Notre Dame Law Review

Volume 38 | Issue 5 Article 5

8-1-1963

Recent Decisions

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CRIMINAL LAW — EVIDENCE — SILENCE HELD AN ADMISSION OF GUILT. — Defendant was arrested and questioned by the police when recently stolen property was found in his possession. Concerning several of the articles involved, defendant either offered dubious explanations or admitted his unlawful possession. On appeal from conviction of burglary and grand theft to the Supreme Court of California, it was *held:* affirmed.[1] Where recently stolen property is found in the conscious possession of defendant who, upon being questioned by the police, gives a false explanation regarding his possession or remains silent under circumstances indicating a consciousness of guilt, an inference of guilt is permitted. *People v. McFarland,* 26 Cal. Rptr. 473, 376 P.2d 449 (1962).

Because possession of recently stolen property is highly incriminating, it is generally held that proof of such possession by a defendant raises an inference or presumption that it was he who committed the theft.[2] California, however, while recognizing that such an inference is warranted, has repeatedly held that possession alone is not sufficient to sustain a conviction. The prosecution is required to produce corroborating evidence.[3] But the corroboration need only be slight.[4]

Utilized with great success by the prosecution in such cases, as well as in many others, is the accusatory statement rule. This rule is a result of the legal maxim, "Qui tacet consentire veditur," or silence gives consent. Thus, where a statement accusing one of a crime is made in his presence and hearing, and he does not deny or explain the statement, both the statement and his failure to deny it are admissible against the defendant in a criminal proceeding as evidence of his acquiescence in its truth. It is thought that an innocent man, accused of a crime, will be quick to deny the accusation and profess his innocence.[5]

As indicated by the *McFarland* case, these two rules of evidence prove to be a most effective combination. While McFarland gave several false explanations and admitted his unlawful possession as concerns several of the articles he allegedly stole, his convictions as to the others rested solely upon his possession of recently stolen property and refusal to explain. The particular corroborating evidence employed here, *i.e.,* defendant's silence in the face of police questioning, has not been favorably accepted by all authorities. It may be questioned on constitutional grounds, its questionable logic, and its effect on police administration.

The constitutional issue is raised by the protection against self-incrimination. Should refusal to answer police interrogations be treated in the same manner as failure to testify in court? The courts have been reluctant to explore the rule on this basis. At least three states, however, have decided the question. Two of them, Alabama and Virginia, thought that pretrial questioning did not merit constitutional protection. In *Davis v. State,*[6] in which defendant was charged and convicted of murder in the first degree, the Supreme Court of Alabama held that silence in the face of an accusatory statement is admissible and its admission does not violate the state constitution. The decision was based upon the questionable reasoning that since defendant remained silent, he has not given any evidence against himself. The Supreme Court of Appeals of Virginia reached the same decision by another route. In *Owens v. Commonwealth,*[7] a case involving grand larceny, the court concluded that the object of the protection is to prohibit the

1 The conviction was affirmed, one judge dissenting, but the judgment, insofar as it imposed a punishment for both grand theft and burglary where the offenses arose out of the same taking, was reversed.

2 People v. Johnson, 215 Mich. 221, 183 N.W. 920 (1921); 1 WIGMORE, EVIDENCE §§ 152-53 (3d ed. 1940).

3 People v. Wells, 187 Cal. App. 2d 324, 9 Cal. Rptr. 384 (1961); People v. Citrino, 46 Cal. 2d 284, 294 P.2d 32 (1956).

4 People v. Citrino, 46 Cal. 2d 284, 294 P.2d 32 (1956).

5 Knight v. Commonwealth, 196 Va. 433, 83 S.E.2d 783 (1954).

6 131 Ala. 10, 31 So. 569 (1902).

7 186 Va. 689, 43 S.E.2d 895 (1947).

extraction "from the person's own lips an admission of his guilt."[8] As this does not occur where a person remains silent, the self-incrimination clause was held not to apply.

Opposite conclusions have been reached in Oklahoma and in the Fifth Circuit. In *Ellis v. State*,[9] a manslaughter prosecution, the Oklahoma Criminal Court of Appeals reversed a conviction and espoused the proposition that if a person's silence while under arrest, in the face of accusatory statements should be admitted, "then the state would be able to do indirectly what the constitution expressly provides it shall not do directly."[10] And in *Helton v. United States*,[11] wherein defendant was convicted of illegal acquisition and production of marijuana, the Court of Appeals held that admission of defendant's silence was "in violation of the spirit, if not the letter, of the Fifth Amendment."[12] As can be readily seen, the Alabama and Virginia courts base their conclusions upon the form of testimony protected while the Oklahoma and Federal courts seem to rest their decisions upon the purpose of the protection, a foundation more in accord with Anglo-American conceptions of justice. Although the cases are too sparse to indicate a definite majority viewpoint, in light of the almost universal use of the rule it would appear that the great majority of states would not find the accusatory statement rule constitutionally objectionable.

The California court, although not stating any reasons therefor, implies that the self-incrimination privilege extends to police interrogations. After stating the evidentiary rule in *McFarland*, the court continued: "His silence cannot be used against him if it is based on a claim of right to which he is legally entitled."[13] It is submitted that in reality this qualification, as a constitutional protection, adds nothing to the accusatory statement rule. If a defendant makes known his claim of right, the rule cannot be applied because the rationale supporting it has vanished. Thus, it is a showing of a reason other than consciousness of guilt that destroys the inference; it makes no difference whether defendant had a right to claim the protection or not. However, if defendant remains absolutely silent, his claim of privilege cannot possibly be recognized with any degree of certainty and this is precisely the situation where the rule infers guilt.

Although the constitutional issue raised by the accusatory statement rule has not been conclusively settled, the rule may be open to attack on its logic. As noted earlier, it is founded on the assumption that the natural reaction of an innocent person, accused of or implicated in crime, will be to deny such statements and profess his innocence. Not all authorities agree on the validity of the assumption. As a result, many jurisdictions further qualify the rule by making such evidence inadmissible if the defendant refuses to answer while in the custody of the police or under arrest.[14] Courts which exclude the evidence point out that there are motives other than consciousness of guilt that may cause an accused to remain silent while under arrest.[15] A layman today, aware of the protection of the Fifth Amendment, may mistakenly assume that while erroneous inferences may be drawn from what he might say, surely he can be no worse off if he remains silent. And further, arrest and police interrogation are occurrences so unfamiliar in his daily routine, that fear and excitement may easily overcome his natural reactions. Moreover, that people react differently when confronted by the same situation

8 Owens v. Commonwealth, 186 Va. 689, 43 S.E.2d 895, 899 (1947).
9 36 Okla. 320, 128 Pac. 1095 (1912).
10 Ellis v. State, 36 Okla. 320, 321, 128 Pac. 1095, 1096 (1912).
11 221 F.2d 338 (1955).
12 Helton v. United States, 221 F.2d 338, 341 (1955).
13 26 Cal. Rptr. at 477, 376 P.2d at 453.
14 Rickman v. State, 230 Ind. 262, 103 N.E.2d 207 (1952); People v. Rutigliano, 261 N.Y. 103, 184 N.E. 689 (1933). The courts seem to be evenly split on this point.
15 State v. Hester, 137 S.C. 145, 134 S.E. 885 (1926); O'Hearn v. State, 79 Neb. 513, 113 N.W. 130 (1907); Commonwealth v. Vallone, 32 A.2d 889, 347 Pac. 486 (1943) (dissenting opinion).

is common knowledge. Yet under the accusatory statement rule, all people are assumed to respond in but one "natural" manner. In ordinary cases it cannot be denied that a protest on the part of the accused is the more probable reaction if he is innocent. But to elevate a probability to the stature of evidence sufficient to convict a person of crime is questionable criminal justice.

This rule may also have a deleterious effect on police administration beyond that of facilitating convictions. It can be reasonably foreseen that the rule will lead to the same evils as brought about by forced confessions, *i.e.*, reliance upon the defendant's self-incrimination rather than effective police measures consonant with humanitarian concepts.[16] Chief Justice Traynor of the Supreme Court of California has recognized this problem. In *People v. Atchley*,[17] he said:

> Involuntary confessions are excluded because they are untrustworthy, because it offends the "community's sense of fair play and decency" to convict a defendant by evidence extorted from him, and because exclusion serves to discourage the use of physical brutality and other undue pressures in questioning those suspected of crime. . . . All these reasons for excluding involuntary confessions apply to involuntary admissions as well.[18]

It seems that the tacit admissions resulting from the accusatory statement rule are just as untrustworthy, extorted, and involuntary as those condemned in the *Atchley* case. Conceding a factual distinction, there is no apparent difference in principle and it is submitted that the reasoning of *Atchley* is just as applicable to the silence of McFarland.

There is one other aspect of the case which deserves consideration. While California law provides that defendant's silence cannot be used against him if based on a claim of right, the court recognized no such claim by defendant McFarland. However, it would not be unreasonable to interpret his statement that he did not want to discuss the situation as such a claim. If the court is going to allow an inference of guilt from any refusal to answer except on a claim of right, it would seem fair to relax the requirements for invoking that claim. California has always required a more explicit statement of the defendant's claim which this decision seems to uphold.[19]

The *McFarland* case reaffirms and entrenches the accusatory statement rule and its application. In view of its widespread acceptance, there is no indication of a forthcoming change. Thus, in California, the paradox remains: Police officials may, with judicial approbation, confront an accused with the statement that anything he says may be used against him, knowing full well that what he does not say may similarly be employed in obtaining a conviction.

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16 Illustrations: Defendant's silence in the face of accusatory statements held inadmissible where police officer slapped him and told him to keep his "damned mouth shut." People v. Kozlowski, 368 Ill. 124, 13 N.E.2d 174 (1938). In People v. Young, 72 App. Div. 9, 76 N.Y. Supp. 275 (1902), defendant's silence was held inadmissible where before reading a co-defendant's statement, police officer told defendant that he did not expect him to say anything, that anything he said might be used against him, and that the only reason the officer was reading the statement was to inform him of the evidence against him.

17 53 Cal. 2d 160, 346 P.2d 764 (1959).

18 People v. Atchley, 53 Cal. 2d 160, 171, 346 P.2d 764, 769 (1959).

19 In People v. Collins, 4 Cal. App. 2d 86, 40 P.2d 542 (1935), defendant, upon being confronted with an accusation of committing abortion, declared that he had nothing to say. *Held:* His silence and conduct were sufficient corroboration.

TORTS — WRONGFUL DEATH — ILLEGITIMATE CHILDREN DENIED RECOVERY. — Alberta Frazier instituted an action under the survival and wrongful death statutes for the recovery of damages resulting from the death of Claude Frazier. Mary Jane Frazier, appellant, as mother and natural guardian of Toni and Claudette Frazier, petitioned the court to intervene in that action, alleging that Toni and Claudette were entitled to share in any damages recovered for the death of their father in spite of the fact that they were his illegitimate children. From an order refusing the intervention, these appeals were taken and it was *held:* affirmed. The right to share in the recovery of damages under the survival statute must await the actual recovery of such damages by the estate;[1] and in the absence of any qualifying expression, the word "children" in the wrongful death statute means legitimate children. *Frazier v. Oil Chemical Co.*, 407 Pa. 78, 179 A.2d 202 (1962).

In 1851, Pennsylvania enacted a wrongful death statute which provided that: "Whenever death shall be occasioned by unlawful violence or negligence, and no suit for damages be brought by the party injured during his or her life, the widow . . . , or if there be no widow, the personal representatives may maintain an action for and recover damages for the death thus occasioned."[2] Four years later, an amendment to this act provided that "The persons entitled to recover damages for any injuries causing death shall be the husband, widow, children, or parents of the deceased, and no other relatives; . . . and the sum recovered shall go to them in the proportion they would take his or her personal estate in case of intestacy. . . ."[3] This amendment was passed on April 26, 1855, at a time when an illegitimate child had no right of inheritance. The very next day, April 27, the legislature passed an act which gave to illegitimate children and their mother the right to inherit from each other,[4] which act was amended in 1947 to provide that "For the purposes of descent by, from and through an illegitimate, he shall be considered the child of his mother, *but not of his father.*"[5] (Emphasis supplied.) The fact that Toni and Claudette were not "children" within the meaning of the wrongful death act was itself a fatal blow. The intestacy act was but a *coup de grâce.*

In *State ex rel. Smith v. Hagerstown & Frederick Ry.*,[6] where a mother was suing for the wrongful death of her illegitimate child, it was said:

> Courts may very well sympathize with a woman who finds herself in the position that Mrs. Smith does in the present case, but that can afford no justification for departing from long and well-established rules of law and construction, and the relief, if any, in such cases is to be sought from the Legislature and not from the courts.

That decision, like the one in the present case, was the product of common law doctrine and a lengthy history of statutory interpretation.

At common law, an illegitimate was an outcast. Conceived in the sin of his parents, he entered a world which called him "bastard." The law regarded him as "filius nullius," the child of no one: "[H]e cannot be heir to anyone, neither can he have heirs, but of his own body; for, being *nullius filius,* he is therefore of kin to nobody, and has no ancestor from whom any inheritable blood can be derived."[7] Various explanations have been advanced for the origin of the rule. One court stated that it arose in order to prevent illicit sexual relations.[8] If this

1 The prematurity of appellant's petition to intervene in the survival action will not be discussed.
2 PA. STAT. ANN. tit 12, § 1601 (1953).
3 PA. STAT. ANN. tit. 12, § 1602 (1953).
4 PA. LAWS 1855, p. 368, No. 387, § 3.
5 PA. STAT. ANN. tit. 20, § 1.7 (1953).
6 130 Md. 78, 114 Atl. 729, 730 (1921).
7 1 BLACKSTONE, COMMENTARIES *459.
8 Clarke v. The Carfin Coal Co., [1891] A. C. 412, 427 (Scot.).

was its purpose, it has had little success.[9] Considering the fact that the doctrine applied only to inheritance,[10] it would appear that necessity is a better explanation. In an age which lacked even the limited scientific and medical assistance of today, paternity was almost impossible to prove. "[S]ince it [was] necessary that the heir should be one whose right could be ascertained, therefore marriage, an act capable of proof, could be relied upon as determining the heir."[11]

Like many other doctrines of the common law, the disability of the illegitimate child was almost universally accepted by the American States.[12] Because of the bastard's want of inheritable blood, the words "child," "children," and "heirs" in statutes relating to descent and distribution (and to a great extent, workmen's compensation acts[13]) are interpreted as meaning lawful children only.[14] When a survival or wrongful death statute enumerates the beneficiaries to whom a right of action accrues, it applies only to legitimate beneficiaries. By "children" is meant legitimate or legitimatized children.[15] Hence, a bastard is generally unable to bring an action for the death of his mother[16] or father.[17] Conversely, a mother[18] or father[19] is generally unable to recover for the death of an illegitimate child.

With respect to modern inheritance law, the disability of an illegitimate to bring an action for the death of his mother and the disability of a mother to bring an action for the death of her illegitimate child have disappeared. The vast majority of the states have enacted statutes enabling an illegitimate to inherit from his mother or legitimizing a bastard in regard to his mother.[20] In some of these

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9 The number of illegitimate births in the United States has more than doubled since 1938. There were an estimated 208,700 illegitimate births in the United States in 1958. Legislative Research Commission, Commw. of Ky., ILLEGITIMACY IN KENTUCKY, Research Report No. 4 (1961).

10 2 KENT, COMMENTARIES *214.

11 16 HARV. L. REV. 22, 23 (1902).

12 Although many jurisdictions modified the doctrine by statute, Connecticut refused to accept it. Heath *et ux.* v. White, 5 Conn. 228 (1824).

13 An action for death under a wrongful death act must be distinguished from an action for death under a workmen's compensation act, where: "Generally speaking the lawmakers and courts have protected illegitimate children, especially when acknowledged. In the absence of specific statutory rules, courts have protected illegitimate children, especially when acknowledged, either by classifying them as 'members of the family' or as 'children.'" RIESENFELD & MAXWELL, MODERN SOCIAL LEGISLATION 324 (1950).

14 *Supra,* note 11.

15 Adams v. Powell, 67 Ga. App. 460, 21 S.E.2d 111 (1942); Cheeks v. The Fidelity & Casualty Co. of New York, 87 So.2d 377 (La. App. 1956); McDonald v. So. Ry., 171 S.C. 352, 51 S.E. 138 (1905).

16 Cheeks v. The Fidelity & Casualty Co. of New York, *supra* note 15; Adams v. Powell, *supra* note 15.

17 Bonewit v. Weber, 95 Ohio App. 428, 120 N.E.2d 738 (1952). With the exception of Arizona and Oregon which treat every child as legitimate, Ariz. REV. STAT. ANN. § 14-206(a) (1956); OREGON REV. STAT. §§ 111.231, 109.060 (1947), there seems to be no jurisdiction which permits an illegitimate child to recover for the wrongful death of his father. In a recent Maryland case, however, the court hinted that under certain circumstances it might permit an illegitimate child to recover. The court said:

> It will be noted that we are dealing with a situation where the decedent's mother is still living. We are not called upon to decide, and therefore express no opinion upon, whether an illegitimate child of a deceased father could qualify under Section 4 as "any person related to the deceased by blood or marriage" who is wholly dependent upon the deceased when he has no wife, parent, or legitimate child. State v. Try, 220 Md. 270, 152 A.2d 126, 128 (1959).

18 State ex rel. Smith v. Hagerstown & Frederick Ry., 139 Md. 78, 114 Atl. 729 (1921).

19 McDonald v. Pit., C., C. & St. L. Ry., 144 Ind. 459, 43 N.E. 447 (1896).

20 Forty-nine of the fifty-one American jurisdictions permit an illegitimate child to be an heir of his mother in the same manner as if he were legitimate. Typical of these statutes is that of Ohio: "Bastards shall be capable of inheriting or transmitting inheritance from and to the mother, and from and to those from whom she may inherit or to whom she may transmit inheritance, as if born in lawful wedlock." OHIO REV. CODE ANN. § 2105.17 (Page 1953). In Heath *et ux.* v. White, *supra,* note 13, Connecticut by judicial interpretation of the word "child" permitted an illegitimate to inherit from his mother. The two re-

states, a mother may maintain an action for the death of her illegitimate child,[21] and the illegitimate child for the death of his mother.[22] The courts permitting recovery do so on the theory that the statutes supply the inheritable blood that was lacking under the common law. Instead of being the child of no one, the illegitimate has a mother from whom he can inherit and to whom he can transmit property.[23] Such statutes have been strictly construed and do not affect the right of recovery between the illegitimate and his father.[24]

In a number of cases, statutory interpretation has led to painful extremes. In 1883 a Vermont court held that the word "dependent" does not include an illegitimate child.[25] In *Beaver v. State*,[26] the court interpreted a statute which provided for the punishment ". . . of any parent who shall wilfully . . . neglect or refuse to provide for the support . . . of his or her child . . ."[27] as meaning legitimate child, with the result that a father did not have to support his illegitimate child.

Although the plight of the illegitimate remains anything but an enviable one, some courts have awakened to the fact that the illegitimate is a human being. Too often, however, this enlightenment is no more than an expression of sympathy. In *Reilley v. Shapiro* while denying recovery the court conceded:

> Nor can it be denied that a child born out of wedlock is as much in need of parental aid and the natural rights that go with the relationship of parent and child as those pertaining to a child born in wedlock. Every human instinct is moved toward extending a helping hand to such child, already laboring under a handicap impossible of removal.[28]

Small consolation, this moral victory.

A more substantial victory for the cause of the illegitimate is found in *Middleton v. Luckenbach S.S. Co.*[29] which involved the claim of an illegitimate under the Federal Death Act,[30] wherein the court stated: "The rule that a bastard is nullius filius applies only in cases of inheritance . . . The purpose and object of the statute is to continue the support of dependents after a casualty. To hold that these children or their parents do not come within the terms of the statute would be to defeat the purposes of the act."[31]

Subjecting wrongful death acts to the analysis of the *Luckenback* case, it would appear that an illegitimate should have every right that his halfbrothers and halfsisters enjoy.

> Every American state now has a statutory remedy for wrongful death. Most of the statutes were modeled upon Lord Campbell's Act, which is a "death act," and creates a new cause of action for the death in favor of the decedent's personal representative for the benefit of certain designated persons.[32]
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> Under Lord Campbell's Act and the great majority of the death acts . . .

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maining states, Louisiana and New York, do not prohibit inheritance by the illegitimate from his mother, but permit it only when the mother is not survived by lawful issue. In addition, Louisiana demands that the mother acknowledge that the child is hers. N.Y. DECEDENT ESTATE LAW § 83(13); LA. CIVIL CODE arts. 918-923.

21 Hadley v. City of Tallahassee, 67 Fla. 436, 65 So. 545 (1914); L. T. Dickason Coal Co. v. Liddil, 49 Ind. App. 40, 94 N.E. 411 (1911); Marshall v. Wabash R.R., 120 Mo. 275, 25 S.W. 179 (1894).

22 Marshall v. Wabash R.R., 120 Mo. 275, 25 S.W. 179 (1894); Bonewit v. Weber, 95 Ohio App. 428, 120 N.E.2d 738 (1952).

23 Hadley v. City of Tallahassee, 67 Fla. 436, 65 So. 545 (1914).

24 Brinkley v. Dixie Constr. Co., 205 Ga. 415, 54 S.E.2d 267 (1949); Dilworth v. Tisdale Transfer & Storage Co., 209 Tenn. 449, 354 S.W.2d 261 (1962).

25 Good v. Towns, 56 Vt. 410, 48 Am. Rep. 799 (1883).

26 256 S.W. 929 (Tex. Cr. App. 1923).

27 TEX. LAWS 1913, p. 188, ch. 101 § 1.

28 196 Minn. 376, 265 N.W. 284, 286 (1936).

29 70 F.2d 326 (2d Cir. 1934).

30 46 U.S.C. § 761 (1952).

31 Middleton v. Luckenback S.S. Co., 70 F.2d 326, 330 (2d Cir. 1934).

32 PROSSER, TORTS 710 (2d ed. 1955).

> the action proceeds on the theory of compensating the individual beneficiary for loss of the economic benefit which they might reasonably have expected to receive from the decedent in the form of support, services, or contributions during the remainder of his lifetime if he had not been killed.[33]

This rationale, however, cannot be extended to survival actions, where "[T]he action is on behalf of the decedent's estate, and the damages . . . include not only the pain and suffering of the decedent during his lifetime, but further compensation to the estate itself for loss of prospective economic benefit in the form of future earnings or savings."[34]

An argument that the common law limitation upon the rights of illegitimate children should never have been "read into" the wrongful death statutes seldom provides assistance to the unfortunate claimant, for the foundation of the present status of the law was laid many years ago, and the building blocks of subsequent decisions have formed a mighty fortress of precedent so strong as to be almost impregnable.[35] A better argument is one that is grounded upon the inheritable relationship which forty-nine[36] jurisdictions now hold to exist between the illegitimate and his mother. With this injection of inheritable blood into the veins of the illegitimate, little reason remains for denying recovery for the tortious death of an illegitimate mother or child.

Although the illegitimate may have justified optimism for recovery in an action for the wrongful death of his mother, he has less hope in an action for the wrongful death of his father. Whereas forty-nine jurisdictions recognize the existence of an inheritable relationship between the illegitimate and his mother, only twenty recognize a similar relationship between the illegitimate and his father,[37] and these do so only when the father *acknowledges*[38] the child to be his. Even after being *acknowledged* the law is still discriminatory, for the illegitimate is generally unable to inherit from his father's kin.[39] Hence there is little hope for recovery in an action for the death of such kin.

Although statutory extension of the rights of illegitimates will continue to be slow in enactment and may never completely emancipate the illegitimate, justice would seem to dictate a policy of nondiscrimination — a complete elimination of all remaining vestiges of the common law doctrine of *nullius filius*. In an action under a wrongful death statute, where the action proceeds on the theory of compensating the enumerated beneficiaries for their actual loss, the only result of denying an illegitimate recovery for the death of his father is a partial immunization of the tortfeasor from liability for damages which he has caused. Where the action for the death of a father is under a survival statute and the measure of damages is the loss suffered by the estate, justice would seem to demand that the illegitimate

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33 *Id.* at 713.

34 *Ibid.*

35 *E.g.,* State ex rel. Smith v. Hagerstown & Frederick Ry., 130 Md. 78, 114 Atl. 129 (1921).

36 *Supra,* note 20.

37 Arizona, California, Colorado, Florida, Idaho, Iowa, Kansas, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wisconsin. A representative statute of these states is that of Florida which states that: "Every illegitimate child is the heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father. . . . However, such illegitimate child does not represent his father or mother by inheriting any part of the estate of the parents' kindred. . . ." FLA. STAT. ANN. § 731.29 (1961). In 26 BROOKLYN L. REV. 45, 76-79 (1960) there is a comprehensive comparison of the inheritance rights of the illegitimate in the fifty-one jurisdictions.

38 A typical act of acknowledgment is the recognition in writing, signed in the presence of a competent witness, that one acknowledges himself to be the father of the child.

39 A majority of the states which permit an illegitimate to inherit from his father after acknowledgment specifically provide that the child may not inherit from his father's kin. *E.g.,* FLA. STAT. ANN. § 731.29 (1961).

40 *Supra,* note 20.

be entitled to share in the estate — that he should be able to inherit from his father. Indeed, there seems to be no justifiable reason for denying the illegitimate all the rights that his legitimate brothers and sisters enjoy. A number of states apparently agree.[40] An examination of these statutes conveys the impression that only the fear of fraudulent claims prevents the complete emancipation of the illegitimate. But more to be feared than the possibility of fraudulent claims is the impossibility of justice. Here lies the greatest evil. Although much has been done to alleviate the plight of the illegitimate, "in a society which has barbarically handicapped and burdened children of illegitimate parents for sins in the commission of which they had no part, much remains to be done to humanize existing rules of law."[41]

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41 Jung v. Saint Paul Fire Dep't Relief, 223 Minn. 402, 27 N.W.2d 152, 155 (1947).

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