law required a written acknowledgment but the court decided that an oral acknowledgment would be sufficient to entitle the illegitimate children to the benefits of the Act.

13. 5 U.S.C. §§ 8701-8716 (1966).

14. 5 U.S.C. § 8705 (1966).

15. 17 U.S.C. § 24 (1964).

16. 17 U.S.C. § 24 (1964).

tionship. Neither statute defines the term "child" with reference to illegitimates and the courts have consistently looked to state law governing the descent of property to ascertain who will be a recipient of the benefits.¹⁷

The third group of statutes is composed of the Federal Death on the High Seas Act,¹⁸ the Federal Employers' Liability Act,¹⁹ and the Jones Act.²⁰ Here the decisions of the federal courts have evolved a definition of the term "child" which includes the illegitimate. This was first decided in the leading case of *Middleton v. Luckenbach S.S. Co.*,²¹ involving the Federal Death on the High Seas Act. The court reasoned that the law of the place of injury should control in order to insure uniformity in recovery, but since the controlling law was the law of the high seas, federal law had to be applied. While the reasoning of the court seems questionable, it has produced the desired uniformity and has been consistently followed.²² Since most accidents involving the Jones Act also occur on the high seas, the courts have followed the results reached in *Middleton* and apply federal law to the term "children."²³ It has not, however, been determined if a federal definition of the term "children" will be applied where the accident occurred within the jurisdiction of the state and recovery is sought under the Jones Act.²⁴ Although some early decisions interpreted the Federal Employers' Liability Act by reference to state laws of inheritance it now seems to be well established that a federal

17. In *Grave v. United States*, 170 F. Supp. 176, 181 (E.D. Va. 1959), the court said that "the state law must control the familial relationship." The same sentiments were expressed in interpreting the Copyright Act by the court in *De Sylva v. Ballantine*, 351 U.S. 570, 580 (1956): "The scope of a federal right is, of course, a federal question, but that does not mean that its contents is not to be determined by state, rather than federal law. . . ."

18. 41 Stat. 537 (1920), 46 U.S.C. §§ 761-67 (1964).

19. 35 Stat. 65 (1908), as amended, 45 U.S.C. §§ 51-60 (1964).

20. 41 Stat. 1007 (1920), as amended, 46 U.S.C. § 688 (1964).

21. 70 F.2d 326 (2d Cir. 1934), cert. denied, 293 U.S. 577 (1934).

22. It is submitted that the court could have avoided the roundabout reasoning and have reached the same result by interpreting the term "children" in reference to the end the statute is trying to accomplish. If the end of the statute is more important on a given issue than the policies of the states, then local law should not be looked to on that issue.

23. *Civil v. Waterman S.S. Corp.*, 217 F.2d 94 (2d Cir. 1954). Since this accident occurred on the high seas, the court merely adopted the definition of the term "child" which was used in the *Luckenbach* case.

24. In *Huber v. Baltimore & O. R.R.*, 241 F. Supp. 646 (D. Md. 1965), the court interpreted the term "children" as used in FELA as including illegitimates, although contrary to state law. Since the Jones Act incorporated *in toto* the beneficiary provisions of the FELA, it is highly probable that a federal definition of the term "children" will likewise be applied to the Jones Act when the accident occurs within the jurisdiction of the state.

definition of "children" will be applied unless it is in conflict with clear state policy.²⁵ Thus under these three acts the illegitimate child is entitled to recovery, but unlike the Copyright and Federal Employees Group Life Insurance Act he must show pecuniary loss. The purpose of these acts is to compensate for loss suffered by the recipients rather than to control the distribution of property.

As a whole, federal legislation does not severely discriminate against the illegitimate. This seems justifiable in view of the fact that the traditional reasons for denying property rights to illegitimate children have no place in the sphere of federal legislation designed to provide benefits to the family of the deceased contributor to a specific fund. To deny the illegitimate child the right to recover from a source to which his parents contributed serves only to increase the burden of the state in providing the child with support. The needs of the illegitimate child being as great if not greater than the legitimate child, it appears that the purpose of this legislation would be better served if both were afforded the same rights.

B. Louisiana Legislation

1. Workmen's Compensation

The Louisiana Compensation Act defines "child" or "children" as "only legitimate children, step-children, posthumous children, adopted children, and illegitimate children acknowledged under the provisions of Civil Code articles 203, 204, and 205."²⁶ Thus the acknowledged illegitimate child has the same rights to compensation upon the death of its parent which the legitimate child has, with one notable exception. An illegitimate can be acknowledged posthumously, but the act has been interpreted as not providing coverage for this child. The courts have repeatedly held that only the modes of acknowledgment provided for in the Civil Code will entitle the illegitimate child to recover.²⁷

25. *Bowen v. New York Cent. R.R.*, 179 W. Supp. 225 (D. Mass. 1959), referred to state law to define the term "children." However, that case seems to be overruled by the decision in *Huber v. Baltimore & O. R.R.*, 241 F. Supp. 646 (D. Md. 1965), which held that a federal definition should be used unless it conflicted with clear state policy.

26. LA. R.S. 23:1021(3) (1950).

27. In *Barranco v. Davis*, 175 La. 35, 142 So. 844 (1932), the court found an acknowledgment by the mother; but since that acknowledgment did not bind the father, the court denied compensation.

In the following cases the court found that the acknowledgment did not

The Act, however, also provides that "other dependent members than those enumerated" are entitled to compensation.²⁸ Thus, in the early case of *Gullung v. Dalgarn Constr. Co.*²⁹ the argument was made that an unacknowledged illegitimate child was an "other dependent member of the family." Reviewing the then existing body of jurisprudence, the court rejected the child's claim. This reasoning was again proposed in *Beard v. Rickert Rice Mills*³⁰ and was decided in favor of the unacknowledged illegitimate daughter of the deceased employee in the court of appeal. However, in the Supreme Court the judgment was reversed on the ground that the term "legal dependents" included only legitimate dependents.³¹ The court concluded that an unacknowledged illegitimate child, because of its illegitimacy, is denied the protections of the act even in cases where they have proved their dependency upon the deceased. But the *Beard* case, insofar as it tended to exclude dependent members of the family of a deceased employee from the protection of the act, was overruled by *Archibald v. Employers Liab. Assur. Corp.*,³² which held that the act must be liberally construed in order to carry out its purpose and that all that is required "is a family or household and the existence of the dependency of a member thereof."³³

Relying upon the reasoning of the *Archibald* decision the Supreme Court finally accepted the argument that an illegitimate child, who could not recover as a "child," could recover as a dependent member of the family in *Thompson v. Vestal Lumber & Mfg. Co.*³⁴ The court reasoned that if the legislature had considered it against public order or good morals to allow an unacknowledged illegitimate child compensation for the accidental death of his father, when the child was living with the

meet the requirements of LA. CIVIL CODE art. 203 (1870): *Stewart v. Parish of Jefferson Davis*, 136 So. 659 (La. App. 1st Cir. 1931) (certificate of a priest did not constitute a legal acknowledgment by either of the parents under art. 203); *Wells v. White-Grandin Lumber Co.*, 129 So.2d 171 (La. App. 1st Cir. 1930) (informal acknowledgment of the paternity of an illegitimate was not sufficient compliance with art. 203); *Gullung v. Dalgarn Constr. Co.*, 1 La. App. 147 (Orl. Cir. 1924) (an adulterous bastard is unacknowledgeable).

28. LA. R.S. 23:1232(8) (1950).

29. 1 La. App. 147 (Orl. Cir. 1924).

30. 185 La. 55, 168 So. 492 (1936).

31. The court was construing LA. R.S. 23:1231 (1950), which states: "For injury causing death within one year after the accident there shall be paid to the *legal dependents* of the employee, actually and wholly dependent upon his earnings for support at the time of the accident and death, a weekly sum as hereinafter provided . . ." (Emphasis added.)

32. 202 La. 89, 96, 11 So.2d 492, 494 (1942).

33. *Id.*

34. 208 La. 83, 22 So.2d 842 (1945).

father as a member of his family and was dependent upon his earnings for support at the time of the accident and death, it would have expressly excluded such a child from the right to compensation. In allowing the illegitimate child to recover the court reasoned that the father had a legal and moral duty to support his illegitimate child under Civil Code article 240, and since he was discharging his duty when taken by death, the child should not now be deprived of that support.³⁵

The unacknowledged illegitimate child who establishes his claim to compensation as a "dependent member of the family" does not, however, enjoy the same status as the acknowledged illegitimate child or the legitimate child. A "child" living with his deceased parent is conclusively presumed to be completely dependent on the parent and is entitled to maximum compensation under the act,³⁶ whereas the "dependent member of the family" may succeed in establishing only partial dependency and, therefore, be entitled only to partial recovery.³⁷ The "dependent member of the family" must be living as a member of the family unit under the roof of the deceased,³⁸ whereas the "child" is entitled to recovery if not living with the deceased, provided he can prove whole or partial dependency.³⁹ Some decisions of our courts also indicate that a child claiming as a "dependent member of the family" will not recover if there is also a dependent wife, "child," or mother or father.⁴⁰

An illegitimate child born after the death of his father was held not entitled to benefits under the act as a "dependent member of the family" in *Williams v. American Employers Ins. Co.*⁴¹ The court reasoned that the child was not actually depen-

35. LA. CIVIL CODE art. 240 (1870) declares: "Fathers and mothers owe alimony to their illegitimate children, when they are in need . . ."

36. LA. R.S. 23:1232(1)-(6) (1950) sets out a schedule of benefits for the "child."

37. To prove dependency the child claiming as a "dependent member of the family" must show that the deceased made actual contribution to his support. The dependent is, however, not entitled to compensation to the extent of the contributions, but only to such compensation to satisfy his needs.

If such a child proves only partial dependency, i.e., he received only a portion of his support from the deceased, then the amount of his compensation is determined by LA. R.S. 23:1231 (1950).

38. *Archibald v. Employer's Liab. Assur. Corp.*, 202 La. 89, 11 So.2d 492 (1942).

39. The "child" not living with the deceased could establish his dependency in the same manner as the child claiming as a "dependent member of the family."

40. *Williams v. Jahncke Service, Inc.*, 38 So.2d 400 (La. App. Orl. Cir. 1949); *Lunkin v. Triangle Farms, Inc.*, 24 So.2d 213 (La. App. 1st Cir. 1945).

41. 237 La. 101, 110 So.2d 541 (1959).

dent upon his father at the time of his death. This decision has been criticized on two grounds.⁴² First, it is suggested that the posthumous child was actually dependent on the father at the time of his death since the father was providing the mother with nourishment which ultimately reaches the child through the body of the mother. Second, the decision is criticized as being contrary to compensation principles. Since the legislature expressly provided for compensation to the posthumous legitimate child, thereby recognizing the social need for compensation after the father's death, this reasoning should likewise be extended to the illegitimate child where the need for compensation is at least equally great.

Thus, while the acknowledged illegitimate child has the same rights under the act as the legitimate child, the same status is not given to those illegitimate children who are not acknowledged or who are born after the death of the father.⁴³ For the reasons previously mentioned it appears that the distinction between a posthumous illegitimate and a posthumous legitimate child is highly questionable in view of sound compensation policy. The distinction between an acknowledged illegitimate child and an unacknowledged illegitimate child seems likewise to be contrary to the construction of the act, which has been repeatedly construed in favor of the employee and his dependents. It is submitted that acknowledgment should not be a criterion in awarding compensation to an illegitimate child. If the child can prove his paternity or maternity he should be entitled to the same benefits as a "child." The traditional reasons for denying the illegitimate child property rights are as inapplicable under the Workmen's Compensation Act as in the sphere of federal welfare legislation. Since the employer of the parent has contributed to a fund for the benefit of the employee's dependents, the illegitimate child should not be denied recovery merely because his parents have not chosen or have neglected to acknowledge him.

2. *Wrongful Death Action—Article 2315*

The Louisiana jurisprudence clearly indicates that we will not allow an illegitimate child to bring an action for the wrong-

42. MALONE, *LOUISIANA WORKMEN'S COMPENSATION* 172 (Supp. 1964, at 172-73).

43. It should be noted that putative children are entitled to recovery under the Act, since their claims have been analogized to the claim of a putative wife who is entitled to compensation. *Eason v. Alexander Shipyards*, 47 So.2d 114 (La. App. Orl. Cir. 1950); *Rollins v. Foundation Co.*, 154 So. 674 (La. App. 1st Cir. 1934).

ful death of its parents under Civil Code article 2315.⁴⁴ Unlike the Workmen's Compensation Act, the words "child" and "children" as used in article 2315 have been interpreted as applying exclusively to children born of the marriage or to children who have been duly legitimated by their parents.⁴⁵ Acknowledged illegitimate children, therefore, have been denied the right afforded to legitimate children under article 2315.⁴⁶

The argument that an illegitimate child should be allowed an action for the wrongful death of its parents was first pressed upon the Supreme Court in the celebrated case of *Sesostriis Youchican v. Texas & Pacific Ry.*⁴⁷ In that case an Indian brought suit for damages for the wrongful death of his mother who had been married according to the customs of the Tunica Indian tribe, but the marriage was not legalized in the manner provided by the Civil Code. The court held that this was not a valid marriage and its illegitimate offspring could not bring an action under article 2315 since that article applies exclusively to legitimate children.

The question of a putative marriage was not raised in the *Youchican* case probably because it previously had been held in *Vaughan v. Dalton-Lard Lumber Co.*⁴⁸ that the civil effects of a putative marriage did not encompass a suit for wrongful death

44. LA. CIVIL CODE art. 2315 (1870) *as amended*, provides: "Every act whatever of man, that causes damage to another obliges him by whose fault it happened to repair it.

"The right to recover damages to property . . . is a property right which on the death of the obligee, is inherited by his legal, instituted, or irregular heirs

"The right to recover all other damages . . . , if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such children The survivors in whose favor this right of action survive, may also recover the damages which they sustained through the wrongful death of the deceased."

Cases interpreting art. 2315 as denying recovery to illegitimate children are: *Levy v. State*, 192 So.2d 193 (La. App. 4th Cir. 1966); *Sesostriis Youchican v. Texas & P. Ry.*, 147 La. 1080, 86 So. 551 (1920); *Jackson v. Lindlom*, 84 So.2d 101 (La. App. Orl. Cir. 1956).

45. *Thompson v. Vestal Lumber & Mfg. Co.*, 208 La. 83, 22 So.2d 842 (1945); *Sesostriis Youchican v. Texas & P. Ry.*, 147 La. 1080, 86 So. 551 (1920); *Green v. New Orleans S. & G.I. R.S.*, 141 La. 120, 74 So. 717 (1917); *Landry v. American Creosote Works*, 119 La. 231, 43 So. 1016 (1907); *Vaughan v. Dalton-Lard Lumber Co.*, 119 La. 61, 43 So. 926 (1907); *Lynch v. Knoop*, 118 La. 611, 43 So. 252 (1907); *Buie v. Hester*, 147 So.2d 733 (La. App. 2d Cir. 1962); *Finn v. Employer's Liab. Assur. Corp.*, 141 So.2d 852 (La. App. 2d Cir. 1962).

46. *Benjamin v. Hardware Mut. Cas. Co.*, 244 F. Supp. 652 (W.D. La. 1965).

47. 147 La. 1080, 86 So. 551 (1920).

48. 119 La. 61, 43 So. 926 (1907). There the putative wife of the deceased brought an action as the surviving spouse, but was denied recovery.

under article 2315. The rationale of the *Vaughan* decision was that article 2315 is *sui generis* and is neither a law of inheritance nor a law of marriage. It provides for the survival of a right of action, and a distinct right of action, in favor of certain classes of persons. Those not included within the express provisions of the article are excluded and the court refused to extend its coverage to persons not expressly mentioned. Thus, while an acknowledged child may be capable of inheriting from its parents, he is not a "child" within the contemplation of article 2315.

Although the right of a putative child to recover under article 2315 has never been litigated, the *Vaughan* case and several subsequent cases denying recovery to the putative spouse indicate that by analogy recovery would be denied to the putative child.⁴⁹ In view of articles 117⁵⁰ and 118⁵¹ of the Civil Code which provide that a putative marriage shall produce civil effects in favor of the children born of the union, these decisions seem to be questionable. However, the courts' repeated refusal to allow recovery has been based on the ground that the action given by article 2315 was purely statutory and not one of the civil effects of marriage.⁵²

A recent argument in favor of the illegitimate's right to recover under article 2315 was advanced in *Levy v. State*.⁵³ There it was argued that it was a denial of due process and equal protection under both the Louisiana and United States Constitutions to deprive illegitimate children of this right simply because of their status. The court of appeal rejected the contention and ruled that the denial of the right has substantial relation to general health, morals, and the welfare of the people because it discourages promiscuity and the births of illegitimate children.⁵⁴

The jurisprudence is clear that neither an illegitimate child

49. *Chivers v. Couch Motor Lines, Inc.*, 159 So.2d 544 (La. App. 3d Cir. 1964); *Scott v. LaFontaine*, 148 So.2d 780 (La. App. 4th Cir. 1963); *Buie v. Hester*, 147 So.2d 733 (La. App. 2d Cir. 1962).

50. LA. CIVIL CODE art. 117 (1870) provides: "The marriage, which has been declared null, produces nevertheless its civil effects as it relates to the parties and their children, if it has been contracted in good faith."

51. "If only one of the parties acted in good faith, the marriage produces its civil effects only in his or her favor, and in favor of the children born of the marriage."

52. *Vaughan v. Dalton-Lard Lumber Co.*, 119 La. 61, 64, 43 So. 926, 927 (1907).

53. 192 So.2d 193 (La. App. 4th Cir. 1966).

54. *Id.* at 195: "Denying illegitimate children the right to recover in such a case is actually based on morals and general welfare because it discourages bringing children into the world out of wedlock."

nor a putative child can recover under article 2315, and the fact that the child was dependent upon the deceased parent for support⁵⁵ or that he was duly acknowledged makes no difference.⁵⁶ It is submitted that denying the child of a putative marriage the protection afforded by article 2315 is contrary to the express intent of articles 117 and 118 of the Civil Code. Those articles give the child of a putative marriage a legitimate status and, since a legitimate child can take advantage of article 2315, it seems illogical to deny the same right of action to the putative child. However, as in the workmen's compensation claims, it is here suggested that the courts make no distinction between the illegitimate child and the legitimate child provided paternity or maternity is proved. By refusing to recognize a right of action in the illegitimate child under article 2315, the courts allow the wrongdoer to escape the consequences of his act, and instead place the burden on the innocent child.

3. *Inheritance and Alimony*

The illegitimate child inherits as an irregular heir under the provisions of the Civil Code.⁵⁷ His right to inherit is wholly dependent upon acknowledgment by the parent from whom he seeks to inherit.⁵⁸ If he has not been acknowledged by the parent from whom he seeks inheritance, or if he is incapable of being acknowledged by him because he is incestuous or adulterous, he has no right to inherit from his parents.⁵⁹ He is, however, entitled to alimony, but can claim it only in limited situations.⁶⁰ Neither the parents of an unacknowledged child nor his brothers or sisters are capable of inheriting from the illegitimate child.⁶¹

55. *Board of Commissioners v. City of New Orleans*, 223 La. 199, 65 So.2d 313 (1953).

56. *Lynch v. Knoop*, 118 La. 611, 43 So. 252 (1907); *Scott v. La Fontaine*, 148 So.2d 780 (La. App. 4th Cir. 1963).

57. LA. CIVIL CODE arts. 917-20 (1870).

58. *Id.* arts. 918, 919. While Civil Code Article 917 is phrased in terms of "natural children" it must be noted that in Louisiana only those children who have been acknowledged are recognized as "natural children." This differs from the French law under which all children born out of wedlock, who are capable of acknowledgment, are called natural children at their birth. *Minor v. Young*, 149 La. 583, 89 So. 757 (1921).

59. LA. CIVIL CODE art. 920 (1870).

60. *Id.* The unacknowledged illegitimate child is entitled to alimony only if he can show that it is necessary for his support. *Id.* art. 240; *O'Gara v. Riddell*, 19 La. Ann. 504 (1867). As to when the duty to pay alimony terminates, see LA. CIVIL CODE art. 243 (1870).

61. LA. CIVIL CODE art. 922 (1870). In *Lathan v. Edwards*, 121 F.2d 183 (5th Cir. 1941), the sister of an unacknowledged child was seeking to inherit from him under the provision of art. 923. The court held that article 923

Since inheritance depends upon acknowledgment, it is not surprising that the modes of acknowledgment sufficient to enable the illegitimate child to inherit have been repeatedly litigated.⁶² The early Louisiana jurisprudence distinguished between the necessity of formal acknowledgment by the mother and the necessity of such an acknowledgment by the father. The courts held that the father could acknowledge only by the methods provided in Civil Code article 203,⁶³ while the mother could acknowledge by other methods which could be shown by any legal evidence.⁶⁴ However, this distinction was later abolished and it became possible for both father and mother to acknowledge by modes other than those provided for in Civil Code article 203.⁶⁵ The case of *Minor v. Young*⁶⁶ cast considerable doubt on the validity of the previous jurisprudence, but subsequent cases have held that the child who has not been acknowledged in accordance with article 203 may prove "informal acknowledgment" through admissions of paternity or maternity and thereby inherit.⁶⁷ However, it has also been established that while an illegitimate child may inherit by proving informal acknowledgment, the parent can inherit from the illegitimate child only if the parent can show an acknowledgment strictly in accordance with the modes prescribed by article 203.⁶⁸

The illegitimate child acknowledged by the mother will

allowed the brothers and sisters of an illegitimate child to inherit only if the child had been acknowledged and, hence, the sister could not inherit directly from her unacknowledged brother. The *Lathan* case was criticized in Note, 4 LA. L. REV. 147 (1941), where the author suggested that the nearest blood relative should be entitled to inherit, thereby diminishing the suffering caused by the social attitude toward illegitimate children.

62. For a discussion dealing with formal and informal acknowledgment under LA. CIVIL CODE art. 203 (1870), see Comments, 6 LA. L. REV. 268 (1945), 6 TUL. L. REV. 120 (1931).

63. LA. CIVIL CODE art. 922 (1870); Succession of Hebert, 33 La. Ann. 1099 (1881); Dupre v. Caruthers, 6 La. Ann. 156 (1851); Jobert v. Pitot, 4 La. Ann. 305 (1849).

64. Succession of Hebert, 33 La. Ann. 1099 (1881); Jobert v. Pitot, 4 La. Ann. 305 (1849); Austin v. Mattie, 4 Orl. App. 148 (La. App. 1907).

65. Succession of Corsey, 171 La. 663, 131 So. 841 (1930); Bourriaque v. Charles, 107 La. 217, 31 So. 757 (1902); Hart v. Hoss & Elder, 26 La. Ann. 90 (1874).

66. 148 La. 610, 87 So. 472 (1921).

67. Succession of Corsey, 171 La. 663, 131 So. 841 (1930); Murdock v. Potter, 155 La. 145, 99 So. 18 (1923); Taylor v. Allen, 151 La. 82, 91 So. 635 (1922); Ford v. Calhoun, 6 La. App. 350 (2d Cir. 1927); Penn v. Jones, 5 La. App. 371 (1st Cir. 1926).

68. Perkins v. Brownell-Draws Lumber Co., 147 La. 337, 84 So. 894 (1920); Succession of Lacosst, 142 La. 673, 77 So. 497 (1917); Pigeau v. Duvernay, 4 Mart. (O.S.) 265 (La. 1816); Succession of Falls, 4 La. App. 10 (1st Cir. 1925).

inherit from her to the exclusion of all relatives other than lawful descendants.⁶⁹ However, the illegitimate child acknowledged by the father inherits from him only when he leaves no legitimate ascendants, descendants, collaterals, or surviving wife. The acknowledged illegitimate child takes the succession of the father only to the exclusion of the state.⁷⁰

Acknowledged illegitimate children do not inherit from the legitimate relations of their parents.⁷¹ Finally, it should be noted that acknowledged illegitimate children, unlike legitimate children, are not seized as heirs at the instant the ancestor dies. They have only a right to be put in possession upon a proper showing.⁷²

While unacknowledged illegitimate children have no right to inherit, the Civil Code does give them a right to alimony from their parents.⁷³ The amount of alimony is determined exclusively by the need of the child and the ability of the parent to pay at the time alimony is granted. However, the amount may be adjusted as need and ability to pay change.⁷⁴ The obligation to provide alimony for the illegitimate child ends whenever he is capable to support himself or when his father and mother have educated him so that he can support himself. However, if the child is physically disabled, the obligation continues.⁷⁵

In order to enforce judicially the right to alimony an illegitimate child must prove either acknowledgment by the parent from whom he claims, or prove that the party is his mother or father. In addition to establishing his filiation, the illegitimate child must show absolute need for support.⁷⁶ The action for

69. LA. CIVIL CODE art. 918 (1870). If the mother has left lawful descendants then the acknowledged illegitimate children are entitled only to alimony.

70. *Id.* art. 919.

71. *Id.* art. 921; Succession of Fernandez, 163 La. 362, 111 So. 787 (1927); Succession of Fortier, 51 La. Ann. 1562, 26 So. 554 (1899).

72. LA. CIVIL CODE 926 (1870); Succession of Fletcher, 11 La. Ann. 59 (1856).

73. LA. CIVIL CODE art. 240 (1870). Alimony encompasses whatever is necessary for nourishment, lodging, support, and (for minors) education. *Id.* art. 230. It should also be noted that this is a reciprocal obligation and, therefore, the illegitimate children have a corresponding duty towards their parents. *Id.* art. 240.

74. O'Gara v. Riddell, 19 La. Ann. 504 (1867); Cleaveland v. Sprowl, 12 Rob. 172 (La. 1845).

75. LA. CIVIL CODE art. 243 (1870). The obligation to provide alimony after the death of a parent rests on the heirs; however, it is extinguished if the parent has provided sufficient maintenance for the child during his lifetime.

76. *Id.* art. 242.

alimony cannot properly be brought against the administrator of the succession of the parent who was charged with the obligations to support the illegitimate child, for the obligation is owed by the heirs and not by the succession.⁷⁷ However, the heirs owe alimony to the illegitimate child and the obligation to pay continues while the need exists and the heirs are able to pay.⁷⁸

The parents of an acknowledged or unacknowledged illegitimate child cannot donate, either mortis causa or inter vivos, any more than that necessary for the support of the child if there are descendants.⁷⁹ However, when the mother leaves no legitimate descendants, the acknowledged illegitimate children can take by donation the whole of her succession.⁸⁰ If the father has left no legitimate descendants, then his acknowledged illegitimate children can take a portion of the father's property by donation, the remainder going to his legitimate heirs.⁸¹ Unacknowledgeable children are only entitled to take by disposition the amount necessary for their support or enough to secure them in a profession or occupation.⁸²

Speaking about the rationale behind the discrimination against the illegitimate child in inheritance law, the court in *Minor v. Young*⁸³ said:

"The purpose of such restrictions is not to punish the offspring of those contravening these rules of morality, but to raise a warning barrier before the transgressors, prior to the act, of the consequences of his conduct."

While this may be a desirable purpose, the legislation certainly

77. *Id.* art. 241; *Drouet v. Succession of Drouet*, 26 La. Ann. 323 (1874). This conclusion seems reasonable, as the payment of alimony may be necessarily required for a considerable time, and should be made only by the parties against whom the law creates a claim.

78. Each heir must pay the alimony according to his virile share. However, if one heir's ability to pay greatly exceeds that of another, he will be assessed a greater portion. *Drouet v. Succession of Drouet*, 26 La. Ann. 323 (1874).

79. LA. CIVIL CODE art. 1483 (1870).

80. *Id.* art. 1484.

81. *Id.* 1486.

82. *Id.* art. 1488 (1870). This makes it possible for the unacknowledged illegitimate child to receive more than the acknowledged illegitimate child. Under article 1486 the acknowledged child is restricted to a certain portion of the testator's property, whereas under article 1488 the only limitation is "what is necessary to their sustenance," depending on the factual situation of each particular case. *Succession of Haydel*, 188 La. 646, 177 So. 695 (1937); *Succession of Vance*, 110 La. 760, 34 So. 767 (1903).

83. 149 La. 583, 589, 89 So. 747, 759 (1921).

has not had that effect. As early as 1851 the court in *Dupre v. Caruthers*⁸⁴ made the following observation:

"It is true that the legislation has ever failed in this object [to honor matrimony and discourage concubinage]; for probably no one was ever deterred from concubinage by the consideration that his innocent offspring would be the victim of his guilt. And the only effect has been, that the guilty parents have eaten the grapes while the child's teeth, with tears in his eyes, have been set on edge. But still it is the law, and must be obeyed until repealed."

The discrimination in our inheritance law seems no longer justifiable on any rational basis. The legislation which discriminates against illegitimacy has not had the desired effect of reducing illegitimates, and it is probable that illicit sexual conduct would be more effectually discouraged if the risk of incurring a serious obligation were substantially increased, that is, if the resulting child was given substantially the rights of a legitimate child. By discriminating against the illegitimate child we are allowing the guilty parties to avoid the consequences of their conduct and are depriving the illegitimate child, not a party to the conduct, of valuable rights. In addition, a denial of the same rights of inheritance and support as are available to the legitimate child correspondingly increases the state's burden in supporting these illegitimate children. It may be argued that allowing illegitimate children to share equally with legitimate children in the assets of their parents other than money may destroy family unity and harmony; however, such a result could be easily avoided by giving the illegitimates their shares in value only, or allowing the legitimate children the option of purchasing the undivided interests of the illegitimates in the inherited assets.

Whenever the illegitimate child is able to prove his maternity he should be entitled to inherit from his mother, at least in value, to the same extent as the legitimate child.⁸⁵ Since, however, there is a great danger of fraudulent and ill-founded

84. 6 La. Ann. 156, 158 (1851).

85. Traditionally, acknowledgment was the only certain means of establishing one's filiation and, therefore, mere proof of maternal and paternal descent was prohibited. FRENCH CIVIL CODE art. 340 (1804). This was due to the inability to prove conclusively one's maternal or paternal descent through then existing methods. In view of modern methods, such as blood tests, it is possible to positively prove one's filiation. These changed conditions justify an abandonment of requiring acknowledgment in order to inherit and to substitute proof of maternity or paternity as the criteria for inheritance rights.

claims to the succession of the father, it is submitted that the illegitimate child must be formally acknowledged by the father before being allowed to share equally with the legitimate children in the father's succession. This requirement of acknowledgment by the father would seem to be especially desirable in view of the fact that after the father's death there is often no one who could effectively contest the claims of children who were not his. Although such an acknowledgment should be a prerequisite to inheritance from the father, it should not, however, be conclusive. Thus, having established his maternity or having been formally acknowledged by his father, the illegitimate child should be allowed his share in value in the succession of his parents to the same extent as legitimate children.

Conclusion

Although complete abolition of the distinction between the illegitimate child and the legitimate child is not envisioned, a reform of the laws discriminating against the illegitimate without any legal justification seems desirable. An illegitimate child is likely to be born under conditions less favorable than the lawful child and thus handicapped at the initial and most critical stage of its existence. Denial of rights to money and other property serves only to increase the burden of the state. Since the state owes a duty to every child, its obligation to the child is increased in proportion to the degree that its natural rights have been neglected.

Proof of informal acknowledgment and in certain instances of maternity or paternity should be sufficient to secure for the illegitimate child all property rights to which the legitimate child is entitled except to the succession of his father. To prove his filiation the illegitimate child should be allowed to use any available evidence.⁸⁶ Any competent person should be permitted to bring a suit establishing the paternity or maternity of the child, as the parties now entitled to bring the suit are often ignorant of their rights. Through such a plan physicians, unmar-

86. Presently a child may prove his paternity only by showing an admission of paternity by the father or that the mother lived in concubinage with the father at the time of the child's birth. LA. CIVIL CODE art. 209 (1870). To prove maternity a child must establish that the alleged mother is not married and that he is identically the same person as the mother brought forth. *Id.* art. 212. In proving maternity the child is not limited to admissions of maternity made by the mother, but may prove his maternal descent by any legal evidence. *Jobert v. Pitot*, 4 La. Ann. 305 (1849).

reputable citizens having knowledge of the facts would be required to report all cases coming within the law.⁸⁷

The position of the illegitimate child in our legal system must be reexamined with a view toward improving his plight. The view that the interest of the child is the paramount interest to which all other considerations should yield must be encouraged. It is not only equitable but socially sound. The view that in the interest of the institution of marriage the fruit of illicit relations should be deprived of substantial rights is intrinsically abhorrent. But it is clear that intense prejudices prevail upon the subject and that the practical difficulties exist in indisputably establishing paternity in many cases. Whether resting upon fancied or real grounds, the opposition to a sweeping legislative reform is for the present apparently insurmountable. It will take time to win over the public opinion which dictates practical reform. If immediate results are contemplated, the goal set must not be unduly high.

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87. While this is a radical departure from LA. CIVIL CODE arts. 208-12 (1870), which authorize only the child to bring an action for paternity or maternity, it would provide a system whereby every child would have a greater chance of establishing his paternity or maternity. For an expanded discussion of how such a system would operate, see U.S. DEPT OF LABOR, PUB. No. 77, STANDARDS OF LEGAL PROTECTION FOR CHILDREN BORN OUT OF WEDLOCK (1921).