

**Illegitimacy and English Landed Society c.1285-c.1500**

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# Declaration of Authorship

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I, Helen Sarah Matthews, hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

# Abstract

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This study examines the incidence of illegitimacy among members of the landed classes, broadly defined, in late medieval England and the factors which affected the ability of parents to provide for their illegitimate offspring.

Illegitimacy has normally been studied from either a legal or a social standpoint. This thesis will combine these approaches in order to provide insight into the social structure of late medieval England. Illegitimacy was a matter which primarily affected the right to inherit property and by implication, the person's associated status. The period from c.1285, when the statute *De Donis Conditionalibus* was enacted, to the end of the fifteenth century saw the development of a number of legal devices affecting the ability of landowners to plan the succession to their estates. The enfeoffment to use and the entail allowed landowners the opportunity to settle estates on illegitimate children, or anyone else, without permanently alienating the property from the family line. By the fifteenth century, this freedom of action was becoming restricted by pre-existing entails and a means of breaking entails developed.

This study begins with a survey of the legal issues surrounding illegitimacy and the context within which landowners were able to make provision for illegitimate children. Subsequent chapters examine wills and estate settlements to consider the actual provision for illegitimate children made by individuals in different circumstances. Particular attention is given to individuals lacking a legitimate male heir of the body and the circumstances in which it was possible for an illegitimate son to become a substitute heir, concluding that illegitimacy was an obstacle that could be overcome, provided a number of conditions were met. A final chapter looks at attitudes to sexual misconduct and illegitimacy generally, concluding that illegitimacy was primarily a legal, rather than social, disability. The overall conclusion is that the fourteenth century provided a particular window of opportunity for bastard offspring.

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## Abbreviated References

The following abbreviations are used in the footnotes. Generally, the full title is given only for the first reference and thereafter short titles are used.

<i>Ancient Deeds</i>	<i>A Descriptive Catalogue of Ancient Deeds in the Public Record Office.</i> ed. H. C. Maxwell-Lyte (6 vols., London 1890-1915)
Blomefield, <i>Norfolk</i>	Blomefield, Francis, <i>An Essay Towards a Topographical History of Norfolk</i> (11 vols. London, 1805-10)
Blore, <i>Rutland</i>	Blore, Thomas, <i>The History and Antiquities of the County of Rutland</i> (Stanford, 1811)
<i>Bracton</i>	<i>Bracton: de Legibus et Consuetudinibus Angliae</i> , ed. G Woodbine, trans. S E Thorne (4 vols., Cambridge, Mass., 1968-77)
<i>Bracton's Note Book</i>	<i>Bracton's Note Book</i> , ed. F Maitland (3 vols., London, 1887)
<i>BRUO</i>	Emden, A B, <i>A Biographical Register of the University of Oxford to A.D. 1500</i> (3 vols., Oxford, 1957-9)
<i>CCR</i>	<i>Calendar of Close Rolls</i>
<i>CFR</i>	<i>Calendar of Fine Rolls</i>
<i>CIPM</i>	<i>Calendar of Inquisitions Post Mortem</i>
<i>Cal. Inq. Misc.</i>	<i>Calendar of Inquisitions Miscellaneous</i>
<i>Cal. Ireland</i>	<i>Calendar of Documents Relating to Ireland</i>
<i>Cal. Scot</i>	<i>Calendar of Documents Relating to Scotland</i>
<i>Coll. Top. et. Gen.</i>	<i>Collectanea Topographica et Genealogica</i>
<i>CP</i>	Cockayne, G E , <i>The Complete Peerage</i> , ed. V. Gibbs <i>et al.</i> (12 volumes in 13, London, 1912-50)
<i>CPL</i>	<i>Calendar of entries in the papal registers relating to Great Britain and Ireland: papal letters</i> ed. Bliss <i>et al.</i> i – vii, (London, 1893-1906)
<i>CPP</i>	<i>Petitions to the Pope 1342-1419</i> ed. W. H. Bliss (London, 1896)
<i>CPR</i>	<i>Calendar of Patent Rolls</i>
Dugdale, <i>Baronage</i>	Dugdale, William, <i>The Baronage of England</i> (2 vols., London, 1675-6)
Dugdale, <i>Monasticon</i>	Dugdale, William, <i>Monasticon Anglicanum</i> (6 vols., London, 1846)
Dugdale, <i>Warwickshire</i>	Dugdale, William <i>The Antiquities of Warwickshire</i> (2 <sup>nd</sup> ed. London, 1730).
<i>Ec.Hist.R</i>	<i>Economic History Review</i>
<i>EELR</i>	<i>Earliest English Law Reports</i> ed. Paul A Brand, (Selden Society 111, 112, 122, 123, 1995-2007)
<i>EHD</i>	<i>English Historical Documents</i>
<i>EHR</i>	<i>English Historical Review</i>

<i>Fasti Ebor.</i>	W H Dixon, <i>Fasti Eboracenses. Lives of the Archbishops of York</i> , ed. J Raine (London, 1863)
<i>Feudal Aids</i>	<i>Inquisitions and assessments relating to feudal aids: with other analogous documents preserved in the Public Record Office. A.D. 1284-1431</i> (6 vols, London 1899-1920)
<i>House of Commons</i>	J S Roskell, L Clark and C Rawcliffe eds. <i>The History of Parliament. The House of Commons 1386-1421</i> (4 vols, Stroud 1992)
Hanshall	Hanshall, JH, <i>History of the County Palatine of Chester</i> (Chester, 1817)
Hunter, South Yorks	Hunter, Joseph, <i>South Yorkshire: The history and topography of the deanery of Doncaster, in the diocese and county of York</i> (2 vols., London, 1828-31)
Husting	<i>Calendar of Wills proved and enrolled in the Court of Hustings A.D. 1258-A.D. 1688</i> ed. R R Sharpe, (2 vols., London, 1889-90)
Lipscomb	Lipscomb, George, <i>The History and Antiquities of the County of Buckingham</i> (4 vols. London, 1847).
Nichols, Leicestershire	Nichols, John, <i>History and Antiquities of the County of Leicester</i> (4 vols., London, 1795-1815)
<i>OED</i>	<i>Oxford English Dictionary</i>
<i>Oxford DNB</i>	<i>Oxford Dictionary of National Biography</i>
<i>Paston Letters</i>	<i>Paston Letters and Papers of the Fifteenth Century</i> ed. N Davies (Oxford, 1971)
Pole	Pole, Sir William, <i>Collections Towards a Description of the County of Devon</i> (London, 1791)
<i>PROME</i>	<i>Parliament Rolls of Medieval England</i>
SS	Selden Society
<i>Testa Nevill</i>	<i>Liber feodorum: the book of fees, commonly called Testa de Nevill</i> ed. H C Maxwell Lyte (3 vols., London. 1920-31)
<i>Test. Ebor.</i>	<i>Testamenta Eboracensia</i> ed. J Raine <i>et al.</i> (4 vols., Surtees Society 1836-1869)
<i>Test. Vet.</i>	<i>Testamenta Vetusta.</i> ed. Sir Nicolas Harris Nicolas, (2 vols, London, 1836).
Thoroton	Thoroton, Robert, <i>History of Nottinghamshire</i> , (3 vols, London, 1790-6)
<i>TRHS</i>	<i>Transactions of the Royal Historical Society</i>
<i>Trans. Salop. Arch. Soc.</i>	<i>Transactions of the Shropshire Archaeological Society</i>
<i>VCH</i>	<i>Victoria County History</i>
Westcote	Westcote, Thomas, <i>A view of Devonshire in MDCXXX, with a Pedigree of most of its gentry</i> ed. George Olwer and Pitman Jones, (Exeter, 1845)
Wright, Essex	Wright, Thomas, <i>The History and Topography of the County of Essex</i> (2 vols. London, 1836).
X	Decretals of Gregory IX
YB	Year Book

# Chapter 1: Introduction

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*Now, gods, stand up for bastards!*  
(*King Lear*, Act I, Scene II)

## Why study illegitimacy or bastardy?

There is a common popular conception of the bastard as resembling Shakespeare's Edmund in *King Lear*, or Don John, the 'plain dealing villain' of *Much Ado About Nothing*, jealously plotting evil schemes against his legitimate siblings. The idea of the villainous bastard was a common theme of Renaissance drama. Alison Findlay was able to list 71 plays from the period 1588-1652 which had bastard characters, or characters threatened with bastardy, including many historical plays set in the medieval period.<sup>1</sup> But illegitimate offspring in literature have not always played the part of villains. Contemporary medieval literature displayed a more tolerant attitude to bastards. Jessica Lewis Watson argued that bastardy as portrayed by Chaucer and Malory can be read as symbolic of 'love, wealth, and sometimes power and honour'.<sup>2</sup> By the eighteenth century literary representations of illegitimacy had once more undergone a transformation. Whilst illegitimacy was still a common plot device, the villainous bastard had been superseded by the 'virtuous foundling'.<sup>3</sup>

Whether as evil schemers, wronged heroes and heroines or gifted individuals, the frequent appearance of bastards in literature reflects their usefulness as a literary or dramatic plot device. Bastards are useful because they are, in theory at least, outsiders 'without a name or a place in the social structure, outside its values and norms, deviant' and as such can be seen as a potential threat to the natural order of society.<sup>4</sup> The Bastard in Shakespeare's *King John*, an illegitimate son of King Richard, plays a pivotal role in the drama precisely because his illegitimacy leaves him without a fixed identity or place in society.<sup>5</sup> It would of course be inappropriate to try to draw conclusions relating to the status of actual individual bastards in later medieval England from Renaissance drama, but the conception of bastards as being somehow apart from normal

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<sup>1</sup> Alison Findlay, *Illegitimate Power: Bastards in Renaissance Drama* (Manchester, 1994).

<sup>2</sup> Jessica Lewis Watson, *Bastardy as a Gifted Status in Chaucer and Malory* (Studies in Mediaeval Literature 14, New York, 1996) p.7.

<sup>3</sup> See Lisa Zunshine, *Bastards and Foundlings. Illegitimacy in Eighteenth-Century England* (Ohio, 2005) p.19.

<sup>4</sup> Alison Findlay, *Illegitimate Power* p. 1.

<sup>5</sup> Thomas Anderson, "'Legitimation, Name and All is Gone": Bastardy and Bureaucracy in Shakespeare's *King John*", *The Journal for Early Modern Cultural Studies* 4 (2004) p.54.



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society, which makes them such a useful plot device, also makes them an interesting group to study. This view of bastards as outsiders is also to be found in academic studies of illegitimacy. As the sociologist Kingsley Davis put it, the bastard is one of ‘that motley crowd of disreputable social types which society has generally resented, always endured.’<sup>6</sup>

At the same time, the study of illegitimacy provides a different perspective on the legitimate institutions of marriage and the family. For the historical demographer Peter Laslett, the study of the comparative history of illegitimacy throws light on ‘such things as the succession to property and to status, the mechanisms of social control, the relationships of ruling élites with the masses of society, of dominant with dominated classes.’<sup>7</sup> As Richard Adair noted, the study of behaviour which is generally regarded as unacceptable can be inverted to provide an insight into the norms and values of the society concerned. Adair argued that illegitimacy provides a particularly fruitful line of enquiry in which ‘the economic, social, legal and cultural attitudes all converge in one topic, and their interaction can be analysed far more acutely than would otherwise be possible.’<sup>8</sup> Richard Helmholz has shown that illegitimacy could also have significance for the study of canon law beyond the directly relevant. For example, the fifteenth century canonist Panormitanus cited illegitimacy as an example of a situation in which compurgation was inappropriate, for, as no one could know the identity of his father with absolute certainty, it was not possible for an individual to swear that he was legitimate or for compurgators to swear to the veracity of such an oath, without risking the sin of perjury.<sup>9</sup>

This is likely to have been a result of the increasing control over marriage exerted by the Church. In the earlier medieval period, when the distinction between valid and invalid marriages was less clear cut, illegitimacy was not such an issue. David d’Avray has noted that there was increasing concern about the validity of marriages during the last three medieval centuries, and that individuals were prepared to go to great lengths in order to authenticate their marriage and thus ensure that the legitimacy of their children was not in any doubt.<sup>10</sup>

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<sup>6</sup> Kingsley Davis, ‘Illegitimacy and the Social Structure’, *American Journal of Sociology* 45 (1939-40) p. 215.

<sup>7</sup> Peter Laslett, ‘Comparing illegitimacy over time and between cultures’ in Peter Laslett, Karla Oosterveen and Richard M Smith (eds.) *Bastardy and its Comparative History* (London, 1980) p. 3.

<sup>8</sup> Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (Manchester, 1996) p. 3.

<sup>9</sup> Richard Helmholz, *The Ius Commune in England. Four Studies* (Oxford, 2001) p.115, citing Panormitanus’ *Commentaria* on X.5.34.14, no. 4.

<sup>10</sup> David d’Avray, ‘Authentication of Marital Status: A Thirteenth-Century English Royal Annulment Process and Late Medieval Cases from the Papal Penitentiary’ *EHR* cxx (2005) p.988

The study of illegitimacy, then, has the potential to provide an insight into the norms of a society through the experience of an abnormal group of outsiders. But how far is this really applicable to the nobility and gentry of later medieval England? For members of the landed classes in later medieval England, perhaps more so than in those parts of continental Europe where nobility was legally-defined, landed property was a key determinant of status.<sup>11</sup> Land was a source of both wealth and status and was the ‘birthright of the noble’ as Chris Given-Wilson once put it.<sup>12</sup> A bastard, on the other hand, was theoretically *filius nullius*, excluded from inheritance at common law and from the priesthood. Illegitimacy should have had a particular stigma in a society based on landed property and family status. Yet it is clear from a few well-known cases that some individuals managed to do quite well for themselves despite the supposed taint of illegitimacy. The Beauforts are the most obvious, if most extreme, example. John, Henry, Thomas and Joan Beaufort were the children of John of Gaunt, Duke of Lancaster, and his mistress and later wife, Katherine Swynford. These children were born during the 1370s, when Gaunt was married to his second wife, Constanza of Castile. They were accorded a place in the Duke’s household alongside their legitimate siblings. John and Thomas were present when their half brother Henry Bolingbroke was admitted to the fraternity of Lincoln Cathedral in February 1386. Following Gaunt’s later marriage to Katherine in 1396, the Beauforts were, exceptionally, legitimated by act of parliament and raised to the higher ranks of the peerage. John ended his career as Earl of Somerset and Marquis of Dorset, whilst in 1416 Thomas was created Duke of Exeter. Henry’s illegitimate birth did not prevent him from becoming Bishop of Winchester or, eventually, a Cardinal, political considerations seemingly proving a more significant obstacle to his achievement of the latter dignity than his illegitimate birth.<sup>13</sup> Joan married, as her second husband, Ralph Neville, Earl of Westmorland.<sup>14</sup> As the illegitimate offspring of the most powerful magnate of their day and grandchildren of Edward III, the Beauforts were of course far from typical. All the same, their remarkable success demonstrates the gap that could exist between legal theory and actual practice. An example of illegitimate blood failing to provide an

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<sup>11</sup> On the continent, nobility was a heritable status, though the system of reckoning varied. For a summary of differences between the so-called ‘French’ and ‘German’ systems, see Judith J Hurwich, ‘Bastards in the German Nobility in the Fifteenth and Early Sixteenth Centuries: Evidence of the *Zimmerische Chronik*’ in *The Sixteenth Century Journal* 34 (2003) pp. 701-3.

<sup>12</sup> Chris Given-Wilson, *The English Nobility in the Later Middle Ages* 2<sup>nd</sup> ed. (London, 1996) p. 19.

<sup>13</sup> K B McFarlane, ‘Bishop Beaufort and the Red Hat’ in K B McFarlane, *England in the Fifteenth Century* (London, 1981); G L Harriss, *Cardinal Beaufort* (Oxford, 1988) p. 94-95.

<sup>14</sup> *Oxford DNB* 4 pp 620-39.

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overwhelming obstacle on a lower rung of the landed property ladder is the case of Thomas Hopton, the illegitimate son of Sir Robert Swillington and Joan Hopton described by Colin Richmond in his work on Thomas' son John.<sup>15</sup> Thomas' father, Sir Robert, was a prosperous knight with 35 manors and an annual income in the region of 2,000 marks per annum, who remembered his bastard son with a relatively small legacy. His son and heir Sir Roger Swillington, in making a careful settlement of his estates in 1413, included a reversionary interest to his illegitimate half-brother Thomas Hopton and his sons.<sup>16</sup> Whilst it would have seemed most unlikely at the time that the reversions would eventually fall in to the benefit of Thomas' son John, the fact that Thomas was included in the settlement at all demonstrates that the family link was accepted. In fact, within 17 years of the original settlement, all the intervening beneficiaries had died, and on 7 February 1430 the escheators of the counties concerned were ordered to deliver to John Hopton the estates that were due to him under the settlements made by Sir Roger. These included the Yorkshire manors of Oldhall and Newhall in Swillington, Preston, Culworth and Rodes and the Suffolk manors of Blythburgh and Walberswick, Wissett and Wissett Roos; Yoxford, Stricklands, Meriells, Middleton and Brendfen in Yoxford; Lembaldes, Claydons and Risings in Westleton; Westhall and Thorington, and the manors of Ellingham and Pirnhow in Norfolk, along with sundry other smaller properties. The Yorkshire and Suffolk estates that were the core of his inheritance were sufficient to bring him an estimated income of c.£300 pa.<sup>17</sup> The theoretical disadvantages of illegitimate birth were not, it seems, necessarily so great in practice, and there is a risk of viewing medieval society through the distorting prism of later attitudes. It is of course possible that illegitimacy in general was stigmatized, whilst certain individuals flourished. On the continent, and in parts of Italy in particular, some illegitimate sons of nobles became *de facto* heirs in the absence of legitimate sons, the Este family of Ferrara being a particularly notable example.<sup>18</sup>

This apparent difference between theory and reality suggests a number of areas for investigation. Firstly some quantification is needed: how common was it for members of the landed classes to have illegitimate children? Secondly, the status of illegitimate children and the provision made for them needs consideration: how were bastards regarded generally, and did they tend to be integrated into the family or kept

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<sup>15</sup> Colin Richmond, *John Hopton* (Cambridge, 1981).

<sup>16</sup> Richmond, *John Hopton* pp. 1-6.

<sup>17</sup> *Ibid.* pp. 10, 25, 95.

<sup>18</sup> Jane Fair Bestor 'Bastardy and Legitimacy in the Formation of a Regional State in Italy: The Estense Succession' in *Comparative Studies in Society and History* 38 (1996) pp 549-585.

apart? What provision was made for their livelihood? Were there differences in the way different kinds of bastards were treated? Was the status of the mother relevant to the level of provision made for the livelihood of an illegitimate child, and the status of the child in society? Were bastard sons treated differently in the absence of legitimate heirs? Were there examples of bastards being fathered with the deliberate intention of providing a substitute heir as appears to have been the case in Italy?<sup>19</sup> How did these attitudes change over time? Finally, what can the study of illegitimacy tell us about late medieval English landed society in general, and how far did the experience of illegitimate children in medieval England differ from that in other countries?

## Definitions and Categories

### Illegitimacy and Bastardy

Before going too much further, it would be useful to consider the nature of illegitimacy. It is a legal status, which can only be understood in relation to its converse, legitimacy. A legitimate child is defined as one born in lawful wedlock and with full filial rights.<sup>20</sup> An illegitimate child, or bastard, is thus one not born as a result of a lawful marriage and without the legal status that brings.<sup>21</sup> ‘Bastard’ is defined by the *Oxford English Dictionary* as ‘one begotten and born out of wedlock; an illegitimate or natural child.’<sup>22</sup> The word comes from the Old French ‘bastard’, which is believed to have originated from a combination of ‘bast’, a pack-saddle used as a bed by muleteers at inns, with the generally pejorative suffix ‘-ard’, to imply a ‘pack-saddle child’ as opposed to a legitimate child of the marriage bed. The same word appears in Provençal, Italian, Portuguese and Spanish, and was also Latinized as ‘bastardus’ – a term which tends to be used in English medieval Latin wills with rather more frequency than ‘illegitimus’. The dictionary definition provides a starting point, but it does not address the complexities of illegitimacy and adds a potential element of confusion, since the term ‘natural’ was not exclusively used to denote illegitimacy in the medieval period,

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<sup>19</sup> In Renaissance Florence and the Veneto, members of the patrician class tended not to father illegitimate children whilst their wives were capable of conceiving. James Grubb, *Provincial Families of the Renaissance. Private and Public Life in the Veneto* (Baltimore, 1996) pp. 38-9.

<sup>20</sup> *OED* 2<sup>nd</sup> edition (Oxford, 1989) VIII p.811.

<sup>21</sup> The word ‘bastard’ will be used throughout this work without any intention of offence as it was the most commonly used term in medieval documents.

<sup>22</sup> *OED* I p. 990.

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but could refer to any child with a genetic relationship to the parent, without any implications regarding legal status.<sup>23</sup>

In order to understand the different ways in which illegitimate children could be regarded, bastardy can be further divided into categories according to the circumstances of the birth, which could affect the legal status and situation of the child. The sociologist Kingsley Davis defined illegitimate births as those which do not conform to the norms of the society in which they take place, identifying nine types of bastard, which he grouped into five categories: simple fornication; adultery; incest; forbidden caste unions; and procreation by avowed celibates.<sup>24</sup> Similar categories can be identified in medieval society: those born as the result of fornication between unmarried persons who were free to marry; adultery; incestuous unions and marriages dissolved as a result of consanguinity or affinity; marriages dissolved as a result of pre-contract; children of clerics. The first category could perhaps be divided to distinguish casual liaisons from more stable relationships between individuals who are free to marry but actively choose not to do so in order to avoid forfeiting land under a settlement from a previous marriage.

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<sup>23</sup> Charles G Bell, 'Edward Fairfax, a Natural Son' in *Modern Language Notes* 62 (1947) pp.24-7; *OED* X pp. 243-4.

<sup>24</sup> Davis, 'Illegitimacy and the Social Structure', pp. 215-233.

**Table 1: Mapping of Sociological Categories of Illegitimacy to Medieval society**

Forms of Illegitimacy identified by Kingsley Davis		Medieval equivalent <sup>25</sup>
Norm violated	Type	
A. Procreation should occur after marriage	1. Simple fornication	A1. <i>Naturales</i> born <i>de soluto et soluta</i> , either from a casual or more long-term relationship.
		A2. Pre-nuptial bastards
		A3. <i>Spurii</i> born of unmarried man and unmarried woman who could not lawfully have married.
B. Procreation should not occur as a result of adulterous relationships	2. One-sided adultery with mother married to another party	B1. One-sided adultery with mother married to another party
	3. One-sided adultery with father married to another party	B2. One-sided adultery with father married to another party
	4. Symmetrical adultery	B3. Symmetrical adultery B4. Children bastardized following annulment of marriage for pre-contract
C. Procreation should not occur as a result of incestuous relationships	5. Brother-sister incest	C1. Children bastardized following annulment of marriage for consanguinity, affinity or quasi affinity/public honesty
	6. Father-daughter incest	
	7. Mother-son incest	
D. Procreation should not violate rule of caste endogamy	8. Intercaste illegitimacy	Not directly applicable, but relative status of parties could affect treatment of children who were illegitimate under one of rules above. If category is interpreted more widely as illegitimacy resulting from breach of societal norms, then, D1: children bastardized following divorce of parents for minority.
E. Procreation by celibates should not occur	9. Celibate illegitimacy	E1. Children of priests.

Winterer, in his work on Italian bastards, identified a definite hierarchy, which broadly follows the categories outlined above. Bastards born *de soluto et soluta* (i.e. where the parents were single and free to marry) were at the top, then adulterine bastards, then bastards from incestuous liaisons, with children of clerics at the bottom.<sup>26</sup> In addition to the classification of bastardy arising from the circumstances in which the

<sup>25</sup> These categories will be discussed in detail in chapter 3.

<sup>26</sup> H Winterer, *Rechtliche Stellung der Bastarde in Italien von 800 bis 1500* (Münchener Beiträge zur Mediävistik und Renaissance-Forschung 28: Munich, 1978) p.49.

child was conceived, it is also possible to classify bastards according to their legal status, which could change during their lifetime. There are three states of illegitimacy: bastard-born and illegitimate, bastard-born but legitimated and legitimately born but bastardised. In medieval England formal changes of legal status were rare, though not unknown. The legal implications of the various categories, and the circumstances in which the state of legitimacy might change, will be considered in detail in Chapter 3.

### **English Landed Society: Nobility and Gentry**

Nobility and gentry are problematic concepts to apply to medieval English society. On the continent, nobility was a defined legal status, though there were geographical variations in the requirements for nobility. Generally nobility was deemed to be inherited from the father, but it was more strictly defined in Germany, where both parents needed to be noble.<sup>27</sup> Whilst nobility had implications of lineage and noble connections, in France in the late thirteenth century patents of ennoblement were introduced by which wealthy commoners could purchase the privileges of nobility, which included freedom from tolls, certain tax exemptions and the ability to be knighted and to wear high-status clothing.<sup>28</sup> Similar patents were also introduced in parts of the Netherlands.<sup>29</sup> There was nothing so clearly defined in England. Crouch's tongue-in-cheek suggestion that as far as medieval England is concerned 'it can seem that the only workable definition of a medieval nobleman remained a man who dressed and acted like a nobleman and was not laughed at' has a certain degree of truth.<sup>30</sup> Philippa Maddern similarly concluded that the status of the late medieval English gentry depended less on immutable status than on their behaviour and how they were perceived by society.<sup>31</sup>

The parliamentary peerage evolved during the course of the fourteenth and fifteenth centuries into a distinct group, identifiable as those receiving an individual summons to parliament. The knights, esquires and wealthy landowners below that level who collectively formed the lesser nobility, or gentry, had no single defining characteristic, although they were in general those individuals who were likely to serve locally as sheriffs, justices or the peace, or representatives in Parliament. Academic debate over the definition of the gentry continues. By the sixteenth century, entitlement

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<sup>27</sup> Judith J Hurwich, 'Bastards in the German Nobility', p.702.

<sup>28</sup> David Crouch, *The Birth of Nobility. Constructing Aristocracy in England and France 900-1300* (Harlow, 2005) pp. 2-3.

<sup>29</sup> Johanna Maria van Winter, 'Knighthood and Nobility in the Netherlands' in Michael Jones ed. *Gentry and Lesser Nobility in Late Medieval Europe* (Gloucester, 1986) p.81-94.

<sup>30</sup> Crouch, *The Birth of Nobility* p.3

<sup>31</sup> Philippa Maddern, 'Gentility' in Raluca Radulescu and Alison Truelove (eds.) *Gentry Culture in Late Medieval England* (Manchester, 2005) p.31.

to a coat of arms had come to be regarded as an indicator of genteel status.<sup>32</sup> Since the period of this study, the fourteenth and fifteenth centuries, encompasses the years in which the upper levels of English society were becoming more stratified with the separation of the parliamentary peerage from the lesser nobility or gentry, for the purposes of this study, the term 'landed society' is used to include both, although the term is not entirely satisfactory. Younger sons and social climbers with very little landed wealth of their own who served as lawyers and estate administrators or made their fortunes on the battlefield were also part of this group. As D A L Morgan pointed out, the fact that those 'gentlemen' who followed a career of service did not necessarily possess a landed estate did not mean that they did not wish to acquire one.<sup>33</sup>

## Historiography

### Medieval Bastardy in General

A number of works have been published, particularly during the last two decades, which deal with historical aspects of bastardy, covering a range of periods and locations from ancient Greece to early modern France, colonial Spanish America and nineteenth-century Scotland.<sup>34</sup> Most of these have been published since 1990, indicating a growing interest in the subject. Whilst there are studies of illegitimacy in the medieval period, they mostly concentrate on parts of continental Europe. For medieval Europe as a whole, the conventional historiographical narrative, following the interpretation of Jacob Burckhardt,<sup>35</sup> is one of increasing opportunity for bastards in the later Middle Ages which came to an end as a result of heightened moral concern resulting from the Protestant reformation or the Counter Reformation, according to location. This position is neatly summarised by Jacques Verger. According to this narrative, 'the weakening of certain moral constraints,' combined with the demands of war, provided the opportunity for bastards from aristocratic families to come to the fore,

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<sup>32</sup> K B McFarlane, *The Nobility of Later Medieval England* (Oxford, 1973) p.7; Maurice Keen, *Origins of the English Gentleman* (Stroud, 2002) pp. 9-21; D A L Morgan, 'The Individual Style of the English Gentleman' in Jones (ed.) *Gentry and Lesser Nobility* pp. 17-18.

<sup>33</sup> Morgan, 'Individual Style of the English Gentleman' p. 27.

<sup>34</sup> e.g Daniel Ogden, *Greek bastardy in the classical and Hellenistic periods* (Oxford, 1996); Matthew Gerber, *Bastards. Politics, Family, and Law in Early Modern France* (Oxford, 2012); Ann Twinham, *Public Lives, Private Secrets. Gender, honor, sexuality and illegitimacy in colonial Spanish America* (Stanford, 1999); Andrew Blaikie, *Illegitimacy, Sex and Society. Northeast Scotland, 1750-1900* (Oxford, 1993).

<sup>35</sup> Jacob Burckhardt, *The Civilisation of the Renaissance in Italy* trans. S G C Middlemore (Penguin Edition, London, 1990) p. 30.



and to be treated almost equally with legitimate children.<sup>36</sup> J P Cooper's analysis of inheritance patterns in fifteenth century Castile followed this model, noting that bastards were given both recognition and support. Recognition of bastards provided a means by which aristocratic families could ensure a supply of male heirs, despite the prohibition on marriage for members of the military orders.<sup>37</sup>

Recent research has modified this picture of a 'golden age' of bastards somewhat. The Italian city states have proved a particularly fertile area for research, facilitated by the availability of archival sources that enable quantitative analysis. Under *castato* tax, introduced in 1427, bastards were tax-deductible as a personal expense.<sup>38</sup> This recognition of the expense of raising a child, whether legitimate or not, meant that illegitimate children were declared, and the *castato* thus provides a rare example of an archive in which bastards are listed. Thomas Kuehn's study of bastardy in Renaissance Florence based on these records suggests that the notion of a 'golden age' is difficult to sustain. He stresses the 'deep indelible stain of dishonour' borne by bastards, and the generally limited nature of testamentary provision for them. However, he did note that they were in some cases used as a form of insurance policy for the continuation of the family line in the absence of a legitimate male heir, as legitimation was possible. In the meantime, they were less expensive to provide for than legitimate offspring. Florentines were generally concerned to provide bastards with a sufficient living, or in the case of bastard daughters, a modest dowry.<sup>39</sup> The Florentine records also provide a source which allows specific provision for illegitimate daughters, which are normally more difficult to trace, to be identified. Fathers were able to invest in a civic fund, the *Monte delle doti*, in order to provide a future dowry for their daughters. Julius Kirshner and Anthony Molho have shown that this fund was used to provide for bastard daughters as well as for legitimate ones, though the dowries they could expect were on average much smaller. Whereas the overall average dowry was 405 florins, for illegitimate daughters the average was only 232 florins. Those fathers who made investments for both

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<sup>36</sup> Jacques Verger, 'Different values and authorities' in Robert Fossier (ed.) *The Cambridge Illustrated History of the Middle Ages 1250-1520* (Cambridge, 1986) p. 176.

<sup>37</sup> J P Cooper, 'Patterns of Inheritance and Settlement by Great Landowners from the Fifteenth to the Eighteenth Centuries; in *Family and Inheritance: Rural Society in Western Europe 1200-1800* ed. Jack Goody, Joan Thirst and E P Thompson (Cambridge, 1978) pp. 238, 302.

<sup>38</sup> In 1458 Florentines were required to specify which of their dependents were illegitimate. Officials subsequently declared that they would only accept deductions for illegitimates once they had satisfied themselves of the veracity of the deduction. Kuehn found that the numbers of bastards in the raw *castato* declarations for 1458 were much higher than for the other years he studied. Clearly the tax privileges on offer could lead to fictitious claims and bastards that were truly spurious in both senses of the word.

Kuehn, *Illegitimacy in Renaissance Florence* (Ann Arbor, 2001) p.82.

<sup>39</sup> Kuehn, *Illegitimacy in Renaissance Florence* pp.14, 166, 184, 191.

legitimate and illegitimate daughters generally provided their bastard daughters with a dowry between a quarter and a third of that of their legitimate daughters.<sup>40</sup>

James Grub, in a study of Renaissance families in the Veneto, also stresses the value of illegitimate sons as potential substitute heirs, and further suggests that procreation of bastards tended to occur mainly when men did not have wives capable of conceiving, that is before and after marriage and when their wives had passed childbearing age. He also found that illegitimate daughters were less well-favoured, being five times more likely than their legitimate siblings to be sent to a convent and, when married, receiving significantly lower dowries and being married down the social scale.<sup>41</sup> Stanley Chojnacki found that attempts by members of the Venetian aristocracy to insinuate their illegitimate children into the patriciate were sufficiently widespread to be a concern for the city government, which attempted to control this through legislation.<sup>42</sup>

Quantitative studies of bastardy in continental Europe have also been facilitated by the opening of the papal penitentiary archives, containing details of dispensations to clerics. Ludwig Schmugge in particular used this material and was able to compile a database of 37,916 dispensations that were registered in the Papal Penitentiary between 1449 and 1533. Since it is based on dispensations, this work is primarily concerned with those bastards who went into the Church. However, his analysis suggests that there were fewer opportunities for bastard sons of the nobility in the German Empire. He found that canonries and bishoprics were almost unobtainable for bastards from noble houses, whereas those from Spain fared much better.<sup>43</sup> Judith Hurwich suggested that the legal position of illegitimate sons of the nobility in Germany was inferior to that of noble bastards elsewhere because of the stricter way in which nobility was defined.<sup>44</sup>

## **Marriage, Family and Sexuality**

Moving beyond the purely legal aspects, medieval marriage has in recent years been studied as a subject in its own right. Whilst these studies have relatively little to say about illegitimacy as such, they are relevant, since illegitimacy is defined by

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<sup>40</sup> Julius Kirshner and Anthony Molho, 'The Dowry Fund and the Marriage Market in Early *Quattrocento* Florence', *The Journal of Modern History* 50 (1978) pp. 403-418.

<sup>41</sup> James Grub, *Provincial Families of the Renaissance: Private and Public Life in the Veneto* (Baltimore, 1996), p. 39.

<sup>42</sup> Stanley Chojnacki, *Women and Men in Renaissance Venice. Twelve Essays on Patrician Society* (Baltimore, 2000) p.22.

<sup>43</sup> Ludwig Schmugge: *Kirche, Kinder, Karrieren: Päpstliche Dispense von der unehelichen Geburt im Spätmittelalter* (Zurich, 1995) pp.33, 221-2.

<sup>44</sup> Judith J Hurwich, 'Bastards in the German Nobility' pp. 701-727.

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marriage, or rather, by its absence. Georges Duby saw medieval marriage in terms of two competing models: a secular, aristocratic one in which maintaining the lineage was important, choice of marriage partner was strictly controlled by the family and divorce or annulment was possible, and the ecclesiastical model, which emphasised the choice and consent of the marriage partners and the indissolubility of the marriage bond.<sup>45</sup> Michael Sheehan found that marriage cases from the Ely Act Books demonstrated individualistic ideas about marriage, and suggested that whilst the norms of family and society remained important, ‘even among the upper classes it was possible for a determined person to escape these norms by the rather simple process of entering into a canonically acceptable marriage of his own choosing’.<sup>46</sup> David d’Avray also challenged the aristocratic model, stressing the importance of marriage symbolism in informing social and legal practice, ‘helping to create a combination of monogamy and indissolubility probably unique in the history of literate societies.’<sup>47</sup> In the earlier medieval period when the distinction between valid and invalid marriages was not always clearly defined illegitimacy was not such an issue as was to become later when the Church began to exert increasing control over marriage. David d’Avray has noted that there was increasing concern about the validity of marriages during the last three medieval centuries, and that individuals were prepared to go to great lengths in order to authenticate their marriage and thus ensure that the legitimacy of their children was not in any doubt.<sup>48</sup>

Charles Donahue’s work on the law of marriage dealt mainly with issues affecting the validity of marriage, but this is of course crucial in determining the legitimacy or otherwise of the children of that marriage. His study of marriage litigation showed that ‘ordinary people will manipulate the system at every turn’ – a conclusion which is hardly profound, but one which can be overlooked by a focus on legal treatises. He also identified a clear distinction between the ways in which the system was manipulated in England and what he described as the ‘Franco-Belgian region.’<sup>49</sup>

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<sup>45</sup> Georges Duby, *Medieval Marriage: Two Models from Twelfth Century France*, tr. E Foster (Baltimore, 1978).

<sup>46</sup> Michael Sheehan ‘The Formation and Stability of Marriage in Fourteenth-Century England: Evidence of an Ely Register’ in Michael Sheehan, *Marriage, Family and Law in Medieval Europe: Collected Studies* (ed. J K Farge) (Toronto, 1996).

<sup>47</sup> David d’Avray, *Medieval Marriage: Symbolism and Society* (Oxford, 2005).

<sup>48</sup> David d’Avray, ‘Authentication of Marital Status: A Thirteenth-Century English Royal Annulment Process and Late Medieval Cases from the Papal Penitentiary’ *EHR* cxx (2005) p.988

<sup>49</sup> Charles Donahue, *Law, Marriage and Society in the Later Middle Ages. Arguments about Marriage in Five Courts* (Cambridge University Press, New York, 2007) p.617.

Recently, illegitimacy has been touched on in works on gender and sexuality. In this context, illegitimate children tend to be regarded as evidence of sexual misconduct or freedom rather than as a topic for study in their own right. The point at issue is whether men who fornicated were treated less harshly than women. This was the view taken by Ruth Mazo Karras, who argued that adultery by women was viewed more seriously than male adultery, partly because of the problems it could cause with heirs of dubious paternity, but also because of a fear of female independence. She also pointed to the ability of single men of high status to father illegitimate children on women of lower status, and the tendency throughout the Middle Ages for ‘illegitimate children of aristocrats to be given lands and titles (if boys) and/or married to other aristocrats slightly lower in status’ without damage to their fathers’ reputations.<sup>50</sup> Little detailed evidence is provided for this assertion; the only concrete examples mentioned being King Henry I of England, and Gregorio Dati, a fifteenth-century Florentine merchant, neither of whom can be assumed to be typical. Other historians, including Shannon McSheffrey and Derek Neal, who have challenged this view of a double standard, have not dealt specifically with illegitimate children so much as with adultery cases.<sup>51</sup>

### **Medieval Bastardy in England**

In respect of England, there is comparatively little literature specifically devoted to illegitimacy during the medieval period. Illegitimacy as a topic occurs mainly in the work of historical demographers and legal historians, though it is touched on also by social historians and increasingly by those working on gender and sexuality. The literature on bastardy in England is mainly represented by studies from the early modern period and later, for which the introduction of parochial, registration of all births, marriages and deaths from the sixteenth century onwards provides a means, albeit far from ideal, by which illegitimate births can be identified and quantified. These studies include Richard Adair’s work on regional variations in illegitimacy in early modern England<sup>52</sup> and chapters in general or comparative works on illegitimacy, most notably

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<sup>50</sup> Ruth Mazo Karras, *Sexuality in Medieval Europe. Doing Unto Others*, (New York, 2005) pp. 88-89; 124-125.

<sup>51</sup> Shannon McSheffrey ‘Men and Masculinity in Late Medieval London Civic Culture: Governance, Patriarchy and Reputation’ in J Murray, ed, *Conflicted Identities and Multiple Masculinities. Men in the Medieval West*. (New York, 1999) pp. 243-278; Derek G Neal, *The Masculine Self in Late Medieval England* (Chicago, 2008)

<sup>52</sup> Richard L Adair, *Courtship, Illegitimacy and Marriage and Regional variations in illegitimacy and courtship patterns in England 1538-1754* (Cambridge, 1991).

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Alan Macfarlane's chapter in *Bastardy and its Comparative History*.<sup>53</sup> This volume, the first in a series by the Cambridge Group for the History of Population and Social Structure, brought together work on bastardy in a variety of countries, from the perspective of historical sociology. As far as England is concerned, the period covered by the work of this group begins in the sixteenth century, with the exception of some comparative material relating to the manorial court rolls of a Suffolk parish during the period 1260-93.<sup>54</sup> As Laslett acknowledges, the work of this group was necessarily with incidence rather than with larger themes such as 'attitudes to bastards...their treatment and their place in society and especially the family',<sup>55</sup> which remain to be explored if the evidence can be recovered. For the period before 1850, the only measure of incidence that the group were able to calculate was the ratio of legitimate to illegitimate births. After 1850, more registrars' tables also recorded the illegitimacy rate per 1000 of population, a more useful statistic since, as Laslett points out, the ratio of illegitimate to legitimate births can be affected by other factors such as changes in the proportion of single women in the population as well as by changes in the tendency towards illegitimate births.<sup>56</sup> The figures produced by Laslett and the Cambridge group show that the general trends of rates and ratios are broadly similar when they can be plotted together. Laslett pointed out that this rhythmic pattern of the English 'bastardy curve' for the period since 1550 is markedly similar to the pattern of overall fertility, not necessarily through cause and effect, but perhaps as a result of the same underlying influences. He also noted an inverse relationship between average age at first marriage and illegitimacy, so that the lower the age of marriage, the more bastards were born, which is not what might be expected. A similar pattern was identified in France and Scotland.<sup>57</sup> Laslett's inference is that late marriage is associated with general sexual restraint, at least in terms of heterosexual relationships and that 'sexual and marital deprivation cannot have been the important reason for the existence of bastardy.'<sup>58</sup> This point in particular is interesting in the context of late medieval landed society, in which early marriage was common, and raises the question of whether the converse holds true

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<sup>53</sup> Alan Macfarlane, 'Illegitimacy and Illegitimates in English history' in Laslett et al. (eds.) *Bastardy and its Comparative History* pp 71-85.

<sup>54</sup> Richard M Smith 'A note on network analysis in relation to the bastardy prone sub-society' in Laslett et al (eds.) *Bastardy and its Comparative History* pp. 240-246.

<sup>55</sup> Laslett 'Comparing Illegitimacy' p.5

<sup>56</sup> Ibid. p.15.

<sup>57</sup> Ibid. p.20-21.

<sup>58</sup> Ibid. pp.58-9. This obviously does not apply to children of clerics.

for this period and that illicit sexual activity and thus the procreation of bastards was common.

If the scope for statistical analysis for the three centuries prior to 1850 is restricted, any attempt at quantifying illegitimacy in the period before parish registers are available is clearly even more problematic. However, some attempts have been made to do so at the level of peasant society by exploiting manorial court records, mainly as part of wider studies of a particular peasant community. This is possible through a study of payments of *leyrwyte*, a fine for single women and widows of unfree status who fornicated, or *childwyte*, a fine for giving birth to an illegitimate child.<sup>59</sup> For example, Zvi Razi estimated, on the basis of recorded payments of *leyrwyte*, that the frequency of illegitimate births on the manor of Halesowen between 1270 and 1348 was high, with one illegitimate birth for about every two marriages.<sup>60</sup> However, this estimate was based on the assumption that all or most of the women of Halesowen who paid *leyrwyte* conceived and gave birth out of wedlock, which seems unlikely. Other researchers working on different areas have suggested much lower rates, and the assumption that *leyrwyte* payments were associated with the birth of illegitimate children may not be reliable. Razi compared his results to R M Smith's research on three Suffolk manors, which suggested a rate of one bastard birth to every three or four marriages with between 4.9 and 12.3% of all births being illegitimate. Razi himself stated that in most of the cases from Halesowen the court roll merely recorded the fact that a woman 'deflorata est'. Only in a few cases was pregnancy specifically mentioned.<sup>61</sup> The birth of a bastard was of course not the only possible evidence of fornication. On the manor of Winslow (Buckinghamshire), *leyrwite* was the name given to the offence, rather than the fine, but seems not to have been mentioned in association with pregnancy, though some women who committed *leyrwite* did have illegitimate children, mentioned elsewhere in the court books.<sup>62</sup>

Studies of English peasant society have also looked at the qualitative issues of the consequences of illegitimacy, highlighting examples where customary law differed from canon and common law in its treatment of bastards. For example, Barbara Hanawalt observed a tendency for the authorities, both lay and ecclesiastical, to take a

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<sup>59</sup> *Leyrwyte* and *childwyte* tended to be mutually exclusive; only one would be levied on any one manor. See Judith M Bennett 'Writing Fornication: Medieval Leyrwite and its Historians' *Transactions of the Royal Historical Society* 13 (2003) pp. 131-62.

<sup>60</sup> Zvi Razi, *Life, Marriage and Death in a Medieval Parish* (Cambridge, 1980) p. 70.

<sup>61</sup> Razi, *Life, Marriage and Death* p. 64.

<sup>62</sup> David Noy, 'Leyrwite, Marriage and Illegitimacy: Winslow before the Black Death'. *Records of Buckinghamshire* 47 (2007) pp.133-151.

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lenient view of bastardy for the practical purpose of ensuring smooth succession to property.<sup>63</sup> Since bastards had no right of inheritance, in theory they were free, as they could not inherit servile status. This interpretation was taken in common law from the reign of Edward II and bastardy became the usual reply to an exception of villeinage.<sup>64</sup> In practice, however, some bastards were able to inherit. For example, Razi cited the cases of John Prick, a bond tenant nicknamed ‘the bastard’ who was able to take over the family holding, presumably because there was no other heir, and of Geoffrey Byrd from Ridgeacre, another bastard who inherited the family holding and apparently did so well that on his death in 1369, his son John was required to pay an entry fine of £5 for the half virgate holding. There was however a slight complication in the transfer of the property to John Byrd, as the son of a bastard was not supposed to be able to inherit a customary holding from his father. This difficulty was solved by declaring John to be the son of Felicity, Geoffrey Byrd’s wife.<sup>65</sup> In a 1285 case from Wakefield cited by J S Beckerman in an unpublished thesis, two brothers contested the right of admission to their father’s land. The younger claimed that the elder should not be the heir as he was born before their parents’ marriage was solemnized at the church door. The elder argued successfully that it was the local custom for the eldest son born after trothplight to be the heir.<sup>66</sup> However, Beckerman’s research into customary law at manorial courts suggests that where inheritance by bastards was permitted, they retained unfree status, and that when manorial custom came to accept the common law doctrine that bastards were free, they lost their ability to inherit. Beckerman cited a case of 1341 from the manor of Ingoldmells (Lincs), in which the jury stated that the custom of the manor had been ‘that any bastard man or woman could acquire to themselves lands and tenements of the manor of Ingoldmells, like the rest of the bondmen, and were considered as bondmen, except for the time of ten years next past.’<sup>67</sup> Manorial custom was not the only means by which bastards were able to succeed to lands. Hanawalt points out that the peasantry only resorted to customs and rules if the father had neglected to make arrangements before his death, and that ‘for the most part, peasants manipulated rules through settlements during their lifetime or arrangements made at their death,

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<sup>63</sup> Barbara Hanawalt, *The Ties that Bound* (Oxford, 1986) p.72.

<sup>64</sup> Norma Adams, ‘Nullius Filius: A Study of the Exception of Bastardy in the Law Courts of Medieval England’, *University of Toronto Law Journal* VI (1946) pp. 377-379.

<sup>65</sup> Razi, *Life, Marriage and Death* p. 65.

<sup>66</sup> J S Beckerman, Customary law in English manorial courts in the thirteenth and fourteenth centuries (Unpublished PhD thesis, University of London, 1972) p.155.

<sup>67</sup> Beckerman, ‘Customary law in English manorial courts’ pp.155-7.

increasingly through wills.<sup>68</sup> This suggests that the consequences of illegitimacy were not necessarily severe in economic terms. It would appear that the social consequences were not too severe either. Razi found that women who had given birth to illegitimate offspring often married subsequently, and not below their social level, while the children were not treated as outcasts. Alice, the co-heiress of a rich peasant from Oldbury, paid *leyrwite* in 1325, but three years later married another rich peasant, Roger Sweyn.<sup>69</sup> In Hanawalt's view, 'the stigma of an illegitimate birth for either the mother or the child need not have been very strong in peasant society'.<sup>70</sup> The existing literature on English medieval peasant bastardy therefore, while inconclusive as to illegitimacy rates, may suggest that where bastardy did occur, the consequences were not necessarily severe, as manorial customs and developing legal devices such as wills enabled the common law difficulties to be surmounted.

A different perspective was put forward by Margaret Spufford, a historian of the early modern period who aimed to show a parallel between seventeenth century moral attitudes and those at the turn of the fourteenth century. Her intention was to challenge the view that the imposition of strict codes of behaviour by Puritan village elites in the seventeenth century was a new development and partly a response to financial concerns about illegitimate children being a charge against the parish, arguing that concern about sexual misbehaviour had also been a feature of the earlier period. Spufford's quantification was based on the work of Richard Smith and Zvi Razi relating to fines of *leyrwyte* and *childwyte* mentioned above.<sup>71</sup> Marjorie McIntosh similarly concluded that concern about sexual misbehaviour was not a new development resulting from Puritanism, but her work was based on the statements of manorial juries concerning problems affecting their communities, rather than the imposition of financial penalties, on the basis that the former provides a better indication of the concerns of the community in general. Manorial court fines may be more indicative of the financial interests of the lord than of the tenant body as a whole.<sup>72</sup> However, fining or citing fornicators in the manorial court was not the same thing as ostracising their illegitimate offspring. McIntosh found some communities that were particularly concerned about social wrongdoing in the later fifteenth century, and noted that of these communities for which she was able to trace the subsequent religious history, most were receptive to

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<sup>68</sup> Hanawalt, *Ties that Bound* p. 73.

<sup>69</sup> Razi, *Life, Marriage and Death* p 65.

<sup>70</sup> *Ibid.* p196.

<sup>71</sup> Margaret Spufford, 'Puritanism and Social Control' in A Fletcher and John Stevenson (eds.) *Order and Disorder in Early Modern England* (Cambridge,1985).

<sup>72</sup> Marjorie McIntosh, *Controlling Misbehavior in England, 1370-1600* (Cambridge 1998) pp.16, 23



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early Protestant ideas and had an active Puritan presence by the end of the sixteenth century, suggesting that if there was a link between Puritanism and concern over sexual misconduct, it originated in the later medieval period.<sup>73</sup>

Higher up the social scale, the nobility and gentry, with landed estates and higher social status, might be supposed to have more to lose from the stigma of illegitimate birth. Studies of landed society do not necessarily support this view. K B McFarlane, who inspired a generation of scholars of the nobility and gentry, observed a rise in status of noble bastards in later medieval England, which would accord with the 'golden age' hypothesis. He commented on the effects of the increased flexibility in the disposal of landed property offered by such devices as the entail and the enfeoffment to use, citing 'the number of younger sons of magnates, even bastard sons of magnates, who themselves became magnates in their own right.' He noted that the new freedom in the disposal of property provided by the use made it more likely that a bastard child would receive unentailed property than a more distant collateral relation. McFarlane saw a rise in the social status of illegitimate children in the late middle ages which was 'due to no invasion of continental morals from France, but to the fact that, whereas a natural child could not legally inherit, he could by then receive a bequest of land under his father's will.'<sup>74</sup> As an example he mentioned the case of Ralph, Lord Basset of Drayton (d.1390), who used this method to convey his estates to his nephew Hugh Shirley, the son of his possibly bastard sister, Isabel.<sup>75</sup> He also traced the origins of the use to the arrangements made in 1297 by William Vescy of Alnwick to convey certain of his estates to his bastard son. McFarlane argued that the period between the end of Edward I's reign and the start of the Tudor dynasty provided a window of opportunity in which landowners enjoyed an unusual degree of flexibility in the disposal of their property; a period during which, 'every conceivable alternative to straight inheritance had its devotees.' This freedom eventually came to an end, not because of any Tudor policy, but simply as a result of the cumulative effects of the entails that had been created once again fettering the discretion of a landowner to dispose of his property as he saw fit, combined with the interests of the fathers-in-law of eldest sons, who wished to ensure that the inheritance of the heirs to whom they were marrying their daughters

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<sup>73</sup> McIntosh, *Controlling Misbehavior* pp. 210-13.

<sup>74</sup> McFarlane, *Nobility* p.73.

<sup>75</sup> The actual status of Isabel is uncertain. A 1583 pedigree produced for Sir George Shirley in 1583 by Robert Glover described Isabel as '*soror naturalis ultimi Radulphi Domini Basset de Drayton*' and gave her arms as those of Basset of Drayton with a baton sinister. E P Shirley, *Stemmata Shirleiana* (2<sup>nd</sup> Edition, 1873) pp. 28-29, *Coll. Top. et Gen.* VII (London, 1841) p.256. However, neither the word 'natural' nor the baton sinister is necessarily conclusive as proof of illegitimacy.

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survived relatively intact. From the mid fifteenth century onwards, McFarlane noted, marriage contracts increasingly contained clauses requiring the father of the heir not to alienate property from their lawful heirs.<sup>76</sup>

McFarlane's work concentrated on the higher nobility, the parliamentary peerage. Following McFarlane, bastardy has been touched on in regional studies of landed society which include the lesser nobility. In these illegitimacy tends to appear as part of the chapter on estate planning and management, if it is mentioned at all. References to illegitimacy occur most notably in S M Wright's work on Derbyshire, in which 'mistresses and bastards abound.'<sup>77</sup> Although she did not attempt a quantitative analysis of illegitimacy, Wright was able to draw some conclusions about bastardy. She found a significant level of recognition of and provision for bastards among the Derbyshire gentry and observed that provision for bastards differed little from that for legitimate younger children.<sup>78</sup> Other works on the nobility and gentry, whether studies of regions, families or other groups, may provide examples of bastards, but only in the context of providing for succession to the family estates and continuation of the lineage. Eric Acheson, in a study of Leicestershire in the fifteenth century, in discussing arrangements made by gentry families to maintain the family name in the absence of legitimate male heirs, mentioned the case of John Bradgate, who arranged for his lands and tenements in Bradgate, Cropston, Thurcaston, Barkby, Thorp, Hamilton and Busby to be transferred to his bastard son, John.<sup>79</sup> An earlier example of an enfeoffment being used to transmit estates to bastards can be found in Nigel Saul's study of knightly families in fourteenth-century Sussex. Sir Andrew Sackville made an enfeoffment in 1365 to ensure that his estates were settled on his illegitimate children, Thomas and Alice, in default of legitimate issue.<sup>80</sup> However, there have been few attempts to draw conclusions for the landed class as a whole. In his book on John Hopton, Colin Richmond commented of the £20 left to Thomas Hopton in his father's will that 'this was small beer indeed; nevertheless it was more than most bastards ever got'.<sup>81</sup> The evidence from Derbyshire provided by Wright suggests that this level of provision for illegitimate offspring was not in fact uncommon. But while the increasing number of

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<sup>76</sup> K B McFarlane, *Nobility* pp. 80-81.

<sup>77</sup> S M Wright, *The Derbyshire Gentry in the Fifteenth Century* (Derbyshire Record Society, VIII, 1983); Colin Richmond, review of Wright, in *Medieval Prosopography* 6 (1985) p.121.

<sup>78</sup> Wright, *Derbyshire Gentry* p.49.

<sup>79</sup> Eric Acheson, *A Gentry Community. Leicestershire in the Fifteenth Century*, c.1422 – c.1485 (Cambridge, 1992) p. 160. TNA:PRO C 1/27/205.

<sup>80</sup> Nigel Saul, *Scenes from Provincial Life. Knightly Families in Sussex 1280-1400* (Oxford, 1986) p.13

<sup>81</sup> Richmond *John Hopton* p. 6.

studies of the nobility and gentry that have been published in the past two decades may provide examples of bastards who did at least as well, the evidence is anecdotal. Quantitative analysis is problematic, as there is no straightforward means of identifying illegitimate births within a population of members of landed society.

The one part of English landed society for which a study of illegitimacy has been undertaken is the very top, with Given-Wilson and Curteis's survey of royal bastards from 1066 to 1485, of whom there were a considerable number.<sup>82</sup> The only kings of England during that period for whom there was not even a doubtful rumour of having fathered a bastard were William I (who was of course himself a bastard), Henry III, Henry V and Henry VI, though William II, Edward I and Richard II had only one potential bastard of doubtful attribution each to their name. If the kings behaved in this way, a similar pattern of behaviour might be expected in their peers. Given-Wilson and Curteis suggested that, at least as far as royalty was concerned, by the fifteenth century there were indications that illegitimacy was considered a more serious defect than it had been before, given the increasing use of allegations of illegitimacy in the context of political struggles for the throne.<sup>83</sup> This would seem to conflict with McFarlane's belief in an increase in the status of bastards during the later middle ages, though Given-Wilson and Curteis did not claim that the allegations of bastardy in high places which were bandied around in the fifteenth century were ever more than a 'makeweight' to add a layer of superficial justification to the realities of political and military power. It is true that the number of relatively certain royal bastards is lower for the fourteenth and fifteenth centuries than the twelfth and thirteenth, but this is mainly because of the exceptionally large numbers fathered by Henry I and, to a lesser extent, John. At this level, there were analogies to be drawn between legitimacy of birth and legitimacy of power, which may have been less significant in the lower ranks of the nobility and gentry.

### Legal Aspects

Illegitimacy naturally features in the work of legal historians in a number of contexts: canon law, particularly in relation to marriage; common law in relation to inheritance rights and escheats; and also estates settlement. It was also an issue in one of the best known legal cases from the twelfth century, the 'Anstey Case'. This case is of

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<sup>82</sup> C Given-Wilson and A Curteis, *The Royal Bastards of Medieval England* (London, 1984). They list 41 identifiable royal bastards for the period 1066-1485, plus 12 for whom the evidence is less conclusive and 13 individuals who have sometimes been described as royal bastards, but about whom the attribution seems doubtful.

<sup>83</sup> Given-Wilson and Curteis, *Royal Bastards* pp. 153-159.

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particular interest to historians of the origins of the English legal system, not so much because of the legal points at issue as because of the survival of a memorandum in which the eventual victor, Richard of Anstey, recorded in detail the expenses he incurred in prosecuting his case. Richard claimed the estates of his uncle, William de Sackville. The defendant in possession was the latter's daughter, Mabel de Francheville, who was eventually found to be illegitimate, and Richard won his case.<sup>84</sup>

The study of the English legal history of illegitimacy has a long pedigree. In 1836 Sir Nicholas Harris Nicolas wrote his *Treatise on the Law of Adulterine Bastardy* as a result of the 1813 Banbury peerage case. This case turned on the parentage of Nicholas Knollys alias Vaux, who had claimed the right to sit in the House of Lords as Earl of Banbury in 1661. Knollys was purportedly the second and surviving son of William Knollys, who had been created Earl of Banbury on 18 August 1626. The circumstances of Nicholas' birth were such that there were grounds for suspicion as to his actual genetic parentage. At the time of Nicholas's birth in 1631, the Earl was over 80. The Earl's wife Elizabeth, who was almost forty years his junior, gave birth to Nicholas at the home of a family friend, Lord Vaux of Harrowden, whom she subsequently married within five weeks of her husband's death in 1633. Nicholas Knollys alias Vaux was nonetheless the son of a married woman, and should have been presumed legitimate by English law. He sat in the Lords as Earl of Banbury in the Convention Parliament from June to November 1660, but having received no writ of summons to the next Parliament in May 1661, petitioned the King. Despite the opinion of the Committee of Privileges on 1 July 1661 that 'Nicholas, Earl of Banbury, is a legitimate person', and a further statement on 19 July 1661 that he was 'in the eye of the law, sonne of the late William Earle of Banbury' the matter was not resolved before Nicholas's death in 1674. His son Charles Knollys made several attempts to establish his own right to the Earldom without resolution, and after his death the matter seems to have been dropped until 1806, when his descendant William Knollys petitioned the Crown for a writ of summons, which led to the resolution of the House of Lords in 1813 that 'the Petitioner is not entitled to use the title etc. of Earl of Banbury', to which Nicolas took such exception.<sup>85</sup> Since the treatise was inspired by the legal issues arising

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<sup>84</sup> *EHD* II no. 55; Paul Brand noted that Richard of Anstey and his heirs did not remain in unchallenged possession of the entire Sackville inheritance, and suggested that Richard may, as the senior coheir, have been acting also on behalf of the the heirs of William of Sackville's younger sister, Hodierna, hence his need to make a full record of expenses. 'New Light on the Anstey case' *Essex Archaeology and History*, 15, (1983) pp. 68-83. See also below, p. 78.

<sup>85</sup> Sir Nicholas Harris Nicolas, *A Treatise on the Law of Adulterine Bastardy* (London, 1836). The Banbury case is described in detail pp.289-554. See *CP* I pp. 400 to 408 for a summary.

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from that case, Nicolas was concerned only with one particular aspect of the law relating to illegitimacy, or rather one specific type of illegitimacy: the position of children born to a married woman involved in an adulterous relationship. Nicolas aimed to ‘insert, in chronological order, and as nearly as possible in the words of the original, every authority and every case that in any way bears on the question’ starting with the treatise known as Glanvill, and continuing via the treatises known as Bracton and Britton and subsequent cases reported in the Year Books.<sup>86</sup>

The wider context of illegitimacy was naturally addressed by Maitland, in the course of his survey of English legal history. He drew a clear distinction between the relative lack of legal disabilities found in English common law, and the legal situation of illegitimate children on the continent:

*‘in our English law bastardy can not be called a status or condition. The bastard can not inherit from his parents or from any one else, but this seems to be the only temporal consequence of his illegitimate birth... This is well worthy of notice for in French and German customs of the thirteenth century, bastardy is often a source of many disabilities, and sometimes the bastard is reckoned among the “rightless”’.*<sup>87</sup>

The divergence between English and continental law of illegitimacy is an important point. However, Maitland’s suggestion that the different treatment afforded to illegitimate offspring in England and on the continent may simply have resulted from England’s rule by kings who ‘proudly traced their descent from a mighty bastard’ should not be taken entirely seriously. Maitland’s tendency to favour legal treatises over case law also influences his account.

In 1911, Wilfred Hooper published a monograph on the law of illegitimacy (based on his LLD thesis) that, unlike Nicolas’, dealt with all aspects of illegitimacy, starting with the customs of the Germanic tribes before the conversion to Christianity. He also included the text of a medieval treatise on bastardy. His aim was to describe ‘the status of the bastard under English law, both historically and as it at present exists.’ Whilst agreeing with Maitland that bastardy could not be regarded as a status or condition in medieval English law, he observed that subsequent legal developments had added other points of difference than rights of inheritance to distinguish between the legitimate and illegitimate, which rendered it necessary to describe the medieval and modern laws in separate sections.<sup>88</sup>

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<sup>86</sup> Nicolas, *Adulterine Bastardy* p.vii

<sup>87</sup> Pollock F, and Maitland, F W, *The History of English Law before the Time of Edward I* (2 vols, Cambridge, 2nd ed., 1898).

<sup>88</sup> Wilfred Hooper, *The Law of Illegitimacy* (London, 1911), pp. iii-iv.

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There has not been a monograph exclusively on the English legal history of illegitimacy since Hooper's, but Richard Helmholz has written extensively on the canon law influences on English common law, including that of illegitimacy.<sup>89</sup> Determination of the legitimacy or otherwise of birth was a canon law matter, although perhaps not the highest priority of the canonists. James Brundage attempted to address the question of how much medieval canon lawyers thought about sex, or more precisely 'what proportion of the legal texts of the medieval canon law deal with sexual topics' by means of a quantitative analysis of a random sample of 800 canon and civil law texts (that is 400 from the *Corpus iuris canonici* and 400 from the *Corpus iuris civilis*). Texts dealing with illegitimacy accounted for just 1% of the total sample.<sup>90</sup> Illegitimacy was an area in which the canon law and common law differed in several important respects as will be explored in Chapter 3.

K B McFarlane argued that there was a rise in the status of bastards towards the end of the middle ages resulting from the development of the use in the fourteenth century, an innovation that made it possible for parents to devise property according to their own wishes rather than the rules of primogeniture.<sup>91</sup> Studies of the history of legal devices, therefore, whilst not relating specifically to illegitimacy, are relevant in that they deal with the means by which landowners were able to find the freedom to dispose of their estates by will, or were prevented from so doing. Key works in this field include J M W Bean's *Decline of English Feudalism*, which traces the development of the use from its origins in the mid-thirteenth century to the 1536 Statute of Uses and the 1540 Statute of Wills and Joseph Biancalana's monograph on the history of the fee tail and common recovery.<sup>92</sup> Bean's theme was the decline in the value of feudal incidents and he saw the development of the use as central to a struggle, or rather, the second of two related struggles, between the Crown and its subjects over the future of feudal institutions, in which the Crown did not make a concerted effort to stop its losses until the late fifteenth century. However, whilst uses enabled feudal incidents to be avoided, Bean acknowledged that the motivation for the creation of uses came more from a desire to meet family responsibilities or pay debts, than a specific attempt to deprive feudal lords of their rights. Bean was unable to determine whether payment of debts or estate planning in order to provide for children was predominant, but provision for

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<sup>89</sup> R H Helmholz, 'Bastardy Litigation in Medieval England' *American Journal of Legal History* 13 (1969) pp. 360-383.

<sup>90</sup> James A Brundage, *Sex, Law and Marriage in the Middle Ages* (Aldershot, 2003) V 92.

<sup>91</sup> McFarlane, *Nobility* p. 73

<sup>92</sup> J M W Bean, *The Decline of English Feudalism 1215-1540*, (Manchester, 1968), Joseph Biancalana, *The Fee Tail and Common Recovery in Medieval England 1176-1502* (Cambridge, 2001).

children was clearly an important consideration.<sup>93</sup> Biancalana's work deals with the history of the entail from its origin as a response to the enforcement by Henry II's officials of the common law rules of inheritance by means of the introduction of the assize of *mort d'ancestor*, to the invention of a means of barring entails some two and a half centuries later, as a result of entails being regarded as 'perpetual'.<sup>94</sup> Biancalana's original interest was in common recovery - a device by which the holder of land in fee tail could alienate the property free of the entail by means of a feigned action in the Court of Common Pleas. However, he found that in order to understand this response to the entail, it was necessary to trace the evolution of the entail itself and its relationship to the change in the form of marriage settlements from grants of land in *maritagium* by the father of the bride to cash payment of a marriage portion in exchange for a grant of land to be held by the couple in joint fee tail.<sup>95</sup>

Neither Bean nor Biancalana has very much to say specifically about provision for illegitimate children as opposed to legal developments in relation to estate planning generally, although Bean refers to the case of William de Vescy of Alnwick in the 1290s as a possible example of an early type of use being used to finance provision for an illegitimate son.<sup>96</sup> However, Biancalana's analysis of the ways in which landowners used fee tails, based on a study of final concords from seven counties during the period 1301-1480 showed that the majority of entails were created for one of three reasons: jointure on marriage, planning the devolution of property, and, once uses had become established, for the last will. The developments in property law they discuss were of crucial importance in enabling provision to be made for the livelihood of illegitimate children.

## Summary and Outline

As the historiography indicates, illegitimacy can be studied from a legal standpoint (who was classed as 'illegitimate' and why?) or a social one (who had illegitimate children, how frequently and what happened to them?) Medieval English landed society is a field in which both these approaches can be combined to provide insight into the social structure. What is lacking so far is a study of bastardy among the

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<sup>93</sup> Bean, *Decline of English Feudalism* pp. 142, 302

<sup>94</sup> Joseph Biancalana: *The Fee Tail and the Common Recovery in Medieval England 1176-1502* (CUP 2001)

<sup>95</sup> Biancalana, *Fee Tail and Common Recovery*, pp. 1-3. The evolution of the entail is discussed further below pp. 96-7.

<sup>96</sup> Bean, *Decline of English Feudalism* pp. 118-9, 142n. This case is discussed in detail below pp. 129-37.

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landed classes in England as a whole, which could provide some form of quantification of the rate of illegitimacy, and consider the provision made for bastards and their social status and relationship with the wider family over a sustained period of time. This thesis seeks to address this gap in scholarly activity.

Illegitimacy was a matter which primarily affected the right to inherit property, which was the determinant of social status. The two centuries between c.1285, when the statute *De Donis* was enacted, and the turn of the sixteenth century were a period during which a number of legal devices affecting the ability of landowners to plan the succession to their estates evolved. The *enfeoffment to use* and the *entail* allowed property to be devised by will, and as McFarlane noted, thus gave landowners the opportunity to provide for illegitimate children. How widely and in what circumstances these legal tools were used is therefore an interesting question, with a bearing on the nature of landed society. This question is one which has not so far been approached in a holistic manner. The reason for this lack of previous surveys is undoubtedly related to the diverse and fragmented nature of the sources. The strengths and weakness of the available source material for the study of illegitimacy are explored in the next chapter. Chapter 3 reviews the legal context, and in particular the differing interpretations offered by canon law, which dealt with the validity of marriage, and hence the legitimacy of offspring, and English common law, which dealt with property and inheritance. It is argued that the Church was generally more tolerant of bastards born outside lawful wedlock, provided that they were 'natural', whereas common law was more concerned with the outward manifestations of legitimacy and was thus more favourable to those born within a marriage, even if they were not the natural offspring of the husband. Subsequent chapters will move from legal theory to actual practice, examining the nature of provision made for illegitimate children in different circumstances. Chapter 4 deals with illegitimate children in families with legitimate heirs, and shows that provision for illegitimate children could vary considerably and that illegitimacy was not the only or in some cases even the primary factor which determined the level of provision. Chapters 5 and 6 consider the position of illegitimate children in cases where there was no surviving legitimate heir of the body. Cases where all or most of the property was transferred to the illegitimate offspring, who thus became substitute heirs, are considered in chapter 5, whereas chapter 6 deals with cases where the illegitimate children were not used in this way, and considers the reasons for this diversity of practice. It will be shown that whilst there were certain conditions which facilitated the transfer of property to an illegitimate son, success was



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variable and that, particularly at the highest levels of society, some individuals appear to have been constrained by what they considered to be appropriate for a bastard. Chapter 7 then examines wider attitudes to illegitimacy, concluding that it was not viewed as a social disability in medieval England. The detailed study in chapters 4-7 focuses on the fourteenth and fifteenth centuries, as this is the period during which the legal mechanisms by which landowners were able to circumvent the common law rules of inheritance evolved and matured.

## Chapter 2: Methodology

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Researching illegitimacy in the landed classes in later medieval England presents a methodological challenge. One of the reasons for the absence of such a study to date is the difficulty of identifying and selecting source material. It is no accident that the comprehensive study of bastardy in England begins with the sixteenth century, when the introduction of parochial registration in 1538 established a new source which can be used to identify illegitimate births as a proportion of all births. This does not mean, however, that there is no relevant source material for the earlier period. Whilst there is no class of records for the landed classes comparable to the manorial court records of payments of *leyrwite* or *childwyte* made by those guilty of fornication or giving birth out of wedlock, there are many types of record that may potentially be used to throw light on illegitimacy among the landed classes. These include wills, inquisitions post mortem, records of legal disputes, property transactions, ecclesiastical records, private correspondence, but all have weaknesses and can provide only part of the picture.

The first phase of the research was to assess the strengths and weaknesses of the various types of source material and the nature of the evidence that was available. For this purpose, printed source material was used initially to identify cases for further investigation.

### Source Types

#### Wills

Wills, which are available in increasing numbers for the later medieval period, provide among other things, as Michael Sheehan observed, a source of information about ‘the functional network of close family, servants, friends and neighbours, about the importance or unimportance of kinship’ and about the redistribution of property.<sup>1</sup> A number of medieval wills contain explicit mention of bastard offspring. Indeed, the frequency of such bequests caused Sir Nicholas Harris Nicolas to observe, in his preface to *Testamenta Vetusta* (1836), that ‘the moral state of this Country is shewn in many

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<sup>1</sup> Michael M Sheehan, ‘English Wills and the Records of the Ecclesiastical and Civil Jurisdictions’, reprinted in Michael Sheehan, *Marriage, Family and Law in Medieval Europe: Collected Studies* (ed. J K Farge) (Toronto, 1996) pp. 199-200.

instances by the numerous bequests to natural children, who are described in the most unequivocal manner; and if it be argued that in that sense society has not improved, still there is now a feeling of morality which prevents so bold an unblushing avowal of them.’<sup>2</sup> This comment perhaps reveals more about the diminution in the status of illegitimate children between the medieval period and the early nineteenth century than the incidence of illegitimacy in the medieval period. However, the medieval willingness to acknowledge illegitimate children in so many words renders wills a promising source, since it is fairly certain that an individual explicitly identified as ‘my bastard son/daughter’ is indeed a bastard. Moreover, explicit references to bastards in wills provide positive identification of at least one of the parents. Comparison with bequests made to legitimate children or relatives provides an indication of the relative status of the bastard offspring, whilst wills that record bequests by individuals other than the father provide evidence of the extent to which illegitimate children were integrated into the wider family.

However, they do have some disadvantages. There can be difficulties with terminology and interpretation. Some testators certainly made explicit reference to the illegitimacy of a beneficiary. For example, in 1428 John Pigot made a bequest of ten pounds to ‘Margaretae filiae meae bastard’ and in 1444 William D of York left four pounds to be divided equally between ‘Roberto et Willelmo, filiis bastardis Johannis Girlyngton avunculi mei’ and in 1438 Sir John Conyers of Ormesby left the residue of his goods to ‘pueris meis non promotes et Thomae filio meo bastardo.’<sup>3</sup> But this was not always the case. Some testators were more circumspect and referred to a child who is identifiable as illegitimate only by implication or from other knowledge of the family context. For example, Sir John Leek referred in his will of 1522 to his daughter Ann ‘got by Jane my wife’ and to three further daughters ‘got by Anne Menwaryng.’<sup>4</sup> In this case it is fairly self-evident from the context that the latter three were illegitimate, even if they were not described as such. In some instances the illegitimacy of a beneficiary described simply as ‘my son’ or ‘my daughter’ can only be inferred from the context, as with the will of Sir Gerard Usflete, which referred to one of his sons simply as ‘*Johanni filio meo*’ but then included a bequest to Anyn who, though not his wife, is described as

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<sup>2</sup> *Test. Vet.* I p. 10.

<sup>3</sup> *Test. Ebor.* I p. 416, II pp. 93-5; 64-65.

<sup>4</sup> G Edwards (ed.) *Derbyshire Wills Proved in the Prerogative Court of Canterbury 1393-1574* (Derbyshire Record Society 26, 1998) pp.56-7.

the mother of John, only on the condition that she attended the funeral.<sup>5</sup> The will of Sir Humphrey Stafford of Hook contained a bequest to ‘Iohanni fratri meo divina pietate Bathoniensi et Wellensi episcopo’. The illegitimacy of this beneficiary can only be identified from external sources. Fortunately, in this case enough is known about the future Archbishop of Canterbury for this information to be easily obtained. It is less obvious in the case of the will of Sir William Sturmy, which referred to his illegitimate son John Sturmy simply as ‘filio meo’.<sup>6</sup> Contextual information is needed in this case and, where it is missing, bastards may easily go unidentified.

Wills do not necessarily present a full picture of the provision made for the bastard’s livelihood. Cash bequests, for example, for the marriage of an illegitimate daughter, or the education of an illegitimate son, will supply part of the picture, but a will may not necessarily provide details of landed provision if this was done as part of an earlier settlement, for example on a marriage. Bequests of personal items or household goods can indicate the closeness of a family relationship, but not how the livelihood of the illegitimate child was to be ensured. However, wills were originally designed to deal with movable property only.<sup>7</sup> Whilst many boroughs permitted bequest of landed property by will, it was only with the development of the use that most landowners were able to dispose of their property by will and it took time for the possibilities to be fully understood by testators.<sup>8</sup> Furthermore, wills are generally of little use for providing information about bastards who were unacknowledged or unprovided for, although there are some exceptions. The will of Sir Henry Pierrepont of Holme in Nottinghamshire, dated 23 October 1489, specifically excluded one Edmund, who claimed to be his bastard son, stating that Edmund was to have ‘nether landes, ne tenements ne goodes that to me perteneth an belongith.’ In contrast, Sir Henry’s godson, Henry, was to receive lands in Screveton (Notts.), which Sir Henry had purchased during his lifetime, together with a cash sum of £20, and ‘Roger Pierrepont of Rothmertwhete’ was to receive lands in Mansfield and Pleasley (Derbys.) with £10. The bulk of the estate, including the lordship of Tibshelf (Derbys.) which had lately been recovered from the executors of Ralph lord Cromwell, was to go to Sir Henry’s right heirs.<sup>9</sup> Wills are also unlikely to provide much information about bastards who

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<sup>5</sup> *Test. Vet.* I pp. 340-1.

<sup>6</sup> TNA:PRO PROB11/3.

<sup>7</sup> Michael Sheehan, *The Will in Medieval England: from the conversion of the Anglo-Saxons to the end of the Thirteenth Century* (Toronto, 1963) p. 305.

<sup>8</sup> Sheehan, ‘Wills and Records of the Jurisdictions’ p. 209.

<sup>9</sup> *Test. Ebor.* IV (Surtees Society 53, 1869) pp. 43-45.

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predeceased their parents, although this is not necessarily the case if the bastards lived long enough to have children of their own. John Godyn, a London grocer who died in 1469, left a reversionary interest in certain tenements in successive tail to George, John and Johanna Godyn, the children of his bastard son Thomas Godyn.<sup>10</sup> Wills therefore tend to underestimate the number of cases of illegitimacy. There are also some potential pitfalls in the language of wills. A bequest to 'my natural son' might be taken to mean an illegitimate son, but this is not necessarily a safe assumption.<sup>11</sup>

Printed collections of wills provide the most accessible starting point for studying testamentary provision for illegitimate children, not least because crucial contextual information about the testator may be provided by the editors. A weakness is that the text is not always printed verbatim, as the editor focused on matters which he or she deemed the most important, such as family relationships. Thus in some cases a printed edition may merely be a summary which indicates that some form of bequest was made to a named illegitimate child, without giving the details, and the original must be consulted for more precise information. Edited volumes provide too skewed a sample for serious quantitative analysis, but a count of the number of wills in various published editions and calendars which mention illegitimate children provides at least some indicators of scale.

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<sup>10</sup> *Husting* pp. 564-5.

<sup>11</sup> See below pp.57-8.

Table 2.

**Bastards identified from a selection of printed wills or calendars:**

Source	Dates Covered	Date of earliest will mentioning bastard	Total No. of Wills	Total no. of wills mentioning bastards	Total no. of bastards
Court of Hustings <sup>12</sup>	1258-1688	1275	3792	11	12
Early Lincoln Wills <sup>13</sup>	1280-1514 <sup>14</sup>	1346	521	8	9
Testamenta Eboracensia (vols 1-4)	1316-1509	1347	779	11	20 <sup>15</sup>
Testamenta Vetusta		1358	823	17	25 <sup>16</sup>
Somerset Medieval Wills <sup>17</sup>	1383-1500	1406	323	3	6 <sup>18</sup>
Derbyshire Wills <sup>19</sup>	1393-1574	1522	34	1	3
Reg. Chichele <sup>20</sup>	1414-1443	1412	315	10 <sup>21</sup>	13 <sup>22</sup>
Some Oxfordshire Wills <sup>23</sup>	1393-1510		122	0	

<sup>12</sup> *Husting*. Only those wills proved up to 1525 counted. Figures exclude the will of Simon de Turnham (1346) which includes a reference to his 'natural daughter', Margaret, and the will of Nicholas de Wyght (1340), which refers to a grant the testator had received from the King following an escheat on the death of the former owner, Johanna le Mareschal, who was a bastard and died without heir.

<sup>13</sup> A Gibbons (ed.) *Early Lincoln Wills: An abstract of all the wills & administrations recorded in the Episcopal registers of the old diocese of Lincoln, 1280-1547* (Lincoln, 1888).

<sup>14</sup> The two last registers included in the volume, covering the period 1514-1547, have not been included in the statistics.

<sup>15</sup> This total excludes the will of Jane Strangeways, which refers to a 'natural son' who appears to be a legitimate son by her first husband.

<sup>16</sup> There is duplication with *Early Lincoln Wills* as the wills of John Holand duke of Exeter, and Sir Robert Swillington appear in both. The figures exclude the will of Edmund Brudenell, which includes a bequest to his 'natural brother'.

<sup>17</sup> F W Weaver (ed.) *Somerset Medieval Wills 1383 - 1500* (Somerset Record Society 16, 1901).

<sup>18</sup> Figures exclude the will of John Smart (1421) which contains a bequest to his 'natural daughter', Florence.

<sup>19</sup> G Edwards (ed.) *Derbyshire Wills Proved in the Prerogative Court of Canterbury 1393-1574* (Derbyshire Record Society, 1998). Only wills proved up to 1525 included.

<sup>20</sup> E F Jacob (ed.) *Register of Henry Chichele, Archbishop of Canterbury, 1414-1443* vol II (Oxford, 1967).

<sup>21</sup> The will of Lucia Visconti, widow of Edmund Holand, Earl of Kent, in which she leaves a jewelled brooch to her bastard brother Lionel, has been discounted as not relating to an English family.

<sup>22</sup> There is duplication as the wills of Humphrey Stafford, Thomas Montagu and William Roos appear.

Source	Dates Covered	Date of earliest will mentioning bastard	Total No. of Wills	Total no. of wills mentioning bastards	Total no. of bastards
Wills of the Archdeaconry of Sudbury <sup>24</sup>	1439-1474		1497	0	
Bedfordshire Wills proved in the Prerogative Court of Canterbury <sup>25</sup>	1383-1548		100	1	
<b>Total</b>				<b>62</b>	<b>89</b>
<b>Total with duplicates removed</b>				<b>57</b>	<b>83</b>

A full list of the testators and their illegitimate offspring can be found at appendix A.

### Inquisitions Post Mortem

This class of records is useful in that it provides a supposedly impartial account of the rights of succession to property held in chief of the crown.<sup>26</sup> An inquisition was held to determine what property a deceased tenant in chief had held in each county, how much it was worth, the identity of the next heir and whether they were of age. The purpose was to ascertain the value of property which was taken into the King's hand, and whether there was an adult male heir to whom the property should be released, or whether there were opportunities to benefit from wardship or escheat. As the inquisitions dealt specifically with right of succession, these records not only identify the next heir, but contain details of enfeoffments or entails which affected the property and may explicitly state that particular individuals were illegitimate, particularly if the deceased was a bastard without heirs of his body, whose property would therefore be liable to escheat to the superior lord. For example, an inquisition held in Berkshire in 1349 following the death of William Hastings found that William held the manor of Benham Valence for life, together with certain other lands in Westbrook and Newbury, and that he had no heir because he was a bastard. In some cases reference was made to

<sup>23</sup> JRH Weaver and A Beardwood (eds.) *Some Oxfordshire wills: proved in the Prerogative Court of Canterbury, 1393-1510* (Oxfordshire Record Society, 1958)

<sup>24</sup> P Northeast (ed.) *Wills of the Archdeaconry of Sudbury 1439-1474 : wills from the register "Baldwyne"* (Woodbridge, 2001).

<sup>25</sup> Margaret McGregor (ed.) *Bedfordshire wills proved in the Prerogative Court of Canterbury 1383-1548* (Bedfordshire Historical Record Society, 1979). Only wills proved up to 1525 counted.

<sup>26</sup> How impartial inquisitions were in fact is a matter of debate. See below page 40.

the illegitimacy of a third party, such as William, the bastard son of Sir John de Cokeryngton, who held certain lands in Cokeryngton (Lincs.) of William de Vavasour, according to the 1370 inquisition on the latter.<sup>27</sup> The inquisition on the death of Joan Richmond reveals that she was previously married to Thomas Herle, bastard son of Sir John Herle, who had conveyed certain tenements in Exeter to feoffees in order to provide for his illegitimate son.<sup>28</sup> A survey of the 26 printed volumes of the *Calendar of Inquisitions Post Mortem 1236-1447* identified 45 individuals for whom there is a reference to bastardy in at least one inquisition. Of these, 29 were found to be bastards themselves, and 8 had bastard offspring. In other cases the bastard mentioned was a third party, such as a former tenant whose property had escheated, or a more distant family member.<sup>29</sup> Inquisitions post mortem are thus of particular use in identifying individuals who were themselves bastards. They do however have some weaknesses. One problem is that they were only held on individuals who were believed to hold land of the crown in chief, although the juries would report on all the property the deceased held in the county in question, whether held directly of the crown or not. Furthermore, their accuracy as a source has been questioned, particularly with regard to the valuations, and the possibility that the juries could be ill-informed or open to manipulation.<sup>30</sup> It was certainly not uncommon for juries in different counties to arrive at different conclusions regarding the identity of the next heir. An inquisition held at Oxford in 1357 found that John Bereford, son of Edmund Bereford, was a bastard who died without heir of his body but that the property he held in the county had previously been settled with reversion after John's death to his brother Baldwin, whereas an inquisition held in Derby did not mention his illegitimacy and simply found that his brother Baldwin was his heir. A Warwick jury also omitted any mention of bastardy but found that he died without heir of his body.<sup>31</sup> After the death of the bastard William de Vescy of Kildare in 1314, the property he held should have reverted to the right heirs of William de Vescy his father, but the various juries came to different conclusions. A

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<sup>27</sup> *CIPM* IX no. 287. William Hastings was the illegitimate son of Laurence Hastings, Earl of Pembroke; *CIPM* XIII no. 6.

<sup>28</sup> *CIPM Henry VII* II, 267. Thomas appears to have been an illegitimate son of Sir John Herle of Ilfracombe, who died without legitimate issue. [*CCR* 1435-1441 pp. 18-19].

<sup>29</sup> As the jury in the inquisition held on the 1398 London stockfishmonger and former mayor, William Lovekyn, was unable to say whether he was a bastard or not, [*CIPM* XVII no. 1314] this case is excluded from the total of 29.

<sup>30</sup> For a discussion of the strengths and weakness of inquisitions post mortem as a source, see C D Ross and T B Pugh, 'Materials for the Study of Baronial Incomes in Fifteenth Century England', *Ec.Hist.R* 6 (1953) pp. 185-94; Bruce M S Campbell, James A Galloway and Margaret Murphy, 'Rural Land-Use in the Metropolitan Hinterland, 1270-1339: The Evidence of "Inquisitiones Post Mortem"', *Agricultural History Review* 40 (1992) pp. 1-22.

<sup>31</sup> *CIPM* X, no. 321



Pickering jury was aware that the property should remain to William senior's right heir, but was unaware who this might have been, whilst a jury in York merely observed that he died without heir. A Northumberland jury found that the right heir of William de Vescy senior was John, son of Arnald de Percy.<sup>32</sup>

## Legal Records

Records of legal disputes over property may contain allegations of illegitimacy on the part of one or more of the parties to the dispute, or the ancestors on whom their claim depended. Where property was at stake, litigation was common, and a claim of illegitimacy on the part of a rival was a tactic that could be used if there was any room for doubt, as occurred in the Kerdiston case, which will be discussed in chapter 4. The difficulties are that it is not always clear whether the allegations had any real basis in fact and that the relevant documents may be scattered or the records may be incomplete, inconclusive or inaccurate, as they rely on the litigants' reconstruction of family histories. The case of Mistress Swete, described by Christine Carpenter in her introduction to the Stonor letters, illustrates the complexity of disentangling the various relationships after the elapse of several generations.<sup>33</sup>

However, they do provide a source of information on individuals whose legitimacy was at least open to challenge. A search of Wrottesley's *Pedigrees from the Plea Rolls* has identified fifteen unique allegations of bastardy by one or more parties to the dispute.<sup>34</sup>

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<sup>32</sup> *CIPM* V no. 534. A number of claimants came forward before Gilbert de Aton was eventually found to be the heir.

<sup>33</sup> Christine Carpenter, (ed.) *Kingsford's Stonor Letters and Papers 1290-1483* (Cambridge, 1996) pp. xlviii-lvi.

<sup>34</sup> George Wrottesley (ed.) *Pedigrees from the Plea Rolls, collected from the pleadings in the various courts of law, A.D. 1200 to 1500, etc* (London, 1905). Note that Wrottesley's work is not an exhaustive survey of the Plea Rolls but comprises material 'of considerable interest for the history of other counties' he identified whilst in the process of researching a history of Staffordshire.

**Table 3: Bastardy Examples from Wrottesley's *Pedigrees from the Plea Rolls***

Case Reference	No. of Bastardy Allegations	Alleged Bastard(s)
<i>King's Bench</i> .Hillary 45 Edward 3 m.34	1	William, son of William de Kerdeston
<i>Common Pleas</i> Trinity 49 Edward III m. 272	1	Agnes, daughter of Matilda, daughter of Reginald son of Reginald de Haseldene
<i>Chester Plea Roll</i> No. 19 35 Edward I	1	Richard, son of Robert de Pulford
<i>Chester Plea Roll</i> No. 89 9-10 Richard II m.8	2	Cecily and Isabella, daughters of Hamon de Masy
<i>King's Bench</i> Michaelmas 3 Henry IV m.39	1	Sir Stephen Marreys
<i>Chester Plea Roll</i> 10 Henry IV m.9	2	Thomas and Walkeline, sons of John de Arderne
<i>Common Pleas</i> Michaelmas 10 Henry IV m. 398	1	Adomond, son of William son of Peter de Frothyngham
<i>Common Pleas</i> Michaelmas 10 Henry IV m.224	1	Thomas de Sackville, son of Andrew de Sackville
<i>Common Pleas</i> Hillary 1 Henry VI m.320	1	John son of John fitz Waryn
<i>Common Pleas</i> Hillary 15 Henry VI m.102	1	Thomas de Sackville, son of Andrew de Sackville (see also above)
<i>King's Bench</i> Easter 31 Henry VI	2	William, son of William de Kerdeston; Margaret, daughter of William de Kerdeston (see also above)
<i>Common Pleas</i> Trinity 38 Henry VI m.200	1	William de Byngham, son of Richard de Byngham.
<i>Common Pleas</i> Easter 8 Edward IV m.137	1	Katherine, daughter of John de Rivers
<i>Common Pleas</i> Michaelmas 19 Edward IV m.459	1	Margaret, daughter of George Densill
Total Allegations of illegitimacy	17	
Total unique allegations of illegitimacy	15	

The Year Books, which contain reports of the actual pleas and legal arguments used in court provide qualitative evidence of how the law relating to illegitimacy was understood, interpreted, misinterpreted and even manipulated, by individuals. This will be explored further in chapter 3.

## Property Transactions

For information on how parents made some form of provision in land for their illegitimate children it is necessary to use records of property settlements such as feet of fines. As there was no reason to identify bastards explicitly as such, rather the reverse, they seldom did so and are mainly of use in establishing details of provision for bastards whose existence has been identified from other records.<sup>35</sup> Illegitimacy may sometimes be inferred from the wording, as in the case of Sir John Arundell of Lanherne (d. 1435), who settled a reversionary interest in certain property to Emeline Wode to hold during the life of her daughter Agnes, with successive reversions to Edward Arundell, son of Agnes and then to his various siblings. The implication is that Edward and his brothers and sisters were the offspring of Sir John by Agnes Wode.<sup>36</sup> Such records are of course reliable only as evidence of how the landowner intended to settle his property, and the eventual outcome might well be different.<sup>37</sup>

## Ecclesiastical Records

Dispensations granted to enable those of illegitimate birth to pursue a career in the Church are useful in that they relate to individuals whose illegitimacy was not in doubt. They generally also give some details of the context of the illegitimacy, and, in some cases, the parentage of the individual, normally where they were of noble birth. Such dispensations are found in bishops' registers, papal letters and the papal penitentiary records and are primarily useful for identifying bastards for whom provision was made in the form of a church career. These records are useful in that they are likely to be accurate regarding the illegitimacy, but they do not necessarily provide full details of the parentage, only stating the type of illegitimacy involved.<sup>38</sup> Usually cases are *de soluto et soluta*, occasionally, *de subdiaconus et soluta* or, more rarely, *de presbytero et soluta*. Parents of high status were also more likely to be mentioned explicitly in dispensations. The dispensation that permitted John Wensley to hold benefices with cure of souls identified him as son of the late Sir Thomas Wensley and

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<sup>35</sup> One example in which bastards were described explicitly is a 1425 fine in which John Chenduyt mentioned his bastard son and daughter. [J H Rowe (ed.) *Cornwall Feet of Fines* (2 vols, Devon and Cornwall Record Society, 1914-1950) II 964]

<sup>36</sup> *Cornwall Feet of Fines* II 933

<sup>37</sup> See below pp. 107-8.

<sup>38</sup> They are however the most reliable source for this information, which is not always found in secular records.

as the son of a married nobleman and an unmarried woman.<sup>39</sup> Noble parentage was often mentioned even if the names of the actual parents were not given, as in the cases of Thomas Fitzwilliam, Rector of Stock in the diocese of Bath and Wells, and later of Emley and Sprotborough (Yorks.) who was described as of 'noble race' in dispensations of 1429 and 1437 and Thomas Ludlow, Rector of Tawstock (Devon) who was described in a dispensation of 1435 as the son of an unmarried nobleman and an unmarried noblewoman.<sup>40</sup> The dispensation granted to Alice Burton, nun of the Augustinian priory of St Margaret, Bramhall, in the diocese of Salisbury, allowing her to hold any benefice wont to be held by nuns of her order, similarly described her as the daughter of an unmarried nobleman and an unmarried noblewoman.<sup>41</sup> Dispensations of this type obviously include only those bastards who followed a church career, and probably not all of those. It is clear that some cases only came to light after the individuals concerned had received the first tonsure and so it is probable that there were others of illegitimate birth who never disclosed this fact. For example, Thomas de Mandeville of the diocese of Norwich managed to have himself promoted to holy orders and acquire two benefices before his illegitimacy came to light.<sup>42</sup> Another possible example of this is the case of Sir Nicholas Stafford, son of Richard, Lord Stafford of Clifton (d.1380). He was in receipt of a papal dispensation, but it was not for illegitimacy. In October 1349 he obtained a dispensation to enable him to hold a benefice with cure of souls, he being in his eighteenth year. Neither the original petition to the pope by his father nor the subsequent dispensation made any mention of illegitimate birth. It is clear the purpose of the dispensation sought was to address a deficiency of age rather than birth as the same petition had sought a similar dispensation for another son, John, aged sixteen, which was not granted.<sup>43</sup> However, both boys must have been illegitimate, since their father did not marry until 1337 and Richard Stafford's heir was Sir Richard de Stafford the younger, who was born c.1339, when Nicholas would already have been eight years old and John would have been six.<sup>44</sup> In some cases the full facts of the case were not disclosed initially, but came to light at a later date, requiring a further

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<sup>39</sup> *CPL* VII p. 519.

<sup>40</sup> *CPL* VIII pp. 149, 251, 260, 632; *Test Ebor* III pp. 271-2. Fitzwilliam was a member of the Fitzwilliam family of Emley and Sprotborough.

<sup>41</sup> *CPL* VIII pp. 443.

<sup>42</sup> *CPL* V p. 402. See R M T Hill (ed.) *Register of William Melton, Archbishop of York* (Canterbury and York Society, LXX, 1977), pp. 61 and 64 for further examples of dispensations granted for bastardy and receiving the first tonsure without admitting the same.

<sup>43</sup> *CPL* III p. 352; *CPP* I p. 179.

<sup>44</sup> Josiah C Wedgwood, *Staffordshire parliamentary history, from the earliest times to the present day* (William Salt Archaeological Society. *Collections for a History of Staffordshire*: 1917).

dispensation, which provided more details of the circumstances of the illegitimate birth. John de Saunford, a canon of London, received dispensations on account of illegitimacy in 1364 and 1367 and subsequent provisions of benefices and canonries of Wells and St John's, Beverley, but when it subsequently came to light that he was an adulterine bastard, his mother having been married to someone other than his father at the time of his birth, some doubt was cast on the validity of the dispensation and the provision of benefices.<sup>45</sup> Robert Dalton, a priest of York, who sought a dispensation as the son of an unmarried man and married woman, initially concealed the fact that his parents were related and had been living together in concubinage. Further confirmation of his dispensations was therefore required when this subsequently came to light in 1401.<sup>46</sup> Dispensations are therefore likely to under-represent the true number of illegitimates in the church.

Ecclesiastical records can also provide examples which arose from disputed or problematic marriages. In October 1319 William de Kirkebrunne, a subdeacon, obtained a dispensation to minister in the orders which he had received, to be promoted to higher orders, and to hold a benefice. This dispensation was required because his parents, who were related in the third and fourth degree, had intermarried without dispensation. Richard de Hale, who as rector of Bentley (Lichfield diocese) already held a dispensation for illegitimacy, claimed to have believed that the subsequent clandestine marriage of his parents had legitimized him, when he resigned Bentley and accepted further benefices without having obtained a further dispensation. This proved not to be correct, and he needed to obtain a further dispensation in 1328 in order to retain his new benefices. When Richard FitzAlan, Earl of Arundel had his marriage to Isabella Despenser annulled in 1344, their son Edmund, who was thereby bastardised, appealed to the papal authorities.<sup>47</sup>

## Correspondence

Whilst private letters are insufficiently numerous for this period to permit their use as anything more than anecdotal evidence, they are of some help in throwing light on contemporary attitudes, though references are not always explicit. Examples of bastards occur in connection with all the main letter collections that survive from the later Middle Ages - those of the Pastons, Plumpton, Stonors and Celys. A letter of

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<sup>45</sup> *CPL* IV pp. 40, 64, 78.

<sup>46</sup> *CPL* V p. 479.

<sup>47</sup> *CPL* II pp. 193, 274; III p.254.

Margaret Paston relates with some relish the interesting case of John Heydon's wife, one of the relatively few known examples of a bastard being born to a married woman and disowned by her husband.<sup>48</sup> But as far as the family's own activities were concerned, the surviving letters are rather more circumspect. There are only hints of Paston bastard children in the letters, such as the 'little man' or 'little Jack' mentioned by John Paston III and the child Edmond Paston fathered by a married woman known as 'Mistress Dixon'.<sup>49</sup> Sir John Paston II fathered a bastard daughter, who does not appear to be mentioned in the surviving letters at all, yet she received a legacy of 10 marks in Margaret Paston's will.<sup>50</sup>

Sir William Plumpton had two bastard sons: Robert, who was common clerk of the city of York between 1490 and 1507, and William. Sir William also had a legitimate son, another Robert, by his second marriage to Joan Wintringham. Since this clandestine marriage took place in the 1450s and was not made public until 1468, Sir William does not appear to have worried unduly about any consequences for his son of being presumed a bastard.<sup>51</sup> The Stonor letters refer to the complicated legal case in which a useful piece of documentary evidence had come to light, and that as a result their opponent 'most breff Margete, Suster to Th., bastard.'<sup>52</sup> The Cely letters provide perhaps the most useful insight into attitudes, since they include a letter in which a young man confessed to his brother that he believed he had made a girl pregnant.<sup>53</sup> Another letter collection, the Armburgh papers, relates to a disputed inheritance in which a rather implausible allegation of bastardy was made, though this was not the essence of the dispute.<sup>54</sup> Letter collections therefore provide useful illustrations of what medieval gentry and burgesses thought about illegitimacy and the ways in which it affected them but, as with wills, additional contextual information about the families concerned is usually required.

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<sup>48</sup> *Paston Letters* I, p.127.

<sup>49</sup> Helen Castor, *Blood and Roses. The Paston Family in the Fifteenth Century* (London, 2004) p.118, citing *Paston Letters* 330, 329, 187, 194 and 354. The references in nos. 187 and 194, both dated 1465, to "lytyl John" undertaking tasks for Margaret seem unlikely to refer to an illegitimate child of John III (more likely to John III himself), but John III's letter (no. 330) in which John III asks Margaret to see that his 'lytyll man' is sent to school, does seem quite likely to refer to an illegitimate child. p. 275, citing *PL* ed. Davis 302 and 381.

<sup>50</sup> *Paston Letters* I, no. 230.

<sup>51</sup> J Kirby (ed.) *The Plumpton Letters and Papers*, Camden Fifth Series, 8 (Cambridge, 1996) pp. 8-9; 332; Thomas Stapleton (ed.) *Plumpton Correspondence* Camden OS IV (1839) p. lxxiii.

<sup>52</sup> *Kingsford's Stonor Letters and Papers* pp. xlviiii-lvi, 59.

<sup>53</sup> A Hanham (ed.) *The Cely Letters 1472-1488* (Oxford, 1975).

<sup>54</sup> C Carpenter, (ed.) *The Armburgh Papers: The Brokholes Inheritance in Warwickshire, Hertfordshire and Essex c. 1417-1453* (Woodbridge, 1998).

## Limitations

The nature of the available evidence creates a crucial difference between the study of illegitimacy among the medieval nobility and gentry and that of illegitimacy at lower levels of society or during later periods. The manorial records on which studies of illegitimacy among the peasantry depend gave the names of the mothers, as they dealt with penalties and fines incurred by women for fornication or bastard-bearing. In the parish records of the sixteenth century and later, in which the intention was to record the birth of an illegitimate child and of the two parents, the mother was the one whose identity was not in doubt. Studies of illegitimacy in medieval peasant society and of illegitimacy more generally from the early modern period onwards thus tended to focus on the mothers. In contrast, records from which details of the bastard offspring of the nobility and gentry can be found tended to relate to financial provision made for the livelihood of the illegitimate offspring in a will or property settlement or to legal disputes over property. As a result they are more likely to identify the father than the mother. This study will therefore differ from other work on illegitimacy by focusing more on the fathers of bastards than their mothers.

## The Approach

Illegitimacy can be studied from a legal standpoint (who was classed as 'illegitimate' and how this affected their legal rights) or a social one (how common were illegitimate children and what happened to them). This study attempts to take a holistic approach, looking at the range of ways in which illegitimacy was interpreted and how this had an impact on the lives and estates of members of the landed classes, broadly defined, in medieval England. In view of the difficulty of establishing a representative sample on which to base a meaningful quantitative analysis, the study is of necessity mainly based on a qualitative analysis of individual cases of illegitimacy. It attempts to identify the factors which motivated individuals when making provision for illegitimate offspring and analyse the degree of freedom of action available to them. Although it is not a legal history as such, consideration is given to the legal framework within which provision for illegitimate children needed to operate.

In order to undertake this qualitative study, examples of bastards for more detailed investigation were compiled from a trawl of printed primary sources as outlined above, together with secondary works dealing with the types of family under consideration. The thirteen volumes (fourteen including the amendments) of *The*

*Complete Peerage* provide coverage of families of baronial rank and some that could not entirely be regarded as baronial. This is a useful starting point, but is far from comprehensive. Since the work is concerned with succession, it is useful in identifying those individuals who died without a legitimate heir of the body, such as Edmund Holand (d.1408), earl of Kent.<sup>55</sup> Other illegitimate children may however only be mentioned only if there is a particular reason, such as if they achieved notoriety on their own account such as Thomas Holt ('Bastard Fauconberg') son of William Neville (d.1463),<sup>56</sup> or if they married another individual who appears elsewhere in the work. The *Victoria County History (VCH)* and other county histories have also been examined. As the *VCH* is concerned mainly with the descent of manors, or fractions of manors, rather than with the history of families as such, it too has limitations. Illegitimate children may appear only when they were provided for by means of the settlement of a manor or part of a manor, or were involved in a legal dispute, or if they married an heiress. For example, the entry on the township of Castleton (Lancs.) mentions a settlement of an estate in Castleton made by in 1419 by James del Holt, with remainder in default of male heirs, to Henry del Holt, bastard, Elizabeth wife of Ellis de Buckley, and Agnes wife of Bernard de Butterworth. As things turned out James did not have a male heir and Henry Holt the bastard succeeded to the estate. Sir John de Montfort, an illegitimate son of Peter de Montfort of Beaudesert (Warks.), is mentioned in the *VCH* entry on Colehill (Warks.) as he married Joan de Clinton, the heiress of the Clintons of Coleshill.<sup>57</sup>

This search of printed primary and secondary sources resulted in a database of over 600 examples for further investigation. The examples chosen include townsmen as well as landed gentry, for two reasons. Firstly, the distinction between the two classes was not clear cut but permeable. Members of the nobility and gentry owned town properties and burgesses, successful ones at least, bought rural properties in order to demonstrate their status and proceeded to intermarry with the gentry. Richard York made his fortune in the city which shared his name, but purchased a landed estate, including one manor with a value of £30 p.a. He was knighted in 1487 and may have married a member of the Mauleverer family.<sup>58</sup> Members of the county gentry often

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<sup>55</sup> *CP* VII p. 161.

<sup>56</sup> *CP* V p. 284. Bastard Fauconberg made an unsuccessful attack on London in support of Henry VI in 1471.

<sup>57</sup> *VCH Lancashire* V pp. 204n; *VCH Warwickshire* IV pp. 50-51.

<sup>58</sup> *VCH Yorkshire: City of York* pp. 112-3.



represented boroughs in Parliament.<sup>59</sup> The second reason is that inclusion of wealthy town-dwellers also allows for better comparison with the continent, where work has been undertaken on urban elites, for example in Italy.<sup>60</sup> Gentry families often owned a property in the local town, and wealthier burgesses purchased property in the countryside. Nicholas Potyn (d.1398) managed to have a foot in both camps; originally a London fuller and draper, he continued to be described as a ‘citizen of London’ long after he had become an established landowner in Kent. As well as this blurring of the distinction between the two groups, there was also mobility between them. Richard Whittington (d.1423), perhaps the most famous burgess of the age, came of gentry stock, the youngest son of a knightly landowner from Gloucestershire, Sir William Whittington. His brother Robert (d. 1423/4) served as a knight of the shire for that county on six occasions. Sir William Pecche of Lullingstone (d. 1399), a knight of the shire for Kent in 1394 and 1397, was the son of a London fishmonger who had built up a landed estate in several counties. Robert Hebburn (c. 1415) was a member of a family that had owned an estate at Newton-by-the-Sea (Northumberland) since the early thirteenth century, and had acquired further landed estates through his mother, but derived most of his income from his mercantile activities, exporting wool and hides from Newcastle-upon-Tyne.<sup>61</sup>

Aside from the difficulty in drawing a clear line of demarcation between the gentry and the wealthier townsmen, it is in any case helpful to include burgesses within the scope of the study for comparative purposes. Property held in boroughs, unlike rural landed estates, could be devised by will, thus making it easier, potentially at least, to make provision for illegitimate offspring.<sup>62</sup>

Despite the difficulties inherent in undertaking a quantitative analysis, some form of quantification is desirable and it is fortunate that a useful sample is provided by the three biographical volumes of *The History of Parliament* relating to the members of the House of Commons during the period 1386-1421.<sup>63</sup> This provides a sample of over 3,000 individuals living in the middle of the period under study, who were eligible to serve as knights of the shire or burgesses, and whose lives, property and family

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<sup>59</sup> Owing to the frequency with which country gentlemen sat for towns as well as for counties, in the fifteenth century gentlemen outnumbered true townsmen in the Commons by around two to one. [*House of Commons* I p.53].

<sup>60</sup> See for example Kuehn, *Illegitimacy in Renaissance Florence*; Chojnacki, *Women and Men in Renaissance Venice*.

<sup>61</sup> *House of Commons* IV pp. 125, 846, 32-3; III p. 339.

<sup>62</sup> Sheehan, *The Will in medieval England* p.303.

<sup>63</sup> *House of Commons* II-IV

relationships have already been researched as far as possible within the surviving records. Clearly, the sample includes townsmen as well as the country gentry, but this is less of a problem in practice than might first appear given the significant degree of overlap between the two groups. These *History of Parliament* volumes therefore provide a rare opportunity for quantitative analysis, both of the number of MPs who had illegitimate children, and of the number who were themselves illegitimate.

**Table 4: MPs who fathered illegitimate children**

Note: Cases involving some uncertainty are shaded grey. These include known bastards where the parental link is not definite, and known offspring who are assumed to be illegitimate.

	Name	Married?	No. of bastards	No. of legit. males	No of legit. females	Total Legit.	Total Children
1	Allington, William (d. 1446) of Horseheath, Cambs.	Y	1	1	0	1	2
2	Arundell, John (d. 1435) of Lanherne, Cornwall	Y	5	3	2	5	10
3	Bataill, Thomas (d. 1396) of Otes and Matching, Essex	Y	2	1	2	3	5
4	Baynard, Richard (d.1434) of Messing, Essex	Y	1	2	4	6	7
5	Becket, John (d. 1416) of Salisbury, Wilts.	Y	1	0	0	0	1
6	Bertram, John (d.1450) of Bothal, Northumb.	Y	1	2	1	3	4
7	Bonville, Sir William (d. 1461) of Chewton-Mendip (Som.) and Shute (Devon)	Y	1	1	3	4	5
8	Booth, John (d. 1422) of Barton in Eccles (Lancs.)	Y	1	6	5	11	12
9	Brokesby, Bartholemew (d. 1448) of Frisby-on-the-Wreak (Leics)	Y	1	1	0	1	2
10	Browe, Robert (d.1451) of Teigh and Woodhead, )Rutland)	Y	1	1	1	2	3
11	Butler, Sir Andrew (d.1430) of Great Waldingfield (Suffolk).	Y	1	0	0	0	1
12	Cheddar, Richard (d. 1437) of Thorn Falcon (Som.)	Y	1	1	1	2	3
13	Chenduyt, John (d. 1426) of Ardevora, Moliney and Bodannan (Cornwall)	Y	2	0	0	0	2
14	Clitheroe, Hugh, of Kingston-upon-Hull (Yorks.)		1	0	0	0	1
15	Colas, Henry of Guildford (Surrey)		1	0	0	0	1
16	Cornwall, Sir John	Y	1	0	2	2	3
17	Dabrichecourt, Sir John (d. 1415) of Markeaton, Derbys.	Y	2	1	5	6	8
18	Dronsfield, Sir William (d. 1406) of West Bretton (Yorks)	Y	1	0	0	0	1

Chapter 2

	Name	Married?	No. of bastards	No. of legit. males	No of legit. females	Total Legit.	Total Children
19	Dyer, Walter (d. c.1423) of Wells (Som.)	Y	1	0	0	0	1
20	Fox, Richard (d. 1435) of Thonglands (Salop.), Haselbeeche (Northants.) and Ackesden (Essex)	Y	1	0	1	1	2
21	Gerard, Nicholas (d. 1421) of Shrewsbury		4	0	0	0	4
22	Hankford, Richard (d. 1419) of Hewish (Devon)	Y	2	1	3	4	6
23	Hoghton, Sir Henry (d.1424) of Chipping (Lancs.)	Y	1	0	0	0	1
24	Jacob, Reynold (d. 1424) of Dorchester (Dorset)	Y	1	0	0	0	1
25	Leversegge, John (d.1411/12) of Kingston-upon-Hull, Cottingham and Beverley (Yorks).	Y	1	0	1	1	2
26	Lound, Sir Alexander (d.1431) of South Cave, (Yorks)	Y	1	1	1	2	3
27	Nash, Richard (d. 1400) of Hereford	Y	1	0	1	1	2
28	Parker, William (d.1403) of London)	Y	1	4	1	5	6
29	Peckham, James (d. 1400) of London	Y	1	4	2	6	7
30	Pelham, Sir John (d. 1429) of Pevensey castle and Loughton (Sussex)	Y	1	0	0	0	1
31	Pleasington, Sir Henry (d.1452) of Burley (Rutland)	Y	1	1	0	1	2
32	John Rous (d.c. 1454) of Baynton in Edington (Wilts)	Y	1	0	0	0	1
33	Sir John Russell (d. 1405) of Strensham, Worcs	Y	1	2	3	5	6
34	John Selman (d.1426)	Y	1	0	0	0	1
35	Spnore <i>alias</i> Durvassall, William (d. 1401) of Spennall (Warks.) and Frankley (Worcs.)	Y	1	0	2	0	3
36	Stafford, Sir Humphrey (d.1413) of Southwick in North Bradley (Wilts.) and Hooke (Dorset)	Y	1	1	0	1	2
37	Sir William Sturmy (d. 1427) of Wolf Hall in Great Bedwyn (Wilts.)	Y	1	0	2	2	3
38	Tiptoft, Sir Payn (d. 1413) of Burwell (Cambs.)	Y	1	1	1	2	3
39	Usflete, Sir Gerard (d. 1401) of North Ferriby and Ousefleet (Yorks.)	Y	2	1	2	3	5
40	Welles, John (d.1418) of Maldon (Essex)	Y	2	0	0	0	2
41	Wensley, Sir Thomas (d. 1403) of Wensley (Derbys.)	Y	1	0	0	0	1
42	Wilcotes, John (d. 1422) of Great Tew, Oxon	Y	1	0	2	2	3
43	Wykes, Thomas (d. 1430) of Stechworth (Cambs.)	Y	1	0	1	1	2
	Total Definite		47				
	Total Possible		9				
	Grand Total		56	36	49	85	141

Thus of the total population of 3,168 individuals who served as MPs during this period, 43 or 1.36% can be shown to have definitely or probably fathered an illegitimate child and of these, 34 or 1.07% of the total number of MPs are known to have done so. However, not all individuals named in the parliamentary returns are identifiable and

very limited information has been discovered for others. A more informative measure may therefore be to take the number of MPs who are known to have had children at all, which will exclude those for whom little information is available and those who may have been impotent. Out of the total sample of MPs, 1453 can be identified as having definitely or probably fathered offspring. The percentage of this sub-group of MPs who were definitely fathers who had illegitimate offspring is 2.96% including the probable cases, and 2.34% if only the 34 definite cases are counted.

It should be noted that the number of known legitimate daughters of the bastard-begetters, 46, is higher than that of legitimate sons, 34. This is most likely a reflection of the fact that both legitimate daughters and illegitimate children were of greater significance in the absence of a legitimate son and heir and are thus more likely to appear in the records. In the case of sixteen (38.1%) of the 42 known or probable begetters of bastards no legitimate children at all are recorded. Thirteen (38.2%) of the 34 definite fathers of bastards are not known to have had any legitimate offspring. There are eight cases in which the only legitimate children were daughters, compared with three in which there was a legitimate son but no legitimate daughters recorded.

For the sample of MPs as a whole, legitimate sons outnumber legitimate daughters by 2,045 to 1,185. Since the actual proportion of sons would be expected to be nearer 50% than 63%, there is clearly under-representation of legitimate daughters in the surviving evidence. This renders calculation of the ratio of illegitimate births problematic. The 56 known or possible illegitimate children constitute 1.7% of the total of 3,297 known children of this group of MPs, but this is likely to be an over-estimate, given the under-representation of legitimate daughters.<sup>64</sup> If it is assumed that the actual number of legitimate daughters was roughly equivalent to that of legitimate sons, the total number of legitimate children can be estimated at 4,090, and the proportion of known illegitimate to legitimate births is 1.15%. If possible bastards are included the proportion increases to 1.37%.

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<sup>64</sup> There are a small number of cases where an individual is known to have had children, but the gender is not known, hence the estimated total number of legitimate children is higher by 12 than the sum of illegitimate sons and illegitimate daughters.

**Table 5: Provision for Bastard Offspring of MPs**

Name	Father	Provision/Career
Robert Allington	Allington, William (d.1446) of Horseheath, Cambs. <sup>65</sup>	Married to granddaughter and coheir of Sir William Argentine.
Edward Arundell	Arundell, John (d. 1435) of Lanherne, Cornwall <sup>66</sup>	Reversion of manors of Tolverne and Respery on death of his mother, Agnes.
Richard Arundell		Reversion of manor of Treveneague on death of his mother, Agnes.
Thomas Arundell		Reversion of manor of Penberthy on death of his mother, Agnes.
Anne Arundell		Reversionary interest in manors of Tolverne, Respery, Treveneague and Penberthy following deaths of mother Agnes and brothers.
Margaret Arundell		
Thomas Bataill	Bataill, Thomas (d.c.1396) of Otes and Matching, Essex. <sup>67</sup>	Provision from father unknown, but received 10 marks in will of legitimate brother.
Maud Bataill		Provision from father unknown, but received 40s in will of legitimate brother.
John Baynard	Baynard, Richard (d.1434) of Messing, Essex	
John Becket	Becket, John (d. 1416) of Salisbury, Wilts.	Property in Salisbury.
Edward Bertram	Bertram, John (d.1450) of Bothal, Northumb.	Sheriff of Newcastle; MP for Newcastle 1435.
John Bonville	Bonville, Sir William (d. 1461) of Chewton-Mendip (Som.) and Shute (Devon) <sup>68</sup>	Manors of Little Modbury and Meavy, together with land in Ivybridge (Devon). Marriage to daughter and heiress of William Dennis of Combe Raleigh through whom he obtained manors of Combe Raleigh (Devon) and Alleston. (Somerset).
Laurence Booth	Booth, John (d. 1422) of Barton in Eccles (Lancs)	Church career; became Archbishop of York.
William Brokesby	Brokesby, Bartholemew (d. 1448) of Frisby-on-the-Wreak (Leics)	
William Browe	Browe, Robert (d.1451) of Teigh and Woodhead, Rutland	Interest in land in Tushingham.
Margery Butler	Butler, Sir Andrew (d. 1430) of Great Waldingham (Suffolk)	100 marks from sale of manor of Bulmer. Married William Crane of Stowmarket.
John Cheddar	Cheddar, Richard (d. 1437) of Thorn Falcon (Som.) <sup>69</sup>	Ultimately received share of Cheddar inheritance via his uncle, Thomas Cheddar.
Richard Chenduyt	Chenduyt, John (d. 1426) of Ardevora, Moliney and	Father's estates were settled upon him, but died shortly after father.
Joan Chenduyt		Reversionary interest in father's estates (but not

<sup>65</sup> See below p.108.<sup>66</sup> See below pp. 107-8.<sup>67</sup> See below p.214.<sup>68</sup> See below pp. 110-11.<sup>69</sup> See below p. 213.

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Name	Father	Provision/Career
	Bodannan (Cornwall) <sup>70</sup>	successful). Married John Pengelly.
Hugh Clitheroe	Clitheroe, Hugh	Mayor of Hull and MP
Walter Colas	Colas, Henry of Guildford (Surrey)	Held property in Surrey, but predeceased his father.
Henry Cornwall	Cornwall, Sir John (c. 1414) of Kinlet (Salop)	Sir John was indicted in 1414 for harbouring one Henry Cornwall esquire after he had killed a man during sessions of Sir John's court. It is possible that Henry was an illegitimate son of Sir John, and a member of his retinue. <sup>71</sup>
[2 sons, names unknown]	Dabrichecourt, Sir John (d. 1415) of Markeaton, Derbys.	£20 to pay for their education.
Richard Kesseburgh	Dronsfield, Sir William (d. 1406) of West Bretton (Yorks)	Reversion of large part of father's estates, with exception of main seat of West Bretton.
[daughter, name unknown]	Dyer, Walter (d. c.1423) of Wells (Som.) <sup>72</sup>	Married Peter Boghyar, alias Tankard, freeman of Wells.
Joan Fox	Fox, Richard (d. 1435) of Thonglands (Salop.), Haselbeech (Northants.) and Ackesden (Essex)	Married John Nowers, son and heir of Sir George Nowers. Joan presumed illegitimate as he was son of her father's wife by first husband.
John Gerard	Gerard, Nicholas (d. 1421) of Shrewsbury <sup>73</sup>	
Nicholas Gerard		
William Gerard		
Robert Gerard		
John Hankford	Hankford, Richard (d. 1419) of Hewish (Devon)	Provision for education in grandfather's will.
Richard Hankford		
Richard Hoghton	Hoghton, Sir Henry (d.1424) of Chipping (Lancs.)	Settlement of manors of Salesbury, Little Pendleton and Clayton-le-Dale and other properties from wife's inheritance, but only partially successful. Parkership of Leagram.
John Jacob	Jacob, Reynold (d. 1424) of Dorchester (Dorset)	Church career.
Richard Lerversegge	Lerversegge, John (d.1411/12) of Kingston-upon-Hull, Cottingham and Beverley (Yorks).	Church career.
John Lound	Sir Alexander Lound (d.1431) of South Cave, (Yorks)	Church career; eventually chancellor to Robert Neville, bishop of Durham (presumed son of Alexander)
James Nash	Nash, Richard (d. 1400) of Hereford	Legal career

<sup>70</sup> See below pp. 145-6.

<sup>71</sup> *House of Commons* II p. 662.

<sup>72</sup> See below p. 196.

<sup>73</sup> *Trans. Salop. Arch. Soc.* (Ser. 3) III (1903) p. 366.

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Name	Father	Provision/Career
[son and daughter]	Parker, William (d.1403) of London.	Bequests in will
John Wrotham	Peckham, James (d. 1400) of London	Legacy in father's will.
John Pelham	Pelham, Sir John (d. 1429) of Pevensey castle and Loughton (Sussex) <sup>74</sup>	Various properties, including manors of Crowhurst, Burwash and Bibleham.
John Pleasington	Pleasington, Sir Henry (d.1452) of Burley (Rutland)	Annuity of £5 from manor of Toynton.
John [Rous?]	John Rous (d.c. 1454), of Baynton in Edington (Wilts.) <sup>75</sup>	
John Selman	John Selman (d. 1426) of Plympton Erle and Newnham (Devon)	Legal career.
William Spernore	Spernore <i>alias</i> Durvassall, William (d. 1401) of Spernall (Warks.) and Frankley (Worcs.)	Retainer of Henry of Monmouth. <sup>76</sup>
John Stafford	Stafford, Sir Humphrey (d.1413) of Southwick in North Bradley (Wilts.) and Hooke (Dorset) <sup>77</sup>	Church career; archbishop of Canterbury.
John Sturmy	Sir William Sturmy (d. 1427) of Wolf Hall in Great Bedwyn (Wilts.) <sup>78</sup>	
William Tiptoft	Tiptoft, Sir Payn (d. 1413) of Burwell (Cams.)	
John	Usflete, Sir Gerard (d. 1401) of North Ferriby and Ousefleet (Yorks.) <sup>79</sup>	Cash bequest
Leon		
William Welles	Welles, John (d.1418) of Maldon (Essex)	Administrators of father's estate. <sup>80</sup>
Thomas Welles		
John Wensley	Wensley, Sir Thomas (d. 1403) of Wensley (Derbys.) <sup>81</sup>	Church career, including canon of Lichfield by 1438, Vicar general in spirituals of bishop of Cove ntry 1440; archdeacon of Stafford 1442. <sup>82</sup>

<sup>74</sup> See below, p. 143.

<sup>75</sup> *The Tropenell Cartulary, being the contents of an old Wiltshire muniment chest* ed. J Silvester Davies (Devizes, 1908) I p. 283. John was the son of a widow called Joan Perot.

<sup>76</sup> *CPR* 1405-8 p.294.

<sup>77</sup> See pp. 36, 203.

<sup>78</sup> See pp. 36, 122.

<sup>79</sup> See pp. 35, 105-6

<sup>80</sup> *CPR* 1422-29 p.510.

<sup>81</sup> See pp. 43, 203.

<sup>82</sup> *BRUO* III p. 2014.

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Name	Father	Provision/Career
Thomas Wilcotes	Wilcotes, John (d. 1422) of Great Tew, Oxon <sup>83</sup>	Tenements in Tetbury and Charlton. Reversionary interest in rest of estates after legitimate sisters.
Edmund Wykes	Wykes, Thomas (d. 1430) of Stechworth (Cams.)	Reversionary interest in property after legitimate daughter and other legitimate relations.

The *History of Parliament* material can also be used to determine the number of MPs who were themselves illegitimate. Seventeen individuals, constituting 0.53% of the total population of MPs, were either definitely or likely to have been illegitimate. These are discussed further in Chapter 7.<sup>84</sup>

**Table 6: Bastard MPs**

Name	Represented	Comments
Argentine, Sir William (c.1350-1409)	Suffolk (1393, 1395, 1399)	Bastard son of Sir John Argentine.
Bodrugan, William	Helston (1384),Launceston (1388), Cornwall (1401)	Bastard son of Otto Bodrugan.
Ford, Edmund (d.1440)	Bath (1388)	Probable bastard son of Henry Ford of Bathford by Joan.
Fulbourn, William (d.c.1441)	Cambridgeshire (1421)	Possible bastard son of William Fulbourn d. 1391 by Alice Whiting.
Holme, Robert (d.1433)	York (1414)	Son, possibly illegitimate, of Robert Holme of York by Beatrice Forden.
Lisle, Sir William (d.1442)	Oxfordshire (1414, 1417, 1426)	Bastard son of Robert, 3rd Lord Lisle of Rougemont.
Martin, William	Dorset (1397)	Younger, bastard, son of Sir Robert Martin by Agnes, daughter of Nicholas Montfort.
Nash, James (d.1400)	Hereford (1390, 1397, 1399)	Son of Richard Nash.
Russell, John (d. 1437)	Herefordshire (1414, 1417, 1419, 1420, 1421, 1422, 1423, 1426, 1429, 1431, 1432, 1433)	May have been bastard son of Sir John Russell of Strensham.
Russell, Robert I (d. 1404)	Warwick (1377)? Worcestershire (1395)	May have been illegitimate brother of Sir John Russell of Strensham.
Sackville, Sir Thomas (d.1432)	Sussex (1394, 1395, 1397)	Bastard son of Sir Andrew Sackville.
Selman, John	Plympton Erle (1414, 1420, 1421, 1425, 1427, 1431, 1432, 1433, 1435)	Probably bastard son of John Selman (d. 1426).
Stafford, Sir Nicholas (1331-94)	Staffordshire (1377, 1379, 1380,1383, 1384, 1385, 1390)	Bastard son of Sir Richard Stafford.
Thickness, William (d.c. 1403)	Newcastle-under-Lyme (1378, 1380, 1382, 1384, 1388)	Bastard son of William Thickness by Katherine Swynnerton.

<sup>83</sup> See below p. 120.

<sup>84</sup> See below pp. 192-5.



Trussell, Sir Alfred (b. before 1349)	Warwickshire (1399, 1401, 1402, 1407)	Bastard son of Sir Theobald Trussell by his mistress and later wife Katherine.
Walsall, William (d. 1414)	Staffordshire (1365, 1380, 1384, 1391, 1393, 1394, 1402, 1404, 1414)	Said to be either illegitimate son or nephew of William Coleson, although no definite evidence has survived.
Wood, John (d.1458)	Worcester (1413, 1415, 1416) / Worcestershire (1414, 1421, 1423, 1429, 1433, 1435)	Possibly the illegitimate son of Sir John atte Wood.

## Terminology

In a 1973 article, Peter Laslett and Karla Oosterveen set out principles used for identifying illegitimate children in parish registers. They divided examples into two categories according to the description in the register:

*‘Above the line’ where illegitimacy is explicitly stated: this category included children described as ‘illegitimate’; ‘bastard’, ‘base’; ‘base born’; ‘spurious’; ‘son of the people’; ‘having a father described as reputed’; ‘natural’.*  
*‘Below the line’ where illegitimacy is inferred from the circumstances: ‘where the child has name “son of” or “daughter of” the mother only and the father’s name is not mentioned’; ‘where the child is given a surname other than that of the mother’.*<sup>85</sup>

These two categories of explicit and inferred illegitimacy can be applied equally to the later middle ages, with a few exceptions. In the case of explicit illegitimacy, the language used is generally ‘bastardus’ or ‘illegitimus’. The term ‘natural’ is however problematic. It had certainly come to have its modern meaning of a person born outside wedlock by the second half of the sixteenth century, but had previously been used to refer to any child with a genetic link to the parent, which could include a legitimate child as opposed to a stepchild or the spouse of a legitimate child.<sup>86</sup> A mention of a ‘natural’ child in a medieval record is just as likely to refer to the legitimate child of a previous marriage. This would appear to be the case in the will of Jane Strangways, who bequeathed to her ‘naturall son’, Laurence Dutton, all the money that she had previously lent to him on condition that he would be content with it and trouble her executors no further. Her first husband was Roger Dutton, and Laurence was in all probability her legitimate son from this first marriage.<sup>87</sup> The ambiguity caused by the use of word

<sup>85</sup> Peter Laslett and Karla Oosterveen, ‘Long-term Trends in Bastardy in England’, appendix II.

<sup>86</sup> *OED*.

<sup>87</sup> *Test. Ebor.* IV pp.186-90.

‘natural’ to describe medieval family relationships has not unnaturally caused some difficulties for historians.<sup>88</sup>

‘Below the line’ illegitimacy can be inferred where individuals are described as ‘son of’ or ‘daughter of’ a particular woman in property settlements and sometimes from wills, as described above.

## Summary

As indicated above, the main part of the thesis is based on an in-depth study of bastardy cases identified during the first phase of research using primary sources where possible. As the purpose is to identify the level of provision for illegitimate children, and whether this was different in cases where there were no legitimate offspring, examples have been categorized according to whether the father had legitimate children, and, where there were no legitimate children, whether the illegitimate children were favoured over legal heirs. These chapters form the main part of the thesis, but first it is necessary to consider in more depth the law as it applied to illegitimacy.

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<sup>88</sup> See for example, *Test Vet.* p.150n, for an example of the word ‘natural’ not being taken to mean illegitimate. Charles G Bell, ‘Edward Fairfax, a Natural Son’ provides an example of the confusion that the use of the word ‘natural’ in a pedigree could cause.

## Chapter 3: When is a bastard not a bastard? Legal aspects of illegitimacy

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*It is clear that of children some may be legitimate, some bastards; sometimes all legitimate, sometimes all bastards, or one of the several legitimate and all the others bastards, and conversely<sup>1</sup>*

This chapter examines the legal framework within which medieval bastards were situated. As noted earlier, illegitimate children can be classified in several ways. This chapter identifies the categories that mattered from a legal perspective and examines both how different categories of bastards were viewed by the law, and how the position of individuals in the same category could be interpreted differently according to canon and common law.

Bastardy in the middle ages was a complex legal issue, which could impinge on the lives of the nobility and gentry in several ways. Gentry families might have bastard children of their own, for whom they wished to provide. Alternatively, they might, like Richard FitzAlan, Earl of Arundel (d. 1376), wish to ensure that the children of an annulled first marriage were declared illegitimate so that they would have no rights of inheritance.<sup>2</sup> In a legal context, illegitimacy might be an issue in a dispute over inheritance of property, with bastardy alleged against the person or ancestor of one or other party.<sup>3</sup> It could even happen that bastardy was alleged on both sides.<sup>4</sup> A tenant who was a villein might claim freedom as a result of his or her illegitimacy.<sup>5</sup> Finally, bastardy in the case of a tenant provided potential to profit from an escheat, if the tenant

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<sup>1</sup> *Bracton*, IV p. 299.

<sup>2</sup> *CP I* pp 243-4

<sup>3</sup> The relationship of the alleged bastard to the point at issue was not necessarily straightforward. For example, in the case of *Piers of Lymesy v the Abbot of Westminster* [YB 6 Edw. II, (SS 36) pp. 31-45 and YB 10 Edw. II, (SS 54) pp. 77-79], the alleged bastard had alienated the property in question to the Abbot of Westminster. The case had been brought by the son of the bastard's legitimate brother. In a case from the Nottingham Borough Court in 1408, a plaintiff even raised his own bastardy (see below p. 195)

<sup>4</sup> In a case of novel disseisin from 1340 between Andrew Quantoxhead and Walter Meriet and others, it was argued that "if there be two bastards and after the death of the ancestor one enter and the other ousts him, he who first entered shall, on account of first possession, have the assize." [YB 14 Edw. III (Rolls Series) 31 (ix) pp. 48-56].

<sup>5</sup> N Adams, 'Nullius Filius' pp. 380-381; R H Helmholz, *The Oxford History of the Laws of England Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s*, (Oxford, 2004) p.557.

had died without heir of his body. It has been shown that individuals at all levels of society had some basic knowledge of the canon law rules of marriage.<sup>6</sup> It is therefore likely that members of the landed classes were aware of the issues relating to the legitimacy or otherwise of children, and the potential legal pitfalls and loopholes, although it was a highly complex matter.

The complexity of the law relating to bastardy was such that litigants often went to some lengths to avoid mentioning it in court at all, or tried to manipulate the discrepancy between the two legal codes by phrasing a plea in such a way as to avoid use of the word 'bastard', claiming instead that an individual was not 'not the son of' the supposed parent or that his father had not been married to his mother.<sup>7</sup>

## **Types of Bastardy and their legal implications**

### **Canon Law Definitions**

It is important to note that, whilst the word 'bastard' was used indiscriminately, in England at least, to describe anyone of illegitimate birth, there were a number of different types of bastards. These different types of bastards had different rights under canon law. Canonists classified children into four groups according to the marital status of the parents and whether or not the union of the parents was 'natural', that is, not subject to a canonical impediment.<sup>8</sup> Hence children who were born of a lawful marriage were natural and legitimate; those born outside marriage to parents who were free to marry without impediment were merely natural and not legitimate; those who were adopted were legitimate only and not natural; whilst those who were born of a prohibited union, or whose paternity was unknown were neither legitimate nor natural, and were named *spurii*. *Spurii* could be further divided between those whose fathers were unknown (*vulgo quaesiti*) and those that arose from prohibited unions (*ex damnato coitu*).

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<sup>6</sup> Frederik Pedersen, *Marriage Disputes in Medieval England* (London, 2000) p. 144.

<sup>7</sup> Helmholz, *Bastardy Litigation* p.379

<sup>8</sup> Raymond de Peñaforte, *Summa de Matrimonio*, tit.24. *Qui filii sint legitimi et qui non*, cited by H G Richardson, in 'Tancred, Raymond and Bracton' *English Historical Review* 59 (1944) pp 376-384, p.380.

**Table 7: Canon law definitions of legitimate and illegitimate children**

	<b>Natural</b>	<b>Unnatural</b>
Legitimate	Children born in legal wedlock	Adopted children
Illegitimate	Children born <i>ex soluto et soluta</i> ; regular concubinage	Children born as a result of an adulterous or incestuous liaison ( <i>ex damnatione coitu</i> ); children born of casual intercourse whose paternity was not known ( <i>vulgo quaesiti</i> )

These distinctions had practical implications, particularly with regard to *spurii* who were regarded as inferior to natural illegitimate children and unlike them, could not be legitimated by the subsequent marriage of the parents.<sup>9</sup>

The canon law approach to illegitimacy was generally followed in the *ius commune* of continental Europe, albeit with certain local variations.<sup>10</sup> *Naturales* had some limited rights of inheritance (one-twelfth of the father's property, by testament if there were legitimate heirs or on intestacy if there were no legitimate heirs), but *spurii* could neither inherit from their fathers nor even receive gifts during the father's lifetime. However, it is worth noting that some of the concessions to *naturales*, notably their inclusion as 'sons' in the case of a *fideicommissum* detailing lines of inheritance in the event of an heir dying 'without sons', specifically did not apply to the nobility, who were supposed to be above such things.<sup>11</sup>

### Common Law Definitions

English common law, however, took a somewhat different approach, although the work of the canonists was studied by some common lawyers. Bracton's treatise on *The Laws and Customs of England* borrowed from them in describing the different types of children, and went on to subdivide the natural and legitimate children according to whether they were heirs on the side of either or both parents, or not at all.

*Some children, as said above, are natural and legitimate, those born in lawful wedlock and of a lawful wife. Some are natural only and not legitimate, as those born of a legitimate concubine with whom a marriage was possible at the time of procreation, as between an unmarried man and*

<sup>9</sup> *Corpus Iuris Canonici* ed. A Friedberg (1879), X.4.17.6.

<sup>10</sup> Thomas Kuehn, 'A Late Medieval Conflict of Laws: Inheritance by Illegitimacy in *Ius Commune* and *Ius Proprium*' in *Law and History Review* 15 (1997) pp 243-27.

<sup>11</sup> Kuehn, *Illegitimacy in Renaissance Florence* p. 44.

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*unmarried woman. Some are neither legitimate nor natural, as those born of prohibited intercourse, of persons for whom no marriage was possible at the time of procreation; such children are spurii who are fit for nothing. Some natural and legitimate children are children and heirs, as those to whom an inheritance descends, either from the father or the mother or from both, in demesne or in service. Some are children and not heirs of one but children [and heirs of the other], according as the inheritance descends only from the father's side or the mother's. And some are natural and legitimate children but heirs of neither, because no inheritance descends to them from either side. [Some may begin to be heirs and cease, some may not.] Of those who are natural, legitimate and heirs, all, however many they are, are right and lawful heirs...*<sup>12</sup>

Interestingly, the text omits the category of unnatural and legitimate (i.e. adopted) children, although reference is made earlier to adoption in the context of illegitimate children born to married women.<sup>13</sup> It was the distinction between children who were heirs and those who were not that was the crucial point, rather than that between different types of illegitimate children. In English common law bastardy was not a 'status or condition'.<sup>14</sup> The important issue was whether a child was eligible to inherit, which was a consequence of legitimacy, rather than the legitimacy itself. If a child was illegitimate, and therefore unable to inherit, the nature of its illegitimacy was not important. Yet this did not necessarily mean that the circumstances of the birth were irrelevant. The validity of a marriage, and hence the legitimacy of children, was held to be a matter for the Church courts. However, common law and canon law differed on a number of crucial issues, such as the ability of the subsequent marriage of the parents to legitimate children already born to the couple. This meant that in some cases a different verdict as to the legitimacy or illegitimacy of the individual could be found depending on the court in which the case was heard. Such cases were normally retained by the secular courts. Thus, although the reasons for illegitimacy did not affect the status of a person once he or she had been proved to be illegitimate, the need to ensure that the determination of legitimacy was in accordance with common law meant that it was important that the reasons for an allegation of bastardy were clearly specified. As Bracton pointed out:

*where a cause is not added there may be under such an answer obscurity and uncertainty, because when it cannot be known to what forum the cogniscance ought to belong...a proof might*

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<sup>12</sup> Bracton II p. 187.

<sup>13</sup> Bracton, II. p.186.

<sup>14</sup> Pollock and Maitland, *History of English Law* II p. 396.

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*indeed be made in the court of Christianity, which in some cases is contrary to the law and customs of England.*<sup>15</sup>

As can be seen from a number of cases reported in the Year Books for the fourteenth century, this could indeed happen, and frequently did.<sup>16</sup>

Although closely connected, legitimacy and heritability were slightly different issues. Common law inheritance followed the rules of male primogeniture and whilst a legitimate child was eligible to inherit, younger sons and daughters would not necessarily do so directly, although there was always the possibility that they or their descendants might become eventual heirs as a result of a failure of the main line. This was the main disadvantage that distinguished the bastard from legitimate younger children. The other, which did not disadvantage the bastard so much as any of his/her legitimate siblings, was that if the bastard had no heirs of his/her body, or his/her direct line of issue failed, there would be no common law right of inheritance for collateral heirs.<sup>17</sup> Prior to the statute of *Quia Emptores* in 1290, this did not matter too much in practical terms, as property granted by means of subinfeudation would be held of the father and his heirs and would therefore escheat to them on the death of the bastard without heir of his body. After 1290 however, any property which the father was able to give to a bastard child in fee simple was alienated for good.

It should also be noted that neither legitimacy nor illegitimacy was necessarily a permanent state. It was possible for a child to be apparently legitimate at birth and subsequently bastardized, for example as a result of the annulment of the parents' marriage. Equally, whilst 'legitimation of children was no part of English law,'<sup>18</sup> there were circumstances in which a bastard child might be legitimated, either formally, as occurred exceptionally in the case of the Beauforts, or in a *de facto* sense by circumventing the disadvantages of illegitimate status (for example by transmitting property to illegitimate offspring by ways other than simple inheritance) so that an illegitimate son could continue the family in the absence of a legitimate son. However, canon law and common law rules relating to such changes in status differed in a number of ways.

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<sup>15</sup> *Bracton* IV p. 285.

<sup>16</sup> See pages 84-5 below.

<sup>17</sup> YB Edw. II (Rolls Series) 31 (ii) p. 364: "Note that Sir Elias de Bekyngham said that if the issue of a bastard die without heir of his body the bastard is said to die without heir; and this holds good down to the fifth degree, when one can make a resort without mentioning the bastard."

<sup>18</sup> Helmholz, *Canon Law and Ecclesiastical Jurisdiction*, p.556.

The various types of bastardy can be grouped into different categories, similar to those identified in chapter 1 as follows:

### **Category 1: *Naturales***

#### **Type 1A: born of an unmarried man and an unmarried woman who were free to marry but did not do so**

Children born of unmarried parents who were free to marry (i.e. those born *ex soluto et soluta*) were illegitimate by both canon and common law, being born outside wedlock. Such children were ‘*naturales tantum et non legitimi*’ and might be the product of a casual liaison or of a more regular concubinage. Such children could not take orders without a dispensation and had no common law right of inheritance, but were the category of illegitimate children treated most leniently under canon law. Under canon law, such children could receive testamentary bequests from their father’s estate and if there were no legitimate children, the father could leave his entire estate to natural but illegitimate children.<sup>19</sup>

#### **Type 1B: born of an unmarried man and an unmarried woman who were free to marry and subsequently did so**

The subsequent marriage of the parents of a natural but illegitimate child led to a situation in which canon and common laws held different interpretations. Such children were regarded as legitimate by canon law, as stated by a decretal of Alexander III sent to the Bishop of Exeter in 1172. They nevertheless remained bastards according to common law. The canon law position can be viewed in the context of the increasing efforts of the Church to define and promote marriage. As Alexander III’s decretal stated ‘*tanta est vis matrimonii, ut qui antea sunt geniti post contractum matrimonium legitimi habeantur.*’<sup>20</sup> According to Robert Grosseteste, there was an English custom that if such children were placed under a pall at the subsequent marriage of their parents they were regarded ‘as legitimate and entitled to inherit.’<sup>21</sup> There seems little supporting evidence for this, although Maitland considered it plausible.<sup>22</sup> The practice does not

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<sup>19</sup> Brundage, *Sex, Law and Marriage* VII 10.

<sup>20</sup> X.4.17.6. Legitimation by subsequent marriage had not been part of classical Roman law. In the Roman Republic, illegitimate children acquired the civil status of their mother, and the only means of formal legitimation was by adoption. [Syme, Ronald, ‘Bastards in the Roman Aristocracy’, *Proceedings of the American Philosophical Society* 104 (1960) p. 325.]

<sup>21</sup> *The Letters of Robert Grosseteste, Bishop of Lincoln*, trans. F A C Mantello and Joseph Goering (Toronto, 2010) p.118.

<sup>22</sup> Hooper *Law of Illegitimacy* (London, 1911) pp. 62-63; Pollock and Maitland, *History of English Law* vol 2 pp.397-8.



appear in any of the surviving law codes from the Anglo-Saxon period, though as Margaret Clunies Ross has observed, the early law codes were limited in their coverage of any matters pertaining to sexual relationships.<sup>23</sup> In any case, it may be anachronistic to regard such a ceremony, if it existed, as offering formal legal legitimation rather than a form of adoption. Early Anglo-Saxon attitudes to the legal aspects of marriage were somewhat informal. Certain relationships could be recognised as ‘marriages’ irrespective of whether they were lawful; such unions were “unriht” but were still marriages.<sup>24</sup> Inheritance was not restricted to offspring born in lawful wedlock. Ross suggests that the implication of the sixteenth chapter of the report of the legates who visited England in 786 to Pope Hadrian is that children of concubines and adulterous unions had previously been able to inherit, since the legates were at pains to declare that such children were illegitimate.<sup>25</sup> If, as Ross argues, it was not uncommon for acknowledged illegitimate sons to have rights of inheritance during the early part of the Christian era, a practice which the Church attempted to eradicate, it is hard to see what purpose there would have been in the ceremony described by Grosseteste. Grosseteste’s correspondent, the chief justice William of Raleigh, apparently countered the argument with reference to an argument by Richard de Lucy, a justiciar under Henry II, a response which failed to impress Grosseteste, but which does suggest that the custom he described was far from universally accepted as conferring any right to inherit.<sup>26</sup> Helmholz notes with respect to Grosseteste’s claim that this supposed old English custom had been in accord with canon law that it is not clear that legitimation by subsequent marriage was in any case an established part of canon law prior to the twelfth century.<sup>27</sup>

Under canon law a child could not be disinherited on the grounds of being born before marriage.<sup>28</sup> However, determination of cases involving inheritance was a matter for the secular courts. When papal judges delegate dared to adjudicate in an English inheritance case involving a claim through a mother who was challenged as illegitimate, Henry II objected in the strongest terms to the infringement of his rights and Alexander III ordered that the case be returned to the royal courts, acknowledging that the secular

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<sup>23</sup> Margaret Clunies Ross, ‘Concubinage in Anglo-Saxon England’ *Past and Present* 108, (1985) pp 3-34

<sup>24</sup> D E Engdahl, ‘English Marriage Conflicts Law Before the Time of Bracton’ *The American Journal of Comparative Law* 15 (1996-7) pp 109-135.

<sup>25</sup> Margaret Clunies Ross ‘Concubinage’ p. 27, citing Haddan and Stubbs (eds.) *Councils and Ecclesiastical Documents* III pp 447-62.

<sup>26</sup> *Letters of Robert Grosseteste* p.124.

<sup>27</sup> Helmholz, ‘Bastardy Litigation’ p. 366n, citing R Généstal, *Histoire de la légitimation des enfants naturels en droit canonique* (Paris, 1905), 136.

<sup>28</sup> X.4.17.1.

court had final jurisdiction over the ownership of the land, whilst reserving the right to canonical determination of legitimacy.<sup>29</sup> This was a compromise that canonists tried hard to justify, but which in reality was based on nothing more substantial than expediency.<sup>30</sup> The procedure was therefore that, where an allegation of bastardy arose, the secular courts would send a writ to the bishop to determine the legitimacy issue. The different views of the two legal systems regarding the legitimacy of pre-nuptial children therefore potentially posed a problem. In Glanvill's time the ecclesiastical authorities apparently co-operated with the secular authorities by pronouncing on the issue of whether an individual was born before or after marriage:

*If there is a dispute as to whether he was born before or after the marriage, this is resolved, as was said, before an ecclesiastical judge, who is to inform the lord king or his justices of his judgment; so that the decision of the ecclesiastical court concerning the marriage, namely whether he who claims the inheritance was born before or after the marriage was contracted, shall be used by the lord king's court in awarding or denying him the disputed inheritance, and by judgment of the court he will either obtain the inheritance or lose his claim.<sup>31</sup>*

The late twelfth and early thirteenth centuries witnessed an increasing concern by the Church to formalise marriage and by the late 1220s the process for dealing with cases involving a birth before espousals was proving problematic, with the confusion as to how to handle such allegations being sufficient to delay or halt proceedings. In 1234 an assembly of lords temporal and spiritual reached an agreement by which such cases would be referred to the bishop to determine whether the individual concerned had been born before the marriage of his parents or after.<sup>32</sup> However, in the following year Robert Grosseteste was appointed to the bishopric of Lincoln. Grosseteste found it quite impossible to reconcile such a process with his conscience. Having refused to respond to a question in that form he was cited on 21 October 1235 to appear before the king's court. He wrote at great length to William of Raleigh, the Chief Justice, to justify his view that the common law position, 'whereby a child born before wedlock is disinherited as illegitimate after his parents contract marriage, is a wicked and unjust law, contrary to natural and divine law and also to canon and civil law' and sought guidance from the archbishop of Canterbury as to how he was to deal with this matter of

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<sup>29</sup> X.4.17.7, discussed also by Helmholz in 'Bastardy Litigation' p.362.

<sup>30</sup> Helmholz, 'Bastardy Litigation' pp. 363-5.

<sup>31</sup> *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanville d. G D G Hall*, (reprint, Oxford, 1993) p. 88.

<sup>32</sup> J L Barton, 'The mystery of Bracton', *The Journal of Legal History* 14 (1993) p.10

conscience.<sup>33</sup> In 1236 the clergy accordingly raised the matter at the Merton parliament, but the barons rejected their arguments with the famous response '*nolumus mutare leges Angliae*'. The practical solution to this problem was for the secular courts to cease sending cases of pre-nuptial bastardy to the bishop, according to the procedure set out in a subsequent writ to the Archbishop of Dublin and Justiciar of Ireland, but this was not a uniform practice.<sup>34</sup> Helmholz has shown that in practice, at least until the later fourteenth century, common lawyers frequently managed to confuse the issue.<sup>35</sup>

The account of this controversy in Bracton is rather muddled, with the ordinance of 1234 following, rather than preceding the Merton parliament. This confusion in the text has been cited in the debates over the dating and authorship of the text. Maitland used the confusion to support his view that the author of *Bracton's Note Book* and the treatise were one and the same person, who had believed the discussion at Merton to have taken place before the ordinance: 'such a mistake made by a royal judge about events but 20 years old, may be very wonderful, but the mistake is there.'<sup>36</sup> Thorne believed that no one with any personal knowledge of the events could have made such a fundamental error. In his view, the problem arose instead from a scribal error, in the course of which the accounts of the ordinance and the *nolumus* that had been added as marginal notes to an early version of the text were wrongly incorporated by a later copyist into the main body of the text where they appeared to him to fit best.<sup>37</sup> Thorne cited as support for his argument of an early date for the composition of the original text, of which he considered Bracton to have been merely a later reviser. Barton, however, viewed things differently, and believed that the treatise was indeed written by Henry de Bracton. Noting differences in the wording of the 1234 ordinance in the *coram rege* roll, *Bracton's Note Book* and the treatise itself, he argued that the wording of the treatise was deliberate. He read it as 'an exposition of the practice which would be followed, were the law well understood and rightly applied, written some time after Merton by a very angry common lawyer' who was prepared to be a little economical with the truth in support of his case.<sup>38</sup> The author of the treatise was thus, in Barton's view, setting out what the law ought to be, rather than the actual practice of the

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<sup>33</sup> *The Letters of Robert Grosseteste, Bishop of Lincoln*. Translated by FAC Mantello and Joseph Goering (Toronto, 2010) pp.109, 134.

<sup>34</sup> *Close Rolls 1234-7* pp. 353-355. Also discussed by Maitland, in his introduction to *Bracton's Note Book* p. 107 and Hooper, *Law of Illegitimacy* p.54.

<sup>35</sup> Helmholz, 'Bastardy Litigation' p.377.

<sup>36</sup> Maitland, *Bracton's Note Book I* p. 111-3.

<sup>37</sup> Thorne, *Bracton III* pp. xv-xvi

<sup>38</sup> Barton, '*Mystery of Bracton*' pp. 18-19.

courts. Paul Brand, whilst disagreeing with a number of Barton's conclusions as to the date and authorship of the treatise, accepted that he had made a good case for the part of the text dealing with special bastardy being viewed in the nature of a polemic rather than a statement of actual procedure.<sup>39</sup>

The conflict between canon law and common law had serious implications for the inheritance of real property. In practical terms, legitimacy only really mattered in certain contexts, such as inheritance, taking orders or joining a guild. Cases involving alleged pre-nuptial children were common. Of printed bastardy cases for the reigns of the first three Edwards and Richard II, almost one in five contain a specific allegation that one or other party was born before espousals.<sup>40</sup> It is likely that some of the remaining cases may include further examples of pre-nuptial bastards, which were not brought out in the pleading.

## **Category 2: Prohibited Unions**

### **Type 2A: Unmarried man and unmarried woman who could not lawfully have married**

Children born of an unmarried couple who were unable to have a lawful marriage owing to some impediment were illegitimate by both canon and common law and could not be legitimated as a valid marriage could not take place. Such children were also known, according to Bracton and his canonist sources, as *spurii*, although this is not a term that is frequently found in common law sources.<sup>41</sup> As far as the common law was concerned, there was no difference between this type and type 1A, as the crucial point was the absence of a marriage between the parents.

### **Type 2B: Married man and unmarried woman**

This is the classic archetype of adulterine bastardy. Legally, it was a similar situation to type 2A above. The offspring were also regarded by canonists as *spurii*, a

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<sup>39</sup> Paul Brand, 'The Age of Bracton' in John Hudson, ed. *The History of English Law: centenary essays on Pollock and Maitland*, (Proceedings of the British Academy 89, 1996) pp.65-89. For more on the debate over the date and authorship of *Bracton* see also J L Barton, 'The Authorship of *Bracton*: Again' in *The Journal of Legal History* 30 (2009) pp. 117-174 and Paul Brand's response, 'The Date and Authorship of Bracton: a Response' in *The Journal of Legal History* 31 (2010) pp. 217-244.

<sup>40</sup> 17 out of 92 distinct cases printed in *EELR* and in the Year Book series printed by the Selden Society, Rolls Series and Ames Foundation.

<sup>41</sup> Bracton, II p. 187. Bracton seems to have borrowed from Raymond de Peñaforte. See H G Richardson, 'Tancred, Raymond and Bracton', and *Bracton, the Problem of his Text* (Selden Society, 1965). In the Year Book cases, the word 'bastard' is used in the majority of cases, the only exception being where the allegation is that a party is born before espousals (*hors des espousailles*).

label that applied to any children ‘*qui de adulterio vel de incestu nati sunt*’.<sup>42</sup> As with 2A the children were illegitimate by both canon and common law and could not normally be legitimated by canon law in the event of the man marrying the children’s mother after the death of his wife.<sup>43</sup> However, there were cases in which such children were exceptionally declared to be legitimate, as in the case of the Beauforts, for example.<sup>44</sup>

### **Type 2C/2D: Unmarried man and married (to a third party) woman/Man and woman both married to other parties**

This was the very situation that arose in the Banbury peerage case which so exercised Sir Nicolas Harris Nicolas. It was also adulterine bastardy, but the legal situation was very different from that of type 2B. In this case the common law was more accommodating towards the bastard than the canon law. From the point of view of the canon law, the situation was the same as in type 2B; such children would be *spurii* and could not be legitimated. The common law, however, took a very different view, based on the pragmatic difficulties of proving the biological parentage of a child.

In Glanvill’s time, fornication by the mother did not affect a son’s inheritance, as a son was regarded as a lawful heir if born of a marriage:

*The general rule that fornication does not take away the inheritance refers to fornication by the mother; for a son is a lawful heir if born of a marriage*<sup>45</sup>

The writers of thirteenth-century treatises continued to stress that children born within a legitimate marriage were to be regarded as legitimate heirs, unless there were unassailable grounds for believing that the child was not that of the husband, although it appears that it may have been possible for the husband to disown the child. Most of Bracton’s comments on female adulterine bastardy derived ultimately from civil law, but the text is contradictory.<sup>46</sup> It refers in places to the behaviour of the husband towards the child, stating that ‘where a wife has had a child by someone other than her husband, and where, ... the husband has taken the child into his house, avowed him and raised him as his son, or if he has not avowed him expressly has not turned him away; he will be

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<sup>42</sup> Raymond de Peñaforte, *Summa de Matrimonio* tit. 24, cited by Richardson.

<sup>43</sup> X.4.17.6.

<sup>44</sup> See below p.82

<sup>45</sup> *Glanvill* Book VII 12-14, p. 87.

<sup>46</sup> Nicolas, *Adulterine Bastardy* p.9

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adjudged legitimate and his father's heir, whether the husband does not know that the child is not his or knows or is in doubt, because he is born of the wife.<sup>47</sup> Elsewhere it is clear that the presumption of legitimacy could only be rebutted if the husband was impotent or absent:

*if husband and wife live together and there is no impediment on either side to prevent conception and the wife conceives by someone other than her husband, the issue will be legitimate because of the presumption, because it is born of the wife, whether the husband avows it or disavows it, for this presumption admits of no proof to the contrary.*<sup>48</sup>

Britton, a late thirteenth-century treatise in French largely based on Bracton, similarly held that children resulting from an adulterous liaison on the part of the wife were to be regarded as legitimate, but also referred to the behaviour of the husband towards the child:

*If any heir is begotten by another than the husband of his mother, that is to say, at a time when it may be presumed that the husband might have begotten the child in matrimony, we will not that the adultery of the mother be a bar to the inheritance of the child. So, where a child begotten by another and imposed upon the husband as his issue, is brought up by the husband and owned by him as his heir, we will that such children be admissible to the inheritance, if it may be presumed that the husband of the mother may have begotten them. But if the husbands of such wives, who bring up as their lawful heirs children that were begotten by others than the husbands, were hindered by manifest infirmity or distance of place and time, so that evident presumption and common fame, as before mentioned, operates against the husbands having been capable of begetting those children, although they choose to bring them up in their houses and to acknowledge them as their own, yet such children shall not be admissible to the inheritance.*<sup>49</sup>

Britton went on to say that adulterine bastards who were immediately disowned by the husbands may not inherit, stressing that such children must be publicly disowned straight away, as once the husband had owned a child to be his, it could not later be disowned.

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<sup>47</sup> Bracton II p. 186.

<sup>48</sup> Bracton II p. 204.

<sup>49</sup> Britton ed. Francis Morgan Nichols, (Oxford, 1865) p.17.

Cases from the Year Books, however, largely ignored the behaviour of the husband, relying instead on the specific tests of physical capacity and access.<sup>50</sup> Even then, impotence was difficult to prove, and was not necessarily regarded as a permanent condition. In one case cited by Nicolas, it was decided that a man who had been divorced on the grounds of impotency and who had married a second wife who subsequently gave birth, was the father of the child, because a man might be impotent at one time and capable at another.<sup>51</sup>

One form of temporary incapacity that could be proved was minority, and the child of a married woman whose husband was too young to be able to procreate would be regarded as a bastard. In a case from the reign of Richard II, serjeant Middleton put the hypothetical case of a husband only five years of age at espousals and seven at the time of the child's birth, 'so that E. could not possibly be his son'.<sup>52</sup> In *Machon v Holt*, a case of *scire facias* from the first year of Henry VI's reign, Strangways remarked that 'if an infant within the age of fourteen years take a wife and she is pregnant, the issue will be a bastard through this special matter, because it cannot be understood by any law that a child within such an age can procreate.'<sup>53</sup>

In the absence of such a clear impediment, there was a very strong presumption that any child born of a married woman was the child of the husband, no matter how unlikely this might seem. However, in the case from Richard II mentioned above, Skipwith J observed that 'certainly our law and every law always presumed that one who is born and begotten within the espousals is legitimate and not a bastard; but due to some other special fact he could be a bastard. For instance, if a wife leaves her husband and lives with an adulterer and has a son begotten between them after the espousals, if such facts be found, he will be adjudged a bastard.'<sup>54</sup> It seems that this was not a generally held opinion.

The case of *Machon v Holt* involved a woman who was already pregnant by another man at the time of her marriage, and who later eloped with her adulterer. Rolfe maintained that 'the law of the land is that although she eloped from her husband and lives with her adulterer, still the issue is legitimate and able to inherit if there be no other special matter shown' and commented that the reason for this was that it was

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<sup>50</sup> Nicolas inferred that "no other deduction can be drawn from the cases reported [in the Year Books], than that the legitimacy of a child born ... whilst the husband was in a situation to have access to his wife, could not be impeached by any circumstances whatever", *Adulterine Bastardy* p. 24.

<sup>51</sup> Nicolas, *Adulterine Bastardy* p.28.

<sup>52</sup> *Ercedekne v Ercedekne*, YB 2 Ric.II, (Ames Foundation, 1975) p.95.

<sup>53</sup> YB I Hen. VI, (SS 50) 1933 p 26.

<sup>54</sup> YB 2 Ric.II, (Ames Foundation, 1975) p.95.

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impossible to try actual paternity ‘since it does not lie in the knowledge of anyone of the country nor of anyone else save God.’<sup>55</sup>

The common law evolved a test for access that became essentially formulaic. According to Bracton, the rule was that a child could be regarded as illegitimate if it ‘is not likely upon any grounds that he is the heir of the husband, as where the latter has been absent for a long time in the Holy Land, so that the truth may overcome the presumption.’<sup>56</sup> However, distance was important. Bracton goes on to add that ‘it will be otherwise, if the husband has been within the country or out of the country that he could have had access to his wife secretly.’<sup>57</sup>

In a case of Edward I’s reign, Hengham J recalled:

*I remember a case in which a damsel brought an assize of mort d’ancestor on the death of her father. The tenant said that she was not next heir. The assize came and said that the [alleged] father after that he had married the mother went beyond seas and abode there three years; and then, when he came home, he found the plaintiff who had not been born more than a month before his return. And so the men of the assize said openly that she was not his heir, for she was not his daughter. All the same, the justices awarded that she should recover the land, for the privities of husband and wife are not to be known, and he might have come by night and engendered the plaintiff.*<sup>58</sup>

The test of access became known as doctrine of the Four Seas, as was later set out in Coke’s First Institute:

*By the Common Law, if the husband be within the four seas, that is, within the jurisdiction of the King of England, if the wife hath issue, no proof is to be admitted to prove the child a bastard, (for in that case, filiatio non potest probari) unless the husband hath an apparent impossibility of procreation; as if the husband be but eight years old, or under the age of procreation, such issue is a bastard, albeit he be born within marriage.*<sup>59</sup>

There was thus a strong presumption that the child of a married woman was legitimate. Common lawyers applied the maxim ‘whoso bulleth my cow, the calf is mine.’<sup>60</sup> This maxim was clearly widely known and understood for a version of it later appeared in Shakespeare’s *King John*:

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<sup>55</sup> YB I Hen. VI (SS 50) 1933 pp 24-25.

<sup>56</sup> Bracton IV p. 299.

<sup>57</sup> Ibid.

<sup>58</sup> Pollock and Maitland, *History of English Law* vol II p.398.

<sup>59</sup> Hooper, *Law of Illegitimacy* p. 14.

<sup>60</sup> YB 43 Edw. III Trin no. 5, f. 19 (1369) cited by Helmholz, in ‘Bastardy Litigation’ p 370.



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*Sirrah, your brother is legitimate;  
Your father's wife did after wedlock bear him,  
And if she did play false the fault was hers;  
Which fault lies on the hazards of all husbands  
That marry wives.*

...  
*In sooth, good friend, your father might have kept  
This calf bred from his cow from all the world...<sup>61</sup>*

The Church courts took a different view, as is shown by a case from 1366 in which a plea of general bastardy was referred to the bishop, who found that the party in question was a bastard, having been begotten when his mother eloped with an adulterer. Although the common law would have taken a different view, the bishop's findings were accepted, but in general such cases were retained for trial by the secular courts.<sup>62</sup>

The Paston letters provide an apparent example of a bastard born to a married woman being accepted as the son of her husband. Edmond Paston II had an affair with a woman known as 'Mistress Dixon'. When, in November 1479, Edmond was involved in negotiations to marry Katherine, widow of William Clippesby, it was suggested that he should try to obtain the wardship of John Clippesby, her son, as an incentive to the match. As John Paston III wrote to his brother John 'I trow he shold get the modyr by that meane.' John III went on to argue that it would be only fair for the King to grant Edmond this wardship, as he had taken the wardship of Edmond's own son 'otherwyse callyd Dyxons, the childys fadyr being alive. Dyxson is ded, God have hys sowle.'<sup>63</sup> The son of Mistress Dixon and Edmond Paston had evidently been regarded as the legitimate offspring of Dixon.

However, law and practice did not always coincide. Where on the facts of the case, bastardy was clear, there could be an attempt to ensure that the actual parentage, rather than the legal fiction, would prevail. William Beaumont deserted his wife Johanna, a daughter of Sir William Courtenay, two years before his death in 1453. They reputedly never saw one another again yet during this period she gave birth to a son. The boy's presumed father was Sir Henry Bodrugan, whom she later married.<sup>64</sup> William Beaumont's brother Philip was found to be his heir, but the potential for a claim by the son, John Beaumont, who was the son of a married woman, seems to have

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<sup>61</sup> *King John* Act I, Scene 1 116-124.

<sup>62</sup> 39 Edw.3. pl 14 (1366) cited by Engdahl in 'Marriage Conflicts' p 133 n.

<sup>63</sup> *Paston Letters* (nos. 302, 381).

<sup>64</sup> Sir John, Maclean, *The parochial and family history of the Deanery of Trigg Minor, in the County of Cornwall* (London, 1873) I p 532.

been realised, for in February 1467 letters patent were obtained, to the effect that whereas it had been understood that Joan, wife of Henry Bodrigan and late the wife of William Beaumont, had issue John, the lawful son of the said William, it had been proved that John was a bastard, and that Philip Beaumont was William's brother and next heir.<sup>65</sup> How this could have been 'proved' in a legally binding sense, when the married couple were living in the same country, if not the same county, remains unclear and this was not the last word on the matter. Philip remained in possession of the Beaumont estate, and after his death it passed firstly to his brother Thomas, and then to another brother, Hugh. After Hugh's death, there was a succession dispute between rival claimants, and John Beaumont took the opportunity to assert his own claim.<sup>66</sup> It appears that the case went before Parliament, which declined to change the law in order to make a legal bastard of a person born in wedlock, although it did go so far as making a proclamation to the effect that John was not the actual descendant of William Beaumont.<sup>67</sup> The estates were eventually divided between the rival claimants, and John Beaumont received his share. It was not until the reign of Henry VIII that the bastardization by act of parliament of children born to an adulterous wife was contemplated.<sup>68</sup>

### **Category 3: Divorce or annulment**

There were a number of diriment impediments that could lead to the annulment of a marriage: consanguinity, affinity, godsib (spiritual affinity arising from the relationship with a godparent), quasi-affinitas or publica honestas, pre-contract, pre-marital adultery, impotence and profession of either party in a religious order. Opinions as to the legitimacy of the children of putative marriages varied according to the reasons for the annulment, and the positions taken by canon and common law were again slightly different. It should be noted, however, that the children remained legitimate until the sentence of divorce had been pronounced by the Ecclesiastical Court. Under canon law, the legitimacy of the children depended on various factors, including the good faith of the parents. If at least one of the parents was ignorant of the impediment, the children were legitimate. Good faith was of course difficult to prove, but the actual test applied under canon law was whether the marriage had been contracted openly in

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<sup>65</sup> *CPR 1461-1467* pp.539-40

<sup>66</sup> *Ibid.* p.533

<sup>67</sup> Nicolas, *Adulterine Bastardy* pp 57-9.

<sup>68</sup> *Ibid.* pp. 59-60.

church, with the banns having been read.<sup>69</sup> The common law position was slightly different and these cases were therefore not referred to the bishop.

### **Type 3A: Couple who subsequently divorce for consanguinity**

The Fourth Lateran Council (1215) had determined that marriages between persons related in the fourth degree according to the canonical method of calculation were invalid. The means of calculation was to count the steps down from the common ancestor, so that a brother and sister would be related in the first degree, and first cousins in the second degree. Where the number of steps between the parties and the common ancestor varied, the longer line would be measured.

The position taken by the English courts regarding children of marriages that were annulled for reasons of consanguinity evolved over time. In 1300, the jury of the inquisition post mortem on Hubert de Multon (a younger son of Thomas de Multon of Gilsland) held at Carlisle found that Hubert had been married to Ada le Brun, with whom he had had a son, William, who was aged fourteen. After Hubert and Ada had cohabited for a period of four years, they were divorced on the grounds of consanguinity, which it was proved that he had known about prior to the espousals. Hubert subsequently remarried Margaret de Boys, with whom he had a son, John, aged seven. A Norfolk jury gave a similar account of matters, but stated that explicitly that John was the son and heir. However, seven years later, when William le Brun came of age, he attempted to claim as heir.<sup>70</sup>

During the reign of Edward II, the royal courts were apparently willing to accept determination by the church courts in cases of bastardy arising from the parents' divorce for consanguinity. In the case of *Stafford v Stafford* (1317), the plaintiff intended to base his claim on the assertion that the tenant was a bastard by virtue of his parents' divorce for consanguinity, but was initially nonsuited as he made the error of describing the tenant as 'son of' in Latin. When the case was tried again, a writ was issued to the Bishop of Coventry and Lichfield, who confirmed the bastardy.<sup>71</sup> During the reign of Edward III, the courts appeared to take the view that divorce for consanguinity did not bastardize the children. This was not quite the same as the canon law position which stressed the need for good faith on the part of the parents, or one of them, at least. Helmholz suggests that the reason for the divergence is that 'English law required a

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<sup>69</sup> X. 4.17.2 (Alexander III) and X.4.17.11 (Celestine III).

<sup>70</sup> *CIPM* III, 594; TNA:PRO SC 8/169/8410, SC 8/61/3042; *PROME* www.british-history.ac.uk/report.aspx?compid=116363&strquery=Hubert de Multon Date accessed: 14 April 2013.

<sup>71</sup> YB II Edw. II (SS 61) pp. 74-8 and *Stafford v Eyam*, YB 12 Edw. II (1319) (SS 81) pp. 89-96.

simpler rule, one easier to state, less difficult to prove, and not so open to fraud,<sup>72</sup> but the original canon law position that good faith was demonstrated by a public marriage in church, thus providing an opportunity for anyone knowing of an impediment to object to the marriage, was straightforward and easy to prove. Decretal X.4.17.2 was very clear that if the marriage had been contracted publicly, the children should not suffer as a result of a subsequent divorce and should be held to be no less legitimate as a result and X.4.17.11 stated that if a marriage has been contracted publicly in church, the fact of an impediment was not sufficient to make the children illegitimate.

An interesting example of the effects of the divorce of the parents for consanguinity can be found in the case of William Latimer, born to William Latimer and his then wife, Lucy Thweng. Lucy's behaviour gives reason for doubt as to his biological parentage. She may have been pregnant when she married his father, if an inadequately referenced account by l'Anson is to be believed. There is some confusion over dates, but her subsequent notorious adultery make this plausible.<sup>73</sup> Yet despite Lucy's adultery, the grounds for the eventual divorce were consanguinity, which at that time did not bastardize the issue. On the death of William Latimer senior in February 1327, his son duly succeeded him, taking livery of his estates in April 1327. He was summoned to parliament in August 1327.<sup>74</sup> There does seem to have been some doubt about his position, however. In 1328 an inquiry found that William Latimer was the lawful son of Sir William Latimer by Lucy Thweng.<sup>75</sup>

The question of fraud would be more likely to arise in the case of clandestine marriages, which were in any case not covered by the decretals mentioned above. By the end of Edward III's reign, the courts appear to have taken the firmer line that even divorce for any reason other than profession bastardized the issue.<sup>76</sup>

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<sup>72</sup> Helmholz, 'Bastardy Litigation' p. 371

<sup>73</sup> l'Anson, 'Kilton Castle' in *Yorks. Arch. Journal* XXII (1913) states that Lucy was already pregnant with her son William at the time of her marriage in 1294, and that her father-in-law persuaded the King to give him a life grant of the lordship and forest of Danby in compensation, but does not provide references to support this assertion. Even if true, Lucy's pregnancy at the time of the marriage would not of itself be sufficient to render her son illegitimate, as the presumption was that a child born to a married woman was the legitimate son of her husband. For a full account of Lucy's exploits, see below pp. 179-80, also M Prestwich 'An Everyday Story of Knightly Folk' in Michael Prestwich, Richard Britnell and Robin Frame (eds.) *Thirteenth Century England IX. Proceedings of the Durham Conference 2001*, (Woodbridge, 2003).

<sup>74</sup> CP VII p 469.

<sup>75</sup> *Fasti Ebor* p.377.

<sup>76</sup> Hooper, *Illegitimacy* p. 51.

**Type 3B: Married couple who subsequently divorced for affinity**

Affinity was in effect a special type of consanguinity, based on the Church's view that sexual intercourse made a man and a woman one flesh. After a consummated marriage the husband was then related to his wife's kin by the same number of degrees as she was. Thus he would be related to her sister in the first degree. The connection was created by the act of sexual intercourse rather than the solemnization of a marriage, so affinity could also be created as a result of adultery or fornication.

Divorce for affinity was very similar to divorce for consanguinity and seems to have been treated in the same way. In an anonymous case from 1339, it was stated that the child of a marriage could not be his father's heir, because of the existence of a child of an earlier marriage 'notwithstanding the divorce ... by reason of affinity, since no divorce for that cause makes any one a bastard who was born after the marriage and before the divorce.'<sup>77</sup>

**Type 3C: Married couple who subsequently divorced for quasi-affinity**

Since affinity was created by sexual intercourse, a betrothal or unconsummated marriage was insufficient to create full affinity. However, if one of the parties to a marriage had previously contracted to marry a blood relative of the other, it was considered a diriment impediment to their marriage, even if there had been no actual previous marriage or sexual relationship. This impediment of quasi-affinity was also known as public honesty because such cases were regarded as scandalous. A decretal of Celestine III stated that children of such a marriage were illegitimate.<sup>78</sup>

**Type 3D: Married couple who subsequently divorced for Godsib**

Such cases were rare. There is a case from the reign of Edward IV cited by Helmholz which involved a divorce for this reason, but in this case the reason for the divorce was less of an issue than the fact that it was posthumous. An over-zealous official, having discovered that John's father had been the godfather of his wife's cousin and that no dispensation had been obtained for their marriage, decided to celebrate a divorce between them, even though both were now dead. When John was subsequently involved in litigation over his inheritance, bastardy was alleged against him as a result of this 'divorce'. The court was unsympathetic to this argument.<sup>79</sup>

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<sup>77</sup> YB 11 &12 Edw. III (Rolls Series) 31 (vi) p.484.

<sup>78</sup> X.14.17.10.

<sup>79</sup> YB 39 Edw. IV Mich. f 31, cited in Helmholz, 'Bastardy Litigation' p.372.

### **Type 3E: Married couple who subsequently divorced for pre-contract**

The common law took a harder line on divorce for pre-contract than for consanguinity or affinity. Divorce for this reason would automatically bastardize the issue. This was the point that had been an issue in the ‘Anstey case’. William de Sackville had contracted a second marriage following his betrothal to Albreda of Tregoze, but the papal legate pronounced the first betrothal binding and the second marriage was declared null at a synod in London. Richard of Anstey, the son of Sackville’s sister, Agnes, therefore claimed his estates as heir, on the basis that Mabel, the child of this second, annulled, marriage was illegitimate. The question of Mabel’s legitimacy took some time to resolve, and was referred to Pope Alexander III before Mabel was eventually declared illegitimate. Mabel’s illegitimacy having been established, consideration of the property issue resumed in the secular courts and Richard of Anstey eventually won his case.<sup>80</sup>

There is some logic to the distinction between divorce for consanguinity and affinity and divorce for pre-contract. As Helmholz points out ‘one may more easily believe that a person has ignored the extent of his kinship than that he has forgotten contracting marriage.’<sup>81</sup> Pre-contract was the basis for Richard III’s claim that Edward IV’s children were illegitimate. The story (of which several versions exist) was that Edward’s marriage to Elizabeth Woodville was invalid as he was already contracted to marry another lady, variously named as Eleanor Butler or Elizabeth Lucy.<sup>82</sup> However, even if true, this would not have been sufficient to render the children of the marriage to Elizabeth Woodville illegitimate, until such time as the marriage had been annulled.

### **Type 3F: Couple who subsequently divorced on grounds of impotence**

In this case, the impotence of the husband having been proved, by the examination *per aspectum corporis* carried out by a group of duly appointed matrons, any children borne by the wife would presumably not have been regarded by the royal courts as legitimate offspring of the husband, this being one of the few exceptions to the presumption that children born to a married woman were the legitimate offspring of her husband. However, cases of divorce for impotence were rare, it being a sensitive

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<sup>80</sup> Paul Brand, ‘Anstey, Richard of (c.1137–1194/5)’, *Oxford Dictionary of National Biography*, Oxford University Press, May 2006; online edn, Jan 2008 [<http://www.oxforddnb.com/view/article/92468>, accessed 25 Sept 2012]; *EHD* II, 55; Brand, ‘New Light on the Anstey Case.’

<sup>81</sup> Helmholz, ‘Bastardy Litigation’ p.371.

<sup>82</sup> Michael Hicks suggests that the lady was in fact Margaret Lucy, the daughter of Sir Lewis John. [*Edward V. The Prince in the Tower* pp. 34-5].

matter.<sup>83</sup> I have not found an example of an actual case of divorce on the basis of genuine physiological impotence in which children born to the wife were bastardized. It is highly unlikely that annulment cases would be brought in these circumstances, which would reflect poorly on both parties.

**Type 3G: Married couple who subsequently divorced on grounds of minority**

Minority was in effect a particular type of impotence. Since a child under the age of fourteen (males) and twelve (females) could not validly consent to a marriage, the marriage was invalid unless the parties gave consent on reaching the appropriate age. Furthermore, a male under the age of fourteen was deemed incapable of procreation. This is another instance in which children born of a married woman were not automatically deemed to be legitimate children of the husband, as was the case in *Machon v Holt*.

An example of the issue of a marriage being bastardised by a subsequent divorce on the grounds of minority is provided by the case of Richard FitzAlan, Earl of Arundel. Richard had been married to Isabella Despenser in 1321 when they were both children. In 1344, he petitioned the pope for an annulment on the grounds that the couple had never consented to the marriage, but had been forced into it by their relations. The wording of the petition made it clear that the marriage had been contracted when the couple were minors, at the ages of seven and eight respectively; that they had not freely consented, but had been forced to contract espousals through fear of their relatives; and that despite renouncing the marriage when they reached puberty, had been ‘forced by blows’ to cohabit, neatly explaining the existence of their son, who might otherwise have presented something of an impediment to their case.<sup>84</sup> This petition thus carefully addressed all the points which were necessary in order to show that the marriage was invalid: there had been no consent; the parties had been minors and they had expressly renounced the arrangement when they reached puberty.

The annulment was duly received, and FitzAlan’s marriage to Eleanor Beaumont took place at Ditton on 5 February 1345, in the King’s presence. Yet this marriage was also not without its technical problems. Since Eleanor was related to his first wife, a dispensation for affinity was needed. Interestingly, this fact was not ‘discovered’ until after the marriage had taken place. Dispensations were duly obtained,

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<sup>83</sup> Pedersen, *Marriage Disputes* describes the lengths to which Nicholas Cantilupe went to persuade his wife to withdraw her suit of impotence. I have not found an example of an actual case of divorce on the basis of genuine physiological impotence in which children were born to the wife.

<sup>84</sup> *CPL* III p. 164; *CPP* p. 81.

the couple agreeing to found three chaplaincies of ten marks each in the church of Arundel.<sup>85</sup> The fact that Richard FitzAlan had had a son by Isabella Despenser appears not to have been an insuperable obstacle to his divorce. But if the marriage was annulled, then the son was rendered illegitimate.<sup>86</sup> Edmund, the son in question, did not give up without protest. He petitioned the pope on the matter, and a commission was issued to William, Cardinal of St Stephen's to cite Richard, Isabella and Eleanor. An appeal against the citation by Richard and Isabella was unsuccessful, but Richard appears to have triumphed in the end.<sup>87</sup>

### **Type 3H: Married couple who subsequently divorced on grounds of profession**

Profession of monastic vows would lead to the annulment of a marriage, but as this was an event which took place after the marriage, the children would remain legitimate and the wife would retain her rights to dower.<sup>88</sup>

### **Category 4: Clerical**

#### **Type 4A: Children of priest and any woman**

Children of priests were illegitimate by both laws. The Church was particularly opposed to clerical bastards, in order to avoid the emergence of a hereditary priesthood, and they therefore occupied the lowest position in the canon law hierarchy of bastards, although by the twelfth century attitudes had relaxed from the harsh position taken by a seventh century Spanish canon, according to which such bastards were slaves of the church.<sup>89</sup> In practice there are plentiful examples of dispensations to enter the priesthood. The prejudice against clerical bastards can perhaps be seen in the tendency to note the circumstances of birth in the dispensations, but it was certainly not unknown for the sons of those in orders to obtain dispensations.

In some cases it might not be entirely clear whether a child was a clerical bastard or not. In the late eleventh century the rules on clerical marriage were not as clearly defined as they later became. This can be seen in a case from 1227 between two sons of

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<sup>85</sup> *CPP* pp. 176 and 188, 1345.

<sup>86</sup> Whether the child was bastardised depended on the reasons for the annulment or divorce, but in this case, where the parties claimed never to have consented, the child would be illegitimate. The papal mandate for the annulment of the FitzAlan's marriage explicitly stated that provision would need to be made for his son. *CPL* III 164.

<sup>87</sup> *CPP* I p.254.

<sup>88</sup> Hooper, *Law of Illegitimacy* p. 51; D Seipp, 'The Reception of Canon Law and Civil Law in the Common Law Courts before 1600', *Oxford Journal of Legal Studies* 13 (1993) p.398

<sup>89</sup> Brundage, *Sex, Law and Marriage* VII 10.



Andrew le Guiz. The younger son, also named Andrew, as plaintiff, claimed that the father had been a cleric in possession of several benefices and had had a mistress, named Amice, who was the mother of the elder son John. According to his version, when Geoffrey Ridel, Bishop of Ely, heard about Andrew senior's domestic arrangements, he summoned the pair, who swore that they were not married. After that time, the pair ceased to cohabit. Some time later, Andrew senior resigned his benefices and married Felicia, who was the mother of the younger Andrew. John's version was that Andrew senior married Amice and that both John and Andrew junior were born after the marriage. According to the plaintiff's argument, a cleric in possession of benefices could not contract a valid marriage, whilst according to the defendant, he could have a legitimate heir.<sup>90</sup> In the event, the case seems to have been settled by a compromise.

Sixty years after this case was settled, a cleric in possession of benefices and apparently in major orders entered into an agreement with his brother, by which he granted lands to the brother to hold in fee tail to him and the heirs of his body, in return for a rent of ten pounds a year payable to the cleric's son Simon, until such time as the brother had settled lands to equivalent value on Simon. This case is interesting as the cleric in question was Osbert Bereford and his brother was the serjeant at law and future Chief Justice of the Common Bench, William Bereford.<sup>91</sup>

### Category Summary

In general, the Church was more tolerant of bastards born outside lawful wedlock, provided that they were 'natural', whereas common law was more favourable to those born within wedlock, whether natural or not, whilst both codes had some difficulty in dealing with putative marriages. In effect, the Church was concerned with internal matters in terms of the intentions and good faith of the parents whereas the common law was more concerned with outward signs such as formal marriage. For the Church, marriage was a sacrament, and good faith was therefore important. The common law was concerned with the inheritance of real property and was therefore more interested in the outward signs of marriage than the spiritual bond. This can be seen more clearly in the table below.

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<sup>90</sup> Fowler, G Herbert (ed) 'Roll of the Justices in Eyre at Bedford 1227' *Publications of Bedfordshire Historical Record Society* iii (1916) pp 46-48.

<sup>91</sup> *EELR* II pp. x-xii.

**Table 8: Comparison of Legal Types of Illegitimacy in Canon and Common Law**

Category	Terminology	Canon Law	Common Law
1A: Unmarried man and unmarried woman ( <i>ex soluto et soluta</i> ) who are free to marry without impediment but never do so	<i>Naturales tantum et non legitimi</i> [Bracton ii p.187]	<b>Illegitimate</b> but can be legitimated if parents marry	<b>Illegitimate</b> [Bracton ii p. 187]
1B: Unmarried man and unmarried woman who subsequently marry	Naturales Bastard eigné	<b>Legitimate</b> [Decretal of Alexander III (X.4.17.1) but royal courts had jurisdiction over inheritance [Decretal of Alexander III (X 4.17.7)]	<b>Illegitimate</b> [Bracton ii p 186-7, iv pp. 287-291]
2A: Unmarried man and unmarried woman who could not lawfully have married	<i>Spurii</i> [Bracton II p 187]	<b>Illegitimate</b>	<b>Illegitimate</b> [Bracton ii p. 187]
2B: Married man and unmarried woman	<i>Spurii</i>	<b>Illegitimate</b> Children cannot be legitimated if man marries woman after his wife's death [Decretal of Alexander III (X.4.17.6)] (But c.f. Beaufort family)	<b>Illegitimate</b> Bracton iv p.311]
2C: Unmarried man and married (to a third party) woman	<i>Adulterini</i>	<b>Illegitimate</b> [Decretal of Alexander III (X.4.17.4)]	<b>Deemed Legitimate</b> offspring of woman's husband, unless he was beyond four seas, or impotent Bracton, <i>De Legibus</i> ii 186, 204, iv 299 Britton, Book III Chap II, ed. Francis Morgan Nichols, Oxford, (1865) p.17
2D: Married man and married (to a third party) woman	<i>Adulterini</i>	As 2 C above.	As 2C above.

Chapter 3

Category	Terminology	Canon Law	Common Law
3A: couple who subsequently divorced for consanguinity	<i>Ex non legitimo matrimonio nati</i>	<b>Depends</b> on good faith of parties. If one was ignorant of impediment, offspring are legitimate. Marriage in Church, with banns being read, was adequate as proof of good faith [Decretals of Alexander III (X.4.17.2) and Celestine III (X.4.17.11)]	<b>Depends</b> /position changed over time  If at least one party was ignorant of the impediment and marriage was contracted publicly according to <i>Bracton</i> , ii 185  Only if marriage contracted in church and banns were read out, according to <i>Tractatus de Bastardia</i> printed in Hooper p.232-3  Divorce for consanguinity did not bastardize according to until late in Edward III's reign, according to Hooper, p.51
3B: Married couple who subsequently divorced for affinity	<i>Ex non legitimo matrimonio nati</i>	<b>Depends</b> on good faith of parties. If one was ignorant of impediment, offspring are legitimate. Marriage in Church, with banns being read, was adequate as proof of good faith [Decretals of Alexander III (X.4.17.2) and (X.4.17.11)]	<b>Depends</b> /position changed over time  If at least one party was ignorant of the impediment, and marriage was contracted publicly according to <i>Bracton</i> , <i>De Legibus</i> ii 185  Only if both parties were ignorant of the impediment, according to <i>Tractatus de Bastardia</i> p.233  Divorce for affinity did not bastardize according to YB 11-12 Edward III R S 31 (vi) but law was later changed – see Hooper, p 51
3C: Married couple who subsequently divorced for <i>honestas publicas</i> /quasi-affinity	<i>Ex non legitimo matrimonio nati</i>	Illegitimate [Decretal of Celestine III (X.4.17.10)]	
3D: Married couple who subsequently divorced for Godsib	<i>Ex non legitimo matrimonio nati</i>		
3E: Married couple who subsequently divorced for pre-contract	<i>Ex non legitimo matrimonio nati</i>	<b>Depends</b> on good faith of parties. If one was ignorant of impediment, offspring are legitimate. Marriage in Church, with banns being read, was adequate as proof of good faith [Decretal of Alexander III (X.4.17.2) and (X.4.17.11)] But see also X.4.17.10	<b>Bastardized</b> [Bracton vol iv p 287-289]  <i>Tractatus de Bastardia</i> p. 233

Category	Terminology	Canon Law	Common Law
3F: Married couple who subsequently divorced for impotence		Illegitimate	Illegitimate  Only if both parties are ignorant of the impediment, according to <i>Tractatus de Bastardia</i> p.233
3F: Married couple who subsequently divorced for minority		Bastardized	Bastardized
3G: Married couple who subsequently divorced as a result of profession by either party		Legitimate	Legitimate
4A: Priest and any woman		Illegitimate	Illegitimate

## Escaping the Stigma: Forms of Legitimation

Illegitimacy was not necessarily permanent. There were ways by which bastards could be legitimated either in a formal legal sense or for practical purposes. Again, common law and canon law had slightly different rules.

### Type 1: Formal legitimation

Formal legitimation was possible on the continent by civil/papal authority, although it was subject to complex rules, *naturales* being viewed more favourably than *spurii*.<sup>92</sup> Under *ius commune*, *naturales* could be legitimated by the subsequent marriage of the parents, *per curie oblationem* or by testament. Legitimation *per curie oblationem* involved the father taking his natural son to the *curia* to be legitimated as his heir. Legitimation by testament occurred when a father who had no legitimate children named his natural children as full heirs in his testament. Legitimation by rescript, which originated from Innocent III's decretal *Per venerabilem*, was intended for cases in which marriage was impossible, for example when the mother had died, and could be used for *spurii* as well as *naturales*. The authority to grant such legitimation came from the Emperor, although it could be, and was, delegated to counts palatine.<sup>93</sup> Whilst it was possible, the success of formal legitimation was not necessarily guaranteed. Thomas Kuehn has shown that the mere act of legitimation was not necessarily

<sup>92</sup> X.4.17.13. For an example of the operation of the complexity of the rules in practice see Bestor, 'Bastardy and Legitimacy'.

<sup>93</sup> Kuehn, *Illegitimacy in Renaissance Florence* pp.49-58.

sufficient for legal purposes – ‘the fate of legitimated bastards lay in the hands of jurists whose judgments could seem unfathomable to others.’<sup>94</sup>

Formal legitimation was not however usual in England, the one exception being the legitimation of the Beauforts, John of Gaunt’s children by his mistress Katherine Swynford. Following Gaunt’s marriage to Katherine after the death of his wife Constance, the couple had sought and obtained from the pope on rather dubious grounds a ratification and confirmation of the marriage, with declaration of the legitimacy of their offspring as far as the Church was concerned (‘lest grave scandals arise’),<sup>95</sup> and the Beauforts were subsequently declared by Richard II in parliament on 4 February 1397 to be fully legitimate in the eyes of the English law. The Beauforts thus became the only English medieval bastards to be legitimated by secular authority according to English law.<sup>96</sup> Since this legitimation is unique, the wording is reproduced below:

*Fait a remembrer qe le maresdy, le quinzisme jour de parlement, le chaunceller, du comandement de roy, declara coment nostre seint pere le pape, al reverence de la tresexcellent persone du roy et de son honorable uncle le duc de Guyen et de Lancastr', et de son sank, ad habliez et legitimez mon seignoure Johan de Beauford, ses freres, et sa soer. Et purceo nostre seignour le roy, come entier emperour de son roialme d'Engleterre, pur honour de son sank, voet, et ad de sa plenir roial poiar hablie, et fait muliere, de sa propre auctorite, le dit Johan, ses ditz freres, et soer. Et aussi pronuncia et puplist l'abilite et legitimacioun, solonc la fourme de la chartre du roy ent faite.*<sup>97</sup>

This wording is worth noting. The reference to Richard as ‘emperor of his realm of England’ may perhaps have been deliberately intended to emphasise his right though ‘imperial’ authority to grant legitimation by rescript, since this was, as far as England was concerned, a new procedure. It should however be viewed in the context of the more exalted vocabulary of address that had developed in the second half of Richard’s reign.<sup>98</sup>

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<sup>94</sup> Thomas Kuehn, “‘As if Conceived within a Legitimate Marriage’ A Dispute concerning Legitimation in Quattrocento Florence’ *American Journal of Legal History*, 29 (1985) pp 275-300.

<sup>95</sup> *CPL* IV p.545.

<sup>96</sup> They were not however the only bastards to be legitimated by a king of England. In January 1408, Leonard de Barde, the son of a Bordeaux merchant, was legitimated by Henry IV, in accordance with the laws and customs of Aquitaine. ‘Rymer’s Foedera with Syllabus: January-March 1408’, *Rymer’s Foedera Volume 8*, pp. 510-512. URL: <http://www.british-history.ac.uk/report.aspx?compid=115157&strquery=Barde> Date accessed: 13 April 2013

<sup>97</sup> ‘Richard II: January 1397’, *PROME*. URL: [http://www.british-history.ac.uk/report.aspx?compid=116501&strquery=Beaufort legitimate](http://www.british-history.ac.uk/report.aspx?compid=116501&strquery=Beaufort%20legitimate) Date accessed: 31 July 2012.

<sup>98</sup> Nigel Saul, *Richard II* (New Haven, 1997) pp. 340-2.

## **Type 2: Legitimation by subsequent marriage**

As discussed above, under canon law, the children of a couple who were free to marry without impediment were legitimated by their marriage. Legitimation by subsequent marriage was most definitely not recognised by the common law, as the barons indicated at Merton in 1236. The nearest the common law came to recognising this principle was the case of the prenuptial bastard who took possession after his father's death and held it peacefully until his own death, after which bastardy could no longer be cited in any subsequent lawsuit over the property. This is less a case of any recognition of the possible legitimacy of the individual than an expression of the common law reluctance to bastardize the dead, though Hooper suggested that in such cases the supposed bastard might well be the issue of a clandestine marriage, whose legitimacy was not challenged during his lifetime as there was a good chance that he would be able to prove the legitimacy of the clandestine marriage.<sup>99</sup> Supposed bastards who later turned out to be the products of a clandestine marriage were a hazard for landed families contracting marriage alliances, as the Sotehills and Rocliffes were to discover shortly after arranging marriages to the granddaughters and supposed co-heiresses of Sir William Plumpton.<sup>100</sup>

## **Type 3: Pseudo legitimation by collusive lawsuit**

In general, once a decision had been taken by the secular court to refer a question of bastardy to the bishop, the response of the bishop was accepted and judgement given on that basis. This judgement then became part of the legal record, to which reference could be made in subsequent lawsuits, including those involving different parties, as in the case of *Bayeux v Beryhale* (1309), in which the demandant, having been accused of bastardy, produced a certificate which had been obtained in an earlier case.<sup>101</sup> There is evidence that litigants were anxious to ensure that certificates were entered on the record as proof of legitimacy. In a case from 1337, bastardy was alleged against the demandant. Once a certificate of his legitimacy had been obtained, he sought a resummons of the tenant, who then defaulted. The demandant requested that he be awarded judgment on the plea as if he had been found legitimate, rather than by the default, but Stonor, J reassured him that whilst the judgment would be on the tenant's default 'it will be always on record that you are mulier because the certification

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<sup>99</sup> Hooper, *Law of Illegitimacy* p. 20.

<sup>100</sup> *Plumpton Letters* ed. J Kirby (Camden 5<sup>th</sup> Series, vol 8, 1996) pp. 8, 230-4, 258, 261, 263-6).

<sup>101</sup> YB 3 Edw. I, (SS 19) 1904 pp.110-11.

is entered on the record.’<sup>102</sup> It is clear that judgement had to be given on a case and the certificate entered on the record for a certificate to be acceptable as evidence.<sup>103</sup>

It was clearly in the interests of a pre-nuptial bastard or bastard eigné to try to ensure that the issue of bastardy was referred to the bishop, who would find that the bastard was ‘mulier’ (legitimate), rather than for the issue to be tried by a jury under the special bastardy procedure. As Helmholz has shown, errors in pleading were not infrequent. The rules concerning which cases were and were not referred to the ecclesiastical court were complex, and there was a tendency for the courts to focus on technical aspects of pleading rather than the substantive legal issue. There was particular confusion regarding possessory writs and writs of right. By the end of the thirteenth century it had become an established principle that bastardy cases were only referred to the bishop in the case of writs of right.<sup>104</sup> However, as David Seipp has shown, there was a lack of common understanding about the classification of writs which lasted some way into the fourteenth century, writs of entry and formedon being particularly problematic.<sup>105</sup>

This concentration on the forms of pleading led to a situation in which the form in which the question of bastardy was raised became more important than the alleged reason. In consequence, it was sometimes assumed that because bastardy could only be referred to the bishop in such cases that it must be so referred, irrespective of the circumstances. Helmholz cites the case of *Le Fevre v Sleght*, (Michaelmas, 1313) in which Scrope, for the demandant, argued that general, rather than special, bastardy had to be alleged as it was a writ of right.<sup>106</sup> In *Chamber v Chamber* (Trinity, 1312), it appears that a prenuptial bastard (bastard eigné) tried to exploit this confusion by suing under a writ of right, rather than under a possessory writ. On this occasion Chief Justice Bereford was alert to the ploy: ‘and if of your own accord you have waived your possessionary writ and gone to your writ of right, has the tenant thereby lost his answer?’<sup>107</sup>

But justices succumbed to confusion on occasion. In the case of *Surrey v Colet* (Hilary 1313), a case of novel disseisin, Inge, J put certain facts to the assize, but ‘on the

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<sup>102</sup> YB 11&12 Edw. III (Rolls Series) 31 (vi) p. 162.

<sup>103</sup> See below, p. 86

<sup>104</sup> See, for example, *Walter Bret v Henry of Tinsley*, *EELR I* pp 179-80.

<sup>105</sup> Seipp, D J ‘Bracton, the Year Books, and the “Transformation of Elementary Legal Ideas” in the Early Common Law’, *Law and History Review* 7 (1989) pp.184-5.

<sup>106</sup> Helmholz, ‘Bastardy Litigation’ pp 379-80, citing YB 7 Edw. II, (SS 36).

<sup>107</sup> YB 5 Edw. III, (SS 33) p 164.

question whether the defendant was born before the marriage [of his parents] or not, he expressed unwillingness to charge them, for he said that that amounted so nearly to a plea of bastardy that he did not wish to encroach on the province of Holy Church by inquiring of it.’ Since this was the very issue which was supposed to have been determined by the King’s courts since the Statute of Merton, it was fortunate that the assize ‘said gratuitously...that the defendant and his elder brother were born out of wedlock.’<sup>108</sup> It is also clear that inquiries to the bishop were not in practice restricted to writs of right. In a writ of cosinage from Hilary term 1306, bastardy was alleged and it was proposed to issue a writ to the bishop to determine the case. A query was raised as to whether this was appropriate in a possessory writ, but Hengham replied that it was ‘as well in a possessory writ as in any other writ.’<sup>109</sup>

The confusion surrounding the procedures relating to special bastardy meant that it was possible for a pre-nuptial bastard to obtain a bishop’s certificate proving his ‘legitimacy’, which would be on record in the event of future actions. It was clearly not unknown for a collusive lawsuit to take place for this very purpose. The practice was sufficiently widespread for the Commons to petition about it in 1347.<sup>110</sup> In the late fourteenth century William Mainwaring claimed that one John, son of John Honford had used a false certificate from the Bishop of Lichfield to prove his legitimacy in a dispute over the manor of Baddiley (Cheshire).<sup>111</sup> In 1431, the heirs of Edmund Holand, Earl of Kent,<sup>112</sup> felt it necessary to petition Parliament to prevent Eleanor Holand, his bastard daughter and wife of Lord Audley, from obtaining such ‘proof’ of her legitimacy:

*wherefore þe saide suppliantz, dredyng hem to be hurt and enpeched of thair enheretance had be the saide Edmond, be oþer subtilite and wirchyng in þe temporell lawe, to be wroght by the saide Lorde Audeley and Alianore his wyf, as if thei wold take an action agayns sum persones of ther assent and covyne, or elles make < sum > persones of < suche > assent and covyne take an action ayenst hem, as þe saide suppliantz < been > credibly enfourmed thei ordeyne*

<sup>108</sup> YB 6 Edw. II, (SS 43) pp. 72-74.

<sup>109</sup> YB 33-35 Edw. I (Rolls Series) 31 (v) p.118.

<sup>110</sup> ‘Edward III: January 1348’, *PROME*. URL: <http://www.british-history.ac.uk/report.aspx?compid=116454> Date accessed: 09 September 2012.

<sup>111</sup> TNA: PRO SC8/126/6262.

<sup>112</sup> i.e. Margaret, duchess of Clarence, Joan, duchess of York (sisters of Edmund, the late earl of Kent), Richard, duke of York, Richard, earl of Salisbury, and Alice his wife, Ralph, earl of Westmorland, John, Lord Tiptoft and of Powis, and Joyce his wife, and Henry Grey.



### Chapter 3

*< hem > to do, in which action be the saide assent and covyne, bastardie shuld be allegged in the persone of þe saide Alianore, wyf to James, and thereupon be assent and covyne, and issue to be taken, and a writte to be sent to < sum > ordinarie, not advertised of the saide subtilite, assent and covyne, wher hym list, to certifie wheþer þe saide Alianore, wyf to James, be mulire, or no; afore whiche ordinaire, þe saide Alianore, wyf to James, wille < allegge >, to prove her self mulire, be the saide depositon of the saide subornatz proves, and þanne þe partie had as adversarie ayenst þe saide Lord Audeley and Alianore hys wyf, in þe saide action taken, or to be taken, be þe saide assent and covyne, wolle no prove ne matier allege, ne defence make afore þe same ordinarie, agaynst þe saide Lord Audeley and Alianore his wyf, but there suffre the matier afore þe same ordinarie < to > procede, after thentent of þe saide Lord Audeley and Alianore his wyf; so þat it is ryght lyche þat þe same ordinarie wold certifie þe saide Alianore, wyf to James, mulire; the whiche certificate so hadde and made, < shulde > by þe commen lawe of the saide roialme of Englund, utterly disherit þe saide suppiauntz, and their issues for evere of alle þe saide hole enheritance.<sup>113</sup>*

However, it was not always the case that the courts accepted such certificates without question. By the mid-fourteenth century, the courts seemed to be once more conscious of the need to keep cases of ‘born before espousals’ out of the ecclesiastical courts. In a case from Michaelmas 1337, the tenant alleged bastardy against the demandant, who had a bishop’s certificate from a previous case. Sharesull, correctly recalling the circumstances of Merton, declared that since the allegation was that the demandant was born before espousals ‘the Bishop shall not be sent to, but the matter shall be inquired of here, and the certificate of the Bishop shall not bar an answer except where the Bishop is again sent to upon that answer.’<sup>114</sup> Seven years later, in *Houghton v de Rotse*, the tenant, against whom bastardy was alleged, produced a bishop’s certificate from an earlier case. The acceptability of the certificate was questioned, as judgment had not been given on the case. Green, for the tenant, argued that the certificate still had force, citing a previous case heard at York as a precedent:

*and it has been seen in an Assize of Mort d’Ancestor that, where the tenant said that the demandant was not the next heir, and it was found by the Assize that he was not the next heir, and how not so was found by verdict, that is to say for the reason that he was born before wedlock, and so a bastard, yet, notwithstanding this, the descendant by making profert of a*

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<sup>113</sup> From: ‘Henry VI: January 1431’, *PROME*. URL: <http://www.british-history.ac.uk/report.aspx?compid=116535&strquery=Holand> Date accessed: 09 September 2012

<sup>114</sup> Year Book 11-12 Edw. III (Rolls Series) 31 (vi) pp 230-34.

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*Bishop's certificate, which proved him to be mulier, recovered the land.*

Unfortunately for the tenant, Willoughby, J was unconvinced, despite Green's assertion that he himself had been one of the presiding justices at the case cited, and further stated that even where judgment had been given on such a certificate it was still possible to put another point to an assize:

*Ready to aver by record that what you say is wrong. And I fully grant that when a Bishop has certified that anyone is mulier, and judgment has been rendered on the certificate, it will be of record, so that there will be no need on a future occasion to send to the Bishop in relation to the same point; but another point, of which enquiry can be had by Assize, as this can, will never be delayed by such a certificate, because enquiry as to it must be made by Assize.*

Stonor, J concurred, referring to the differences in the law relating to pre-nuptial bastards, and the assize was awarded.<sup>115</sup>

In a case from 1456, the law relating to the definitive status of bishop's certificates was stated as an analogy in a case of conflict of laws:

*...in some cases their law and our [law] are contradictory, and yet if their law be certified here, we will take this for law here, notwithstanding that it conflicts with our law; if a writ issue to the ordinary to certify bastardy, and he certify that the party be legitimate, and in truth he was born and engendered before espousals, notwithstanding this in this case the certification is good.<sup>116</sup>*

It should be noted that in the fourteenth century certificates of mulierty had to be given by the bishop himself; even if the bishop was out of the country, the certificate of a deputy was unacceptable.<sup>117</sup> This insistence may have been intended to reduce opportunities for fraud.

#### **Type 4: *De Facto* legitimation by adoption**

Adoption as such seems not to have been a widely accepted practice in medieval England, but there are a few cases which seem to have involved a form of adoption. For example, in a case from the second year of Edward II's reign, a plaintiff brought a writ of cosinage on the death of one Hervey, but was unable to recover possession against the tenant, Thomas, who had been recognised by Hervey as his son and heir and had

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<sup>115</sup> YB 18 Edw. III (Rolls Series) 31 (vii) pp. 32-40.

<sup>116</sup> Boston Law School Year Books Database, Seipp 1456.026.

<sup>117</sup> YB 12 & 13 Edw. III (Rolls Series) 31 (vii) p. 364.

entered as such, notwithstanding allegations that Thomas was in fact the son of William of Rusting, begotten on one Margery la Dayne, who was never lawfully married to Hervey.<sup>118</sup> Note that this was not necessarily a case of the son of an adulterous wife being accepted as the legitimate heir of her husband, since the lady in the case was claimed never to have been married to Hervey. The point was that Thomas had been accepted by Hervey as his 'son' and was 'in' as heir. Reference was made by Spigurnel, J, to the 'ancient case' of 'Sir Henry of Berkeley' who had only one wife, who never conceived a child, but he had six sons, the eldest of whom entered after his death, and because he was acknowledged as Sir Henry's son in his lifetime, retained the inheritance.<sup>119</sup>

### **Type 5A: *De Facto* legitimation by dying seised**

Cases in which bastardy was alleged against a deceased person were determined by assize and not by the bishop. Bastardy could only be tried in the court Christian if the person against whom bastardy was alleged was a party to the proceedings, which they could not be after death.<sup>120</sup> The common law was in general reluctant to bastardize the dead and it was a principle that if a prenuptial bastard (*bastard eigné*) entered upon his father's death and held the land peacefully and died seised, the fact of his illegitimacy could not be used in subsequent actions against his children by his father's right heir (*mulier puisne*). This principle can be seen in operation in cases stretching back to the last quarter of the thirteenth century.<sup>121</sup> The bastard had to have been seised of the property and to have entered by hereditary succession rather than purchase.<sup>122</sup> An analogy was drawn between the case of a *bastard eigné* who died seised and a felon who died unconvicted:

*METINGHAM, J said: if a man has committed a felony and dies in the king's peace he will never be accounted a felon nor will his son lose his inheritance because he died in the king's peace and was never convicted during his lifetime. The same is true of the bastard. They suppose that he was a bastard but he was never proved a bastard during his lifetime and his son has entered into his estate and so he cannot be made a bastard after his death anymore than can one who died in the peace and unconvicted be proved a felon.*<sup>123</sup>

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<sup>118</sup> YB 2 Edw. II (SS 17) pp 184-187.

<sup>119</sup> It has not proved possible to identify this Sir Henry of 'Berkeley' (or 'Workel').

<sup>120</sup> EELR IV clxxi.

<sup>121</sup> EELR I pp 65, 131, II pp. 212, 302.

<sup>122</sup> EELR II pp. 212, 30.

<sup>123</sup> EELR I p. 131.

It was not necessary for the bastard to take possession directly; an entry by the lord or by the widow of the deceased before the bastard took possession would not affect the claim that the bastard had entered as heir, as Bereford, C J declared in a case from 1311:

*I put as a case that the chief lord had entered and [the alleged bastard] had acquired from him as heir of Thomas, well enough would his entry as heir be accepted; and similarly if Gillian had held the tenements in dower etc.*<sup>124</sup>

However, this was only effective if the bastard inherited family lands and died seised, without challenge during their lifetime. If the bastard alienated the property during his lifetime then the case would be regarded differently as indicated below. In a case from 1283 it was held that since the individual concerned had not been proved illegitimate in his lifetime, even if his legitimacy had been challenged, he could not now be found illegitimate.<sup>125</sup>

### **Type 5B: *De Facto* legitimation by alienation whilst seised**

For a time, reluctance to bastardize a person after death also allowed a defence where a now deceased bastard had entered lands and alienated them during his lifetime, but this was no longer the case by the early fourteenth century. In a case from 1317, Peter of Lymesey claimed twenty-eight acres of wood and twenty marks of rent in Amwell (Great Amwell, Herts.) against the Abbot of Westminster, who had purchased it from his uncle, Ralph de Lymesey. Ralph was apparently the elder of two brothers. Peter claimed through the younger brother, Richard, his father, and argued that Ralph was a bastard. The allegation of bastardy was countered with the objection that bastardy had not been alleged during Ralph's lifetime. However, the objection was not upheld because Ralph had not died seised.<sup>126</sup>

### **Type 6: *De Facto* legitimation by transmission of property as if to heir**

As the main disadvantage of illegitimacy was an inability to inherit at common law, the use of measures such as enfeoffment to use to circumvent the normal rules of inheritance resulted in individuals who were technically illegitimate, but in practice

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<sup>124</sup> *Sagor v Atte Welle*, YB 4 Edw. II (SS 42) p.15.

<sup>125</sup> *William de la Strode v Adam son of Peter Lovel*, *EELR* IV, p.clxxii.

<sup>126</sup> *Lymesey v Abbot of Westminster* YB 6 Edw. II (SS 36) pp.31-45, and YB 10 Edw. II (SS 54) pp. 77-79. Peter released all rights to the Abbot (*VCH Herts* III pp. 415-6).

enjoyed the lands and trappings of their father's rank. This will be explored in more depth in chapter 5.

**Table 9: Types of Legitimation**

Situation	Canon Law	Common Law
1. Formal Legitimation	<b>Yes.</b> By Papal [X.4.17.13] or civil authority [ <i>legitimatio per rescriptum principis</i> ]. See also decretal <i>per venerabilem</i>	<b>No.</b> Only (exceptionally) by Act of Parliament in the case of the Beauforts
2. Legitimation by subsequent marriage	<b>Yes.</b> Provided parents were free to marry. <i>Spurii</i> could not be legitimated in this way. [X.4.17.1, X.4.17.6]	<b>No.</b> Statute of Merton expressly forbade this. <i>Bracton</i> ii p.186, iv pp 289-295. 'Special bastardy' was not referred to ecclesiastical courts.
3. Pseudo-legitimation by collusive lawsuit	N/A	<b>Yes.</b> A certificate of mulierty obtained in a previous case and forming part of the court record would be accepted in a subsequent case. [YB 3 Edw.II, SS 19 pp. 110-111] However, there were concerns about fraud. See also YB 11 and 12 Edw. III Rolls Series 31 (vi) pp 230-234 where such certificate was not accepted.
4. De facto legitimation by adoption		<i>Bracton</i> envisages a form of adoption taking place where a husband accepts an illegitimate child borne by his wife, though such children were generally deemed legitimate in any case. <i>Bracton</i> ii p 186 Recognition as son and heir was sufficient to rebut accusation by collateral kinsman that child was son of neither husband nor wife [YB 2 Edward II 1308-9, <i>Selden Society</i> 17 vol 17 pp 184-187].
5A. De facto legitimation by dying seised		<b>Yes.</b> A bastard (generally a <i>bastard eigné</i> ) who entered on his father's death and died seised, without having been challenged during his lifetime, could not be 'bastardized' after death. [YB 4 Edw. II SS 42 pp 13-16]
5B. De facto legitimation by alienation while seised		Yes, until the early fourteenth century. [YB 10 Edw. II SS 54 pp. 77-79]
6. De facto legitimation by transfer to property as if to heir		Common law measures, such as enfeoffment to use could also be used in practice to circumvent the normal rules of inheritance. e.g. Vescy, Sackville etc.

## The law of illegitimacy and landed society

The previous pages demonstrate the complexity of the law relating to illegitimacy in general, with the differences between the common and canon law systems offering opportunities and loopholes for the cunning to exploit. What implications did the legal situation have specifically for members of the landed class?

### The Council of Merton 1236

The debate at Merton concerning legitimation by subsequent marriage requires further consideration as it demonstrates the nobility apparently giving an opinion on a matter relating to legitimacy. It might appear that their reluctance to agree to legitimation by subsequent marriage arose from concerns over its effect on inheritance of property. In practice, however, the barons were unlikely to be personally affected. Where marriage alliances and accompanying property settlements were arranged between landed families, cases of precontract or prior clandestine marriage involving one of the parties would be a more serious problem than a prenuptial child of the couple. It is more likely that Engdahl is correct in viewing it as a culmination of the struggle concerning foreign influence over the English Church which is related in the chronicles of Matthew Paris and Roger of Wendover.<sup>127</sup> Viewed in this light, the barons' famous *nolumus* appears less as concern over legitimacy than a straightforward desire to resist the imposition of change to English practice from a foreign source; an early example of Euro-scepticism, perhaps.<sup>128</sup> The English ecclesiastical courts appear to have been slow to adopt the doctrine of legitimation by subsequent marriage, hence their apparent willingness to answer queries as to whether children were born before or after marriage even after the decretal of Alexander III. Even after the practice came to be regarded as problematic, it seems that the bishops were willing to tolerate an accommodation with the English courts as envisaged by the ordinance of 1234. Matters really only came to a head when the new bishop of Lincoln, Robert Grosseteste, refused to compromise his principles, leading to the matter being raised at Merton. If the arguments Grosseteste made in his correspondence with William Raleigh, citing numerous examples from the Old Testament, are anything to go by, it may not be

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<sup>127</sup> Engdahl, 'Marriage Conflicts' pp. 121-122.

<sup>128</sup> Maitland noted that the following year the Norman exchequer decided to follow the church's rule on this issue and suggested that this was a demonstration of the finality of the breach between England and Normandy. [Pollock and Maitland, *History of English Law* p. 189].

surprising that the barons were unconvinced.<sup>129</sup> There was also one potential economic benefit for the landowning classes: by rejecting a proposal that could reduce the number of bastards, as mesne lords they avoided a reduction in opportunities to benefit from escheats. Self interest thus coincided with principle.

### Escheats

For the landed classes, bastardy was not just important in terms of their own inheritance rights. A bastard who died without an heir of his body died without any heir, resulting in escheat to his lord. Even if the bastard had issue, once the direct line of heirs of his body failed, there could be no recourse to collateral heirs. According to Hooper, this may have been in the minds of the barons at Merton, for ‘a group of great landowners would, if for no other reason than a self-regarding one, hesitate to make an alteration calculated to deprive them of a large number of valuable rights to escheat.’<sup>130</sup> Certainly landowners were keen to claim escheats on the death of bastard tenants. In the Suffolk Eyre of 1240, Hamon Mundy and his wife Matilda claimed from William the son of Ralph a messuage and seventeen acres of land and 5 shillings of rent in Whissonsett which Emma the daughter of William held from them as their escheat because Emma was a bastard who died without heirs of her body.<sup>131</sup> Consistency was, however, necessary. In a case from 1285, a landowner lost a case of novel disseisin because whilst he had taken part of the tenant’s inheritance as an escheat because he was a bastard, he had accepted his homage for another part of his lands. The court found that the landowner could not simultaneously allege that the tenant was his father’s heir for part of the property and not the rest.<sup>132</sup> The value of rights of escheat in bastardy cases may also be demonstrated by the determination of the Crown to exert its own rights to escheat on the death of bastards in the City of London from the end of the thirteenth century.<sup>133</sup>

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<sup>129</sup> In a second letter to Raleigh, Grosseteste defends himself against an implied criticism in Raleigh’s reply that he is attempting to modify the laws England based on Old Testament precedents. [*Letters of Robert Grosseteste* p.123].

<sup>130</sup> Hooper *Law of Illegitimacy* p. 56.

<sup>131</sup> Suffolk Eyre Roll (National Archives JUST1/818) as quoted by Eric Gallagher in ‘An introduction to and edition of the Suffolk eyre roll 1240 - civil pleas’ p.409, (unpublished King’s College London thesis, 2005). See also *Ralph de Basages v Robert Barber* *EELR* II pp. 302-3, *Fitz Pain v Pouncet*, YB 2 Edw. II (SS 17 pp. 174-6).

<sup>132</sup> John son of Richard of Shelton v Thomas de Bray and others *EELR* IV pp. xlxxiv, 613

<sup>133</sup> H M Chew, ‘The Office of the Escheator in the City of London’ pp. 319-330; H T Riley (ed) ‘The French Chronicle of London: Edward II’, *Chronicles of the Mayors and Sheriffs of London: 1188-1274* pp. 248-267.

## Provision for Bastards

According to Glanvill, a man could 'give' (*donare*) part of his inherited land to any stranger, including his bastard son, but he could not give part of his inherited land to one of his younger sons without the permission of his eldest son and heir because 'if this were allowed, the disinheritance of eldest sons would often occur, because of the greater affection which fathers tend to have for younger sons.'<sup>134</sup> From this point of view a bastard son was, theoretically at least, in a better position than a legitimate younger son. However, a gift during the donor's lifetime reduced his own landed income.<sup>135</sup> Whilst such a gift could provide a bastard with a means of support, it was more difficult for a landowner to make provision for a bastard to receive a share of the inheritance after his own death. The gradual evolution of the fee tail from the end of the twelfth century, and more particularly the development of the enfeoffment to use made it possible to exercise greater control over the descent of estates.

## The entail

The other device which was used by landowners to try to circumvent the common law rules of inheritance for estate planning purposes was the entail: a conditional grant in which in the event of the death of the original recipient without heirs of his body, the property would not be inherited by his collateral heirs but revert to the donor, or remain to a specified third party. Grants of land in fee tail appeared with increasing frequency from the late twelfth century until they had become a common form of grant by the third decade of the thirteenth century. At the same time, marriage settlements of land in *maritagium* began to include words of entail. However early entails were more limited in their effects than they were to become later. The statute *De Donis* (1285) provided a milestone in the evolution of the entail, but interpretations of the duration of an entail were to gradually evolve over the century and a half following *De Donis* until it came to be understood that the effects were perpetual. It is important to note that there were two aspects of the entail: the conditional remainders and reversions and the restraint on alienation, and that understanding of the duration of the entail for the two different purposes developed along different timescales. In the years after *De Donis*, a fee tail was understood to last until the entry of the third heir for the purposes of reversion, but the first issue of the donee was able to alienate. By 1309, the

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<sup>134</sup> *Glanvill*, Book VII, I, pp. 70-71

<sup>135</sup> After the statute of *Quia Emptores* in 1290 it also carried the risk of permanent alienation from the main line in the event of the death of the bastard without heirs of his body, since the property would then escheat to the chief lord.



restriction on alienation was considered to include the first heir of the original donee, and during the next twenty years, this extended to the second heir, so that entry of the third heir became the limit on the duration of entails for both succession and alienation. However this period of uniformity did not last, as the period 1330-1420 saw the entail becoming perpetual for the purpose of succession, whilst the restriction on alienation lasted only until the entry of the fourth heir. It was only after 1420 that the entail was seen as a permanent restraint on alienation. Twenty years later, common recovery made an appearance as a means of barring entails.<sup>136</sup>

### **The enfeoffment to use**

Land held under feudal tenure could not be devised by will, but had to descend by the rules of male primogeniture. A father could only make provision for younger (or bastard) children during his own lifetime, and then only if they were of age.<sup>137</sup> However, it would appear that attempts to circumvent the rules were already being made by the second half of the thirteenth century, for the 1267 Statute of Marlborough specifically forbade fraudulent enfeoffments designed to deprive lords of their rights. At the same time, the idea of an individual being seised of property to the use (*ad opus*) of another as a form of trusteeship was evolving. Bean considered that there was no doubt that at the end of the thirteenth century 'lawyers and landowners in English were well aware of the possibility of transactions in which lands were granted to one person to the use of another' although the enfeoffment to use was not yet in its final form.<sup>138</sup> It was only after the statute of *Quia Emptores* in 1290 which abolished subinfeudation and thereby simplified the tenurial arrangements for feoffees that the full potential of the enfeoffment to use could be appreciated. The growth of the use was also assisted by the more relaxed attitude demonstrated by the Crown towards the issue of licences to alienate lands held in chief from 1294 onwards. On the basis of a study of surviving inquisitions post mortem, Bean was able to demonstrate that the employment of uses grew steadily during the reign of Edward III, the practice spreading from lesser landowners to barons and earls. He also noted that by this stage they were frequently being used with the specific intention of making arrangements for the post-mortem distribution of estates. The enfeoffment to use was employed extensively from

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<sup>136</sup> Joseph Biancalana: *The Fee Tail and the Common Recovery in Medieval England 1176-1502* (CUP 2001) pp.83-121.

<sup>137</sup> Bean, *Decline of English Feudalism*, pp. 30-31. Note that lands held in gavelkind or in free burgage could be left by will, providing an advantage for owners of property in Kent or major buroughs.

<sup>138</sup> *Ibid.* pp. 22, 111

the mid-fourteenth century onwards, and it was only at the end of the fifteenth century that the Crown attempted to control the practice.<sup>139</sup>

The use was frequently combined with the entail for the purposes of estate planning, resulting in what Biancalana described as a ‘powerful combination of legal devices for disinheritance’. Legitimate common law heirs could be disinherited in favour of illegitimate children. However, as one of the cases cited by Biancalana demonstrates, this flexibility could work both ways. In 1407 William Waite was able to use this means to disinherit his ‘son’ by his first wife, who had been pregnant by another man when she married him, in favour of the offspring of a second marriage. The son, John, would otherwise have been regarded as his heir by the common law principle that a child born within wedlock was legitimate.<sup>140</sup>

## Summary

The approach taken by the English courts to the determination of cases involving illegitimacy was still developing during the first half of the fourteenth century, but thereafter the situation became much clearer. However, differences in the canon law and common law approaches to illegitimacy remained, providing opportunities for manipulation by those who were able to exploit them. Despite this, the English courts retained the practice, largely abandoned on the continent, of referring some bastardy cases to the ecclesiastical courts. The uncertainties of the outcome of any case in which illegitimacy was raised provided further incentives for title to be secured by means of settlements rather than relying on the common law inheritance rules. The next three chapters will look at the ways in which the parents of bastards provided for the livelihood of their illegitimate children.

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<sup>139</sup> *Ibid.* pp. 114, 120-2, 180

<sup>140</sup> Biancalana, *Fee Tail and Common Recovery* p.186.

## Chapter 4: 'Bastards and else': cases where there were legitimate offspring

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The previous chapter demonstrated that whilst English common law did not distinguish between bastards of different types once illegitimacy had been established, the circumstances of each case were nevertheless crucial in determining how an allegation of bastardy was handled by the courts. The following chapters will turn from the theoretical legal status of bastards to the actual provision that was made for their livelihood. Such provision might also be expected to vary according to the circumstances, but there were other factors in addition to the crucial legal distinction of whether the parents were married, and if so whether the child was born before or after marriage, that might also have a bearing on the matter. The most obvious of these is whether there were legitimate offspring. If so, were the illegitimate children treated on an equivalent basis with the legitimate younger sons or daughters, or was provision made at a lower level? For example, were cash bequests to bastard daughters for their marriage smaller than those for their legitimate half-sisters? Were bastard offspring included in any settlement or entail of the parents' estate, and if so, where were they placed in the order of reversions? This chapter will examine further what happened in practice to those illegitimate children who had legitimate half-brothers and/or sisters; how far their treatment differed from that of legitimate younger sons and daughters, and the other factors which affected the provision made for them.

Since the expectations of sons and daughters were different, the part of the chapter dealing with land and property is divided according to four possible scenarios: illegitimate sons in cases where there was a legitimate son; illegitimate sons where there were legitimate daughters only; illegitimate daughters in cases where there were legitimate sons; and finally, illegitimate daughters in where there were legitimate daughters but not sons. For simplicity, examples where there were both illegitimate sons and illegitimate daughters are included in the first two scenarios as indicated in Table 10 below.

**Table 10: Scenarios with Legitimate and Illegitimate offspring**

Scenario	Legitimate	Illegitimate
1	Sons	Sons (+daughters)
2	Daughters	Sons (+daughters)
3	Sons	Daughters only
4	Daughters	Daughters only

### Scenario 1: Legitimate Sons and Bastard Sons

The options available for the livelihood of younger sons included, if they were lucky, a small estate of their own, or if they were less fortunate, a life interest in property or an annuity. This would often be made from more recently-acquired property rather than from the patrimony.<sup>1</sup> Elizabeth Noble has shown how successive generations of the Stonor family of Oxfordshire took pains to provide for their younger sons in such a way that they were able to support gentry status, but without damaging the core patrimony.<sup>2</sup> Where the number of surviving sons exceeded the father's ability to make landed provision for them all, the younger ones might have to make do with an annuity, which could provide them with sufficient livelihood to enable them to make their own way. Thomas Stonor II's connection, Thomas Hampden, had a total of six sons and five daughters. His four youngest sons received only an annuity.<sup>3</sup> Monetary provision might also be used to fund a legal training at the Inns of Court, or preparation for a church career.

All these options were also available to those wishing to make provision for bastard children. John Lovel of Minster Lovell (d.1287) made provision for his elder, illegitimate son, John, by conveying to him the manor of Snorscombe (Northants). His position thus seems similar to that of a younger legitimate son, in that he was provided with a small portion of the family estate, but also made his own way through military service.<sup>4</sup>

There were additional legal pitfalls of which landowners needed to be aware in making provision for a bastard, as the Corbet family was to discover. In the first decade of the fourteenth century Thomas Corbet of Morton Corbet (Shropshire) enfeoffed a

<sup>1</sup> Wright, *Derbyshire Gentry* p.46.

<sup>2</sup> Elizabeth Noble, *The World of the Stonors. A Gentry Society*. (Woodbridge, 2009) pp. 49-51.

<sup>3</sup> *Ibid* p. 49

<sup>4</sup> CP VIII p. 215n; TNA:PRO SC8/264/13153. *Oxford DNB* 34 p. 511.

bastard, John L'Estrange, in a third part of the manor of Houghton (Leicestershire). In 1311, after Thomas Corbet's death, his widow, Amice, sued the chief lord, William de Bois, for dower in Houghton. By this time the bastard, John, had also died without heir of his body. William's response to the suit was that Amice was entitled to dower in respect of two thirds of the manor only, since he held the third part, not by wardship during the minority of the legitimate heir, but as of right by escheat, as a result of the death of a bastard.<sup>5</sup> Before *Quia Emptores* Corbet could have made this provision by subinfeudation, in which case the property would have escheated to him or his heirs, but the effect of the statute ensured that Corbet's action permanently alienated the property from the family.<sup>6</sup> Had he made the grant in fee tail rather than fee simple, with reversion to himself and his right heirs, the escheat could have been avoided.<sup>7</sup> Where property was settled on a bastard and the heirs of his body it was vital to include a reversion to the main line in order to prevent permanent alienation of the property in the event of the failure of the bastard line, since there was no common law right of collateral inheritance. The development of the use and the entail from the turn of the fourteenth century made this a feasible option.

Even with careful planning, accidents could still happen. The Cornish knight, Sir John Petit, gave a life interest in two messuages and lands in Lafrowder and Meres worth 13s 4d to his bastard son, John, in 1357. The younger John was later said to have committed a felony, and though he was not convicted, the property was confiscated and taken into the hands of the Prince of Wales. Sir John died in 1362, but his legitimate son and heir, Michael, appears to have had some subsequent difficulty in recovering the property, which was still in the King's hand twenty years later.<sup>8</sup>

If it was necessary to allow for all eventualities when planning the succession of estates, it was sometimes also necessary to revise the arrangements in the light of changing circumstances. Flexibility was certainly needed by Peter de Montfort of Beaudesert (Warks.) The Montforts had settled at this manor near Henley-in-Arden, Warwickshire soon after the Conquest, and their landholdings in Rutland and Berkshire can be traced back at least to the early twelfth century.<sup>9</sup> Peter was the legitimate

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<sup>5</sup> YB 5 Edw. II (SS 63) pp. xli; 12-13; *VCH Leics.* V p. 158; Nichols, *Leicestershire* II pp. 611-2; *CIPM* III no. 635.

<sup>6</sup> The effect of the Statute of *Quia Emptores* was to abolish the practice of subinfeudation in order to allow freedom of alienation. [Bean, *Decline of English Feudalism, 1215-1540* p.79.

<sup>7</sup> The nature of the relationship between Corbet and the bastard is unclear from the evidence, but this does not affect the point about the pitfalls involved in providing for bastards.

<sup>8</sup> TNA:PRO SC 8/333/E1073; *Cal Inq. Misc.* IV nos. 119 and 222.

<sup>9</sup> *CP IX* pp. 120-22.

#### Chapter 4

younger son of John de Montfort (d. c. 1296) and as such was originally intended for the church. He had been instituted to the rectory of Ilmington (Warks.), one of the de Montfort manors, in 1312 as a clerk in minor orders when he was presumably in his late teens.<sup>10</sup> Following the death of his elder brother John at Bannockburn in 1314 his plans changed. In 1316 he was summoned for military service against the Scots and the following year he obtained a dispensation from the Bishop of Worcester for non-residence and for not taking further orders for three years. He eventually resigned the rectory of Ilmington on 5 May 1320 and, as Peter de Montfort, knight, he presented his successor in October of the same year.<sup>11</sup>

Peter de Montfort had three illegitimate children as a result of a liaison with one Lora Astley of Ullenhall, two sons, John and Richard, and a daughter, Alice.<sup>12</sup> It would appear that the elder son John, at least, must have been born whilst Peter was still expecting to follow a church career as a younger son, for Peter settled an annuity of £50 from the issues of his manor of Remenham (Berks.) on him as early as 1313.<sup>13</sup> After succeeding to the family estate he made settlements of his property in which these illegitimate children were included. In 1324 he settled the manors of Remenham (Berks.) and Ilmington on himself and the heirs of his body with successive remainders to John, son of Lora of Ullenhall, and his issue and Alice, sister of John.<sup>14</sup> It should be noted in this context that Remenham and Ilmington were not recent acquisitions but had been held by the de Montforts of the Earls of Warwick for a century and a half by this date.<sup>15</sup> In 1326 he settled Whitchurch and an estate in Little Brailes (Warks.) on himself with remainder to John, and also Ullenhall (close to Henley-in-Arden).<sup>16</sup> At this stage it appears that he was unmarried. This had changed by 1338-9, when he settled the manor of Gunthorpe (Notts.) on himself and his wife Margaret (daughter of Lord Furnivall), and their heirs, with successive remainder to John, son of Lora de Ullenhall and the

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<sup>10</sup> He must have been born between 1291, when his elder brother, John, was born, and 1296, when his father died.

<sup>11</sup> Dugdale, *Warwickshire* pp. 629-30.

<sup>12</sup> W Cooper, *The Records of Beaudesert, Henley-in-Arden* (Leeds, 1931) p. xviii; Information supplied by Douglas Richardson in November 2004 - 'Some corrections and additions to the Complete Peerage: Volume 9: Montfort' [www.medievalgenealogy.org.uk/cp/montfort.shtml](http://www.medievalgenealogy.org.uk/cp/montfort.shtml) accessed 28/10/09.

<sup>13</sup> *VCH Berks.* III p. 160.

<sup>14</sup> *CP IX* p.129.

<sup>15</sup> *VCH Berks.* III p. 160.

<sup>16</sup> *VCH Warks.* V p.19; *Warwickshire Feet of Fines* (Dugdale Society XV, 1939) n. 1643.

heirs of his body, Richard, brother of John and the heirs of his body and Alice, wife of Fulk de Penebridge, who was presumably the illegitimate daughter.<sup>17</sup>

By 1349, however, Peter had a legitimate son and heir, Guy, and resettled his estates, apparently on the occasion of the marriage Guy's marriage to Margaret, daughter of Thomas Beauchamp, earl of Warwick.<sup>18</sup> The reversion of Whitchurch was now granted to Guy de Montfort and Margaret his wife, with reversion to Thomas, Earl of Warwick.<sup>19</sup> His eldest illegitimate son, John, received a life interest in Hinton (then in Wiltshire). Guy predeceased his father and on the latter's death the bulk of his estates, including Beaudesert, passed to the Earl of Warwick in accordance with the settlement of 1349. The precise details of the descent of the property are not entirely clear, but John de Montfort appears to have retained Remenham, Monkspath, Ilmington and Ullenhall, as these were still in the family in the time of John's grandson, William de Montfort.<sup>20</sup> John was able to add to his estate through his marriage to Joan de Clinton, heiress to the Warwickshire manor of Coleshill. John was to serve in parliament as a knight of the shire for Warwickshire in 1361-2.<sup>21</sup> He had a son, Baldwin de Montfort, with Joan and thereby founded the family of Montfort (later known as Mountford) of Coleshill. William was to consolidate the family fortunes through his marriage to Margaret, the heiress of Sir John Peche, by which means he acquired a further ten Warwickshire manors. In this case a bastard son who received a landed endowment succeeded in establishing himself in county society and founding a cadet branch of the family.

Peter de Montfort also provided his second illegitimate son, Richard, with a small landed estate. In 1363 he settled the manor of Odes on himself for life, with remainder to Richard and his wife, Rose.<sup>22</sup> Richard acquired half the manor of Lapworth through his marriage to Rose, daughter of Sir Hugh de Brandeston (d.1362), and received a bequest of plate in his father's will, of which he was an executor. Like his brother, he served as a knight of the shire, in the parliament of October 1363, though he was less successful in founding a family line, the eventual heirs being his

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<sup>17</sup> Information supplied by Douglas Richardson in November 2004 - 'Some corrections and additions to the Complete Peerage: Volume 9: Montfort' [www.medievalgenealogy.org.uk/cp/montfort.shtml](http://www.medievalgenealogy.org.uk/cp/montfort.shtml) accessed 28/10/09.

<sup>18</sup> *CPL* III p. 262.

<sup>19</sup> *Warks Feet of Fines* III, Dugdale Soc XVIII (1943) no. 2028.

<sup>20</sup> W Cooper, *Henley-in-Arden* Birmingham, 1946 p. 123; *Warks Feet of Fines* III, nos. 2648, 2649 – entails dated octave of Trinity 29 Hen VI.

<sup>21</sup> Dugdale, *Warwickshire* (1730) p.1009; Cooper, *Records of Beaudesert* p. xix; *Oxford DNB* 39 pp. 560-2.

<sup>22</sup> *VCH Berks* III p.255.

granddaughters, one of whom married John Catesby.<sup>23</sup> Peter de Montfort thus ensured that his illegitimate sons received an adequate livelihood from the family estates. De Montfort's relationship with the mother of his illegitimate sons was a long term one and she was mentioned in his will.

As with Richard de Montfort, it was the ultimate failure of male heirs rather than the problems of illegitimate birth which led to the failure of the bastard line of the Arderne family. The Cheshire knight, Sir John Arderne, had two illegitimate sons, Thomas and Walkeline, who were pre-nuptial bastards born before Sir John's marriage in 1346 to his third wife and former mistress, Ellen Wasteneys. His heir male was Peter de Arderne, his second and surviving son by his first wife Alice Venables. Peter inherited the manor of Alvanley and acquired part of the manor of Bredbury, subsequently known as Harden Hall, through his wife Cicely, the heiress of Adam de Bredbury, to whom he was espoused in 1331, at the age of four. In 1347, with the licence of the Prince of Wales, as Earl of Chester, Sir John settled his manors of Aldford, Alderley and Etchells and the advowsons of the churches of Aldford and Alderley on himself and his wife Ellen, with successive remainders to Thomas, son of Ellen and the heirs male of his body, Walkeline, brother of Thomas and the heirs male of his body and the heirs of the bodies of John and Ellen.<sup>24</sup> In this case the provision for the bastards took place after the marriage of Sir John to their mother. Although they could not be formally legitimated by this marriage, they were nevertheless products of a regular relationship, and in his provision, Sir John seems to have preferred the offspring of this relationship to those of his first marriage, despite their technical illegitimacy. Thomas followed a military career, serving with the Black Prince in Spain and at Poitiers. He died in 1391 and is commemorated in an elaborate tomb in Elford, Staffordshire.<sup>25</sup> The manors passed to his son John, but the latter had no male heir of his body and his daughter and heiress, Matilda married Thomas de Stanley. Sir Theobald Trussell (d. 1368) of Flore, Northants, had a son and daughter with his mistress Katherine before later marrying her and having a legitimate son, John. After his

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<sup>23</sup> *CP* IX p.130; *CCR* 1360-64 p.557. John de Montfort seems to have predeceased his father. *VCH Warks.* V p. 110]; Cooper, *Records of Beaudesert* p. xix; *Northamptonshire Past and Present* 51 (1998 p.9).

<sup>24</sup> Wrottesley, *Pedigrees from the Plea Rolls* p.256; J R Earwaker, *East Cheshire Past and Present* I (London 1877) pp. 323, 461-4.

<sup>25</sup> F Crossley, 'Medieval Monumental Effigies in Cheshire', *Transactions of the Historical Association of Lancashire and Cheshire* New Series, 40 (1924) pp.21-2; Erdeswick, Sampson, *A survey of Staffordshire: containing the antiquities of that county* ed. Thomas Harwood (London, 1844) pp. 455-6.



death, most of the property passed to John, but Sir Theobald had transferred the manor of Nuthurst (Warks) to his son, Alfred.<sup>26</sup>

An illegitimate son would not be the ideal choice of husband for an heiress, but some illegitimate sons were provided for in this manner. Sir Nicholas Stafford (1331-94), the bastard son of Richard, Lord Stafford (d. 1380) was, like Peter de Montfort, intended originally for the church,<sup>27</sup> but this plan was superseded by marriage to Elizabeth, daughter and heiress of Thomas Meverel, who brought him extensive estates in Staffordshire and Derbyshire. Together with the influential family connections that had probably contributed to the advantageous marriage, this meant that he was able to become a notable landowner who served as knight of the shire for Staffordshire on nine occasions.<sup>28</sup>

A variation on marriage to an heiress was marriage to a wealthy widow. William Thickness (d.c. 1403) of Newcastle-under-Lyme (Staffs.) was, according to a deposition made in 1378, the child of a 'secret marriage' contracted by his father, William Thickness (d.1385) with Katherine Swynnerton during the lifetime of his first wife, with whom he had no issue. William senior remarried after the death of his first wife, and it was the son of this later marriage on whom he settled his estates. William junior was however able to achieve financial independence through his marriage to Alice, the widow of Hugh Hough of Shavington.<sup>29</sup>

Bastard sons of knights were not always so well provided for. Sir Robert Swillington (d.1391) had left a relatively modest legacy of £20 to his bastard son Thomas Hopton in his will. The size of this bequest to Thomas can be placed in context against the £100 he left to his legitimate younger son, Richard, and the 500 marks allocated for his daughter's marriages. Sir Robert was a substantial landowner with 35 manors situated in Yorkshire, the midlands and Suffolk, whose income from land was possibly of the order of 2,000 marks p.a.<sup>30</sup>

Sir Gerard Usflete of North Ferriby and Ousefleet (Yorkshire) had a legitimate son, Gerard, two legitimate daughters and two illegitimate sons, Leo and John. In his will, made in September 1405, the legitimate daughters Anne and Isabella both received monetary bequests of 100 marks, whereas Leo received £10 and John received £6 14s 6d. The apparently niggardly treatment of the bastards in this case would appear to be

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<sup>26</sup> *House of Commons* IV p. 664-5.

<sup>27</sup> *CPL* III p.352. See also above pp. 42-3

<sup>28</sup> *House of Commons* IV pp. 442-4.

<sup>29</sup> *House of Commons* IV p.583.

<sup>30</sup> Richmond, *John Hopton* p. 5 *CIPM* XV pp. 130-4, 195-6.

related to the nature of Sir Gerard's relationship with their mother, who received a bequest of £5 on the condition that she attended the funeral.<sup>31</sup> Unlike some testators, Usflete did not actually describe Leo and John as bastards: all three of his sons were described as *filio meo*, but Leo and John's illegitimacy can be inferred from the bequest to the woman described as their mother.

The bequest of £20 which the Derbyshire knight Sir John Dabrichecourt (d.1415) made for the education of two bastard children was, like Usflete's, not particularly generous when viewed in the context of his other bequests. It was less than Dabrichecourt's nephews Nicholas and Eustace were to receive. Sir John had several legitimate offspring, including a son, Richard, and five daughters. The minimum bequest to an unmarried daughter was £10 and 40 shillings of rent. Dabrichecourt left the same amount to the prisoners of Newgate as he did to his bastards. This again seems to be a result of the circumstances of the illegitimacy. The bequest was made on condition that investigation by a priest found that 'the two boys at Copston' were indeed sons of his. Since the mother of these putative bastards was to receive 20 shillings and a cow, when servant women mentioned elsewhere in the will were to receive 20 shillings or more and two cows, it would appear that she was of low social status as well as sufficiently poor reputation for the boys' parentage to be in doubt.<sup>32</sup> For both Usflete and Dabrichecourt, the nature of the relationship leading to the illegitimate births was a critical factor in the provision made. An earlier example of provision being made for an apparently low status mother of illegitimate children can be found in the case of the East Midlands knight, Thomas Chaworth. The Chaworths were a leading gentry family holding extensive estates in the East Midlands, including Alfreton and Norton in Derbyshire, and Wiverton, Osberton, Edwalton and High and Low Marnham in Nottinghamshire.<sup>33</sup> In 1327 Sir Thomas gave Matilda, described as the daughter of Robert Copsi of Medbourne (Leics), and her daughters Ellen and Alice a life interest in two messuages and rents in Medbourne. One of the witnesses to the charter was Sir Thomas's legitimate son and heir, Thomas, who succeeded to the estates on his father's death in 1347. Chaworth's will in 1347 included a monetary bequest of 100s to 'John, son of Matilda Copsi' and the same amount to his sister, Alice. Ellen was not mentioned in the will and may therefore have been dead by this time. Chaworth's legitimate younger son John was to receive 10 marks in the will, but his sisters Joan and Alice

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<sup>31</sup> *House of Commons* IV pp.698-9; *Test. Ebor.* I p. 340-1.

<sup>32</sup> *Reg. Chichele* II pp. 52; 108-110.

<sup>33</sup> *Thoroton*, III p.403.

were to receive 100s, the same amount as the children of Matilda Copsi.<sup>34</sup> As in the Usflete case, the illegitimacy of Matilda Copsi's offspring is inferred, rather than explicit.

Roger Longe, a London vintner, left monetary bequests in his will to his legitimate sons, Thomas and William, and to John, his bastard son. He also left certain tenements to his 'sons'. All three were under age at the time of their father's death, and it appears that Thomas was the only one who survived to claim his inheritance.<sup>35</sup>

John Rous of Imber (Wilts.) had two legitimate sons: William and John, by his wife Isolde, the eldest daughter and coheir of Sir Philip Fitzwaryn of Great Chalfield (Wilts.) He also had several bastard children. By Alice Phillips, daughter of John Phillips of Imber, he had an illegitimate son, Richard, who married Alice Percy, daughter and heiress of John Percy of West (or Little) Chalfield. Another son, Thomas, farmed East Chalfield manor from his legitimate half-brother William Rous. Two illegitimate daughters married into local families. Margaret married William Pylehous of Holt, and Alice married John Wolley of Bradford. Rous' two legitimate sons both fathered bastards. The elder son, William, married Margaret Thorpe, sister of Ralph Thorpe of Boscombe (Wilts), with whom he had a number of children who all died in infancy.<sup>36</sup> During Margaret's lifetime, he also had a number of illegitimate children with his mistress, Margaret Melet.<sup>37</sup>

Sir John Arundell of Lanherne had extensive estates in the south-west and at the time of his death in 1435 held 24 manors in Cornwall and nine more in Devon, together with other land, providing him with a total income from land in the order of £300 p.a.<sup>38</sup> In 1418 Sir John made a settlement of part of his estate in favour of what appear to have been five bastard children. His eldest legitimate son, John (b. c. 1392), had married Margaret, a daughter and coheir of Sir John Burghersh, the previous year. Under the 1418 settlement, the manors of Tolverne, Respery, Treveneague and Penberthy with various other land, messuages and rents, including a ferry across the river Tolverne, were to remain after his death to Emmeline Wode, to hold during the life of her daughter Agnes, who appears to have been the mother of Arundell's bastard children.

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<sup>34</sup>G G Astill, *The Medieval Gentry: A Study in Leicestershire Society, 1350-1399* (PhD thesis, University of Birmingham, 1977) pp. 8, 76; Leicestershire Record Office DE221/2/1/10; DE221/2/2/34; *CP* III pp. 153-4; *House of Commons* II p. 533. Sir Thomas' lands at Medbourne were worth £20 p.a.; *Test. Ebor* I pp. 47-8.

<sup>35</sup>*Husting* II pp.185-6, Calendar of letter-books of the city of London: H: 1375-1399 (1907), pp. 24-32.

<sup>36</sup>*Tropenell Cartulary* I p. 281.

<sup>37</sup>*Ibid.* p. 282.

<sup>38</sup>*House of Commons* II p. 59.

After Agnes' death, the manors of Tolverne and Respery were to remain to Edward Arundell, son of Agnes and the heirs of his body with successive remainders to his brothers Richard and Thomas and sisters Anne and Margaret and the heirs of their bodies, whilst Treveneague was to remain to Richard and Penberthy to Thomas and the heirs of their bodies, with successive remainders to their siblings and a final reversion to Sir John's right heirs.<sup>39</sup> However, this settlement was superseded by various arrangements made in the 1420s following the death of Sir John's eldest son and heir, John, in favour of his two surviving legitimate sons, Thomas and Renfrew. In 1428 Tolverne and Respery, two of the manors mentioned in the 1418 settlement, were granted along with three other Cornish manors to feoffees to the use of Thomas, on condition that after Sir John's death they would maintain a chantry of five chaplains and a clerk to pray for the soul of Sir John and his kin.<sup>40</sup> Treveneague and Penberthy were jointly settled on Thomas and his wife Elizabeth.<sup>41</sup> None of the illegitimate children were mentioned in Arundell's will of 1433, so it is possible that, like his eldest son, they predeceased him.<sup>42</sup> The rather curious nature of the 1418 settlement suggests that the children of Agnes may perhaps have been quite young.

William Allington of Horseheath (Cambridgeshire) managed to provide for both his legitimate son William and bastard son Robert through marriage to heiresses. William Allington senior had initially made his fortune through administrative service with John Holand, earl of Huntingdon, and later with the Duke of Clarence. He had purchased the manor of Horseheath in 1398 and subsequently added to his property portfolio so that his income from land was at least £40 p.a. by 1412. In the 1420s he purchased the wardship of the two granddaughters of Sir William Argentine, who were heiresses to Argentine's estates worth c.£170 p.a. Elizabeth, the elder of the girls, was subsequently married to Allington's son and heir, William, and her sister Joan was married to his illegitimate half-brother. Robert, the illegitimate son, was perhaps unlucky that Joan died in May 1429, most of her share of the Argentine estates passing to William Allington junior, by right of his wife.<sup>43</sup> Sir William Argentine was himself a bastard. The pattern of marriage suggests that perhaps there was a tendency for families with the 'taint' of illegitimacy to stick together.

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<sup>39</sup> *Cornwall Feet of Fines* II, no. 933.

<sup>40</sup> *CCR* 1429-35 pp. 35-37.

<sup>41</sup> *CCR* 1441-1447 p.251.

<sup>42</sup> G R Dunstan (ed.) *The Register of Edmund Lacy Bishop of Exeter, 1420-1455* IV (Devon and Cornwall Record Society 16, 1971) pp. 20-22.

<sup>43</sup> *House of Commons* II p. 29; *Proceedings Camb. Antiq. Soc.* lii pp. 30-42; *VCH Herts* III p. 183 For further discussion of Sir William Argentine, see pp. 110-113.

## Chapter 4

Thomas Brunston of Preston in Kent settled his estates in October 1422, with equal shares to go to each of his five legitimate sons and the heirs of their bodies after the death of his wife, and remainder in the event of all five dying without heirs of their bodies, to his two legitimate daughters. In the event of their also dying without legitimate offspring the property was to be sold and used for the benefit of the souls of the testator, his wife and their friends. However, in his will dated 28 February 1424, he left 100 shillings to an illegitimate son, John. Whilst this was the largest cash bequest in the will, John was excluded from the estate settlement. To place the cash bequest in context, Brunston's mother-in-law, Isabelle Haute, and cousin, John Brunston, were each to receive 40 shillings, and servants received smaller amounts. John was also made a co-executor of the will, along with the testator's wife, Joanna. Brunston's will was proved on 20 March 1425, when it was noted that John Brunston the illegitimate son had refused to act as an executor. Perhaps he was disappointed with his inheritance. It is likely that this illegitimate son was older than the legitimate children, who were probably under age when the will was made. One of the legitimate children is referred to as John 'junior'.<sup>44</sup>

In his will of December 1442, Edward Tyrell of Downham (Essex) left his bastard son John property in Rettendon and South Hanningfield together with the reversion of a property called Barons in Downham. Tyrell was from a well-established Essex family, the younger son of Walter Tyrell of Avon (Hants.) and brother of John Tyrell (d. 1437) of Heron in East Horndon (Essex). As well as his bastard son he had a legitimate son, Edward, and two daughters, Philippa and Margaret, from his marriage to Anne, widow of John Bassynborne. His elder brother was one of the wealthiest gentry landowners in Essex, with an income assessed at £396 in 1436. Although he was a younger son, Edward had played an important role in county affairs. He had at various times served as escheator of Essex and Hertfordshire, sheriff of Essex and Hertfordshire and had been a knight of the shire for Essex in 1427, 1432, and 1435. His own income was assessed at £135 in 1436. He held property in Cambridgeshire, Essex and Middlesex, though his manor of Downham was leased from his brother. His Cambridgeshire estates, which he had inherited from his mother, the daughter and heiress of Edmund Flambard, were left to his legitimate son, Edward.<sup>45</sup> Sir Henry Pleasington (d.1452) of Burley (Rutland) had one legitimate son, William, who was under age when his father died. Pleasington was a wealthy knight, with properties in

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<sup>44</sup> *Reg. Chichele* II pp. 310-11.

<sup>45</sup> *Reg. Chichele* II pp. 628-36; *House of Commons* IV p.683.

Rutland, Lincolnshire, Yorkshire, Lancashire, Northamptonshire and Middlesex, but his only provision for an illegitimate son, John, appears to have been an annuity of five marks from the manor of Toynton (Lincs).<sup>46</sup>

William Lord Bonville of Chewton (1392-1461) had a legitimate son and three daughters from his first marriage to Margaret, the daughter of Reynold, Lord Grey of Ruthin. He also had an illegitimate son, John, from a relationship with Isabel Kirkby. Both his grandfather and father had acquired substantial property through marriage, and Bonville was one of the most powerful and wealthy landowners in the south west, with estates concentrated in Devon, where his principal seat was Shute, and around Chewton Mendip in Somerset. He received a personal summons to parliament as Lord Bonville of Chewton in 1449. His income was valued in 1435 at around £900 p.a., placing him in a good position to be able to provide for his illegitimate son. He settled the manors of Little Modbury and Meavy, together with land in Ivybridge (Devon), on John and Alice, his wife. Alice was the daughter and heiress of William Dennis of Combe Raleigh and, through her, John obtained the manors of Combe Raleigh (Devon) and Alleston (Somerset).<sup>47</sup>

The political upheaval of the fifteenth century brought a premature end to the direct legitimate male line of the Bonvilles. Lord Bonville spent most of the 1440s and 1450s engaged in a bitter power struggle with the Courtenay earls of Devon, and their local rivalry carried over into wider politics. During the later 1450s, Bonville, whose grandson had married a daughter of Richard Neville, earl of Salisday, was closely associated with the Yorkist group. Bonville's legitimate son and grandson were both killed at the battle of Wakefield on 31 December 1460. Bonville himself did not survive this dynastic disaster long enough to make any resettlement of his estates had he wished to do so. He found himself on the losing side at the second battle of St Albans in February 1461 and thus at the mercy of Queen Margaret of Anjou and her supporter Thomas Courtenay, earl of Devon. He was duly executed on 19 February 1461. He was not however attainted. His heiress was his infant great-granddaughter, Cecily, though certain of the Bonville estates passed to his younger brother, Thomas, (who also had a son named John (d.1494)), according to the terms of a 1402 entail created by William's grandfather (d.1408). The bastard John Bonville of Combe Raleigh, who outlived his

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<sup>46</sup> *House of Commons* IV pp. 86-88; *Test Vet.* p. 276.

<sup>47</sup> *House of Commons* II p.288; *Oxford DNB* 6 pp. 574-5; *CP* II pp. 218-9; *CIPM* Henry VI II 266; *Feet of Fines for the county of Somerset*, ed. Emmanuel Green (Somerset Record Society xxii5, 1905) pp. 116, 213; *Transactions of the Devon Assn.* XVIII (1886) pp. 334-5; Westcote, p. 465.

legitimate cousin by five years, had six daughters and one son, another John, who married Edith, daughter of Nicholas Blewett of Grenham (Devon), by whom he had a son, Humphrey, and two daughters.<sup>48</sup> Despite the pervading lawlessness of the time and the family feuding, Lord Bonville thus managed to provide his illegitimate son with a landed estate and the means to live as a gentleman and found his own dynasty.

According to Sir William Pole, John, the son of John Bonville of Combe Raleigh, was also illegitimate. This story is repeated in Prince's *Worthies of Devon*, but may be based on confusion between the different John Bonvilles, for he was found to be his father's heir by an inquisition post mortem, and the story is not found in Westcote.<sup>49</sup> Randle Mainwaring esquire, of Over Peover (Cheshire), also had an illegitimate son who was able to found his own cadet branch of the family. Randle had three legitimate sons and six daughters, as well as six illegitimate children, three sons and three daughters. Hugh, his bastard son by Emma Farrington, married Margaret Croxton, heiress of Ralph Croxton and founded the Mainwarings of Croxton.<sup>50</sup>

In 1470 John Ferriby esquire of Beverley (Yorkshire), who had two legitimate sons, made a curious will in which provision for a bastard son was left to the discretion of his executors: 'ye can thynke yt this basterd of myne will thrife, latt hym have Todworth, or ellys latt hym have xx marks, and go furth in the world.'<sup>51</sup> The implication is that the bastard was an infant, and he must therefore have been an adulterine bastard as Ferriby had married in 1463 and was survived by his widow. Ferriby left his legitimate daughter Margaret £20 and a dozen spoons.

Sir John Pilkington (d.1479) was a member of a cadet branch of a Lancashire knightly family, whose main residence was in the West Riding of Yorkshire.<sup>52</sup> He also held lands in Lancashire, Lincolnshire, Derbyshire and the City of London. The total value of his estate was in excess of £200 per annum.<sup>53</sup> When he made his will in 1478, his legitimate son, Edward, was still under age. He accordingly made arrangements for the custody of his lands during his minority. His brother Charles was to have custody of Bradley, whilst his illegitimate son, Robert, described as 'my bastard sone' in the will, was to have custody of Elphaborough and other lands in Sowerbyshire and Aringden

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<sup>48</sup> *Oxford DNB* 6 pp. 574-5; *CP* II pp. 218-9.

<sup>49</sup> *Transactions of the Devon Assn.* XVIII (1886) pp. 334-5; Pole, p. 319; Prince, *Worthies of Devon* (1810) p.113, Westcote, p.465.

<sup>50</sup> *Transactions of the Historical Society of Lancashire and Cheshire New Series* 40 (1924) p. 45; Hanshall, p.570.

<sup>51</sup> *Test.Ebor.*III. pp.178-80

<sup>52</sup> *Historical Society of Lancashire and Cheshire New Series* 9 (1898) pp.184-5.

<sup>53</sup> *CPR* 1476-85 p.158.

Park. Once Edward reached the age of 24, Robert was to have lands in Wistow; he was also to have Greenhirst.<sup>54</sup> Sir John also settled on Robert the reversion of lands granted to Edward in tail male and since Edward died in 1486, Robert thus became ultimate heir, and on his death the lands passed to his son, Arthur.<sup>55</sup> Robert must have been born before Sir John's marriage in 1464, since he would appear to have been of age in 1478.

In 1485 John Barnard esquire made a will in which his son Thomas was to enjoy the profits and issues of his demesne in Brington (Northamptonshire) during the minority of John Barnard, the son and heir – a rather similar arrangement to that of Sir John Pilkington.<sup>56</sup> Fifteen years later, the will of another Northampton man, John Breknok made a distinction between his 'true and legitimate son' James (*filium meum verum et legitimum*), who was to inherit the lands and properties, and his son Hugo, who was a residuary legatee and co-executor with the testator's wife. It seems likely that Hugo was a pre-nuptial bastard.<sup>57</sup>

Sir John Savage (d.1492), of the prominent Cheshire family, had a legitimate son, John, and a number of legitimate daughters. His illegitimate son George entered the church and became parson of Davenham, and fathered several bastards of his own, including George Savage, chancellor of Chester, John Wilmslow, archdeacon of Middlesex.<sup>58</sup>

Sir Richard York, and alderman and former mayor of York, who represented the city four times in Parliament, bequeathed his lands to his four legitimate sons, with the bulk of his estate going to the eldest, Richard, and the rest shared between the other three. His two bastard sons each received £20 in his will of 8 April 1498.<sup>59</sup> York's legitimate son Thomas, who was a Doctor of Laws, also received an annuity of ten marks for a period of ten years.

Edward Stanley (d.1523), first Baron Monteagle, had three illegitimate children; two sons, Edward and Thomas, and a daughter, Mary, in addition to his legitimate son and daughter. All three were mentioned in wills. Thomas was provided for by a church career. After attending Oxford, he was consecrated as bishop of Man in 1510, an appointment that was made possible through his family's position since 1405 as lords of Man, which gave them control of the Manx church. He was also rector of several

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<sup>54</sup> *Test. Ebor.* III pp. 238-241

<sup>55</sup> Robert is said to have been the son of Elizabeth Darcy of Darcy Lever. *Historical Society of Lancashire and Cheshire* New Series 9 (1898) pp.184-5; *CIPM* Henry VII II, 3

<sup>56</sup> Dorothy Edwards (ed.), *Early Northampton Wills* (Northants Record Society XLII, 2005) pp. 116-7.

<sup>57</sup> *Ibid.* pp. 152-3

<sup>58</sup> *Oxford DNB* 49 p.65

<sup>59</sup> *Test. Ebor.* IV pp.134-5; *VCH Yorkshire: City of York* p. 79



northern parishes.<sup>60</sup> Lord Monteagle's brother, James Stanley, bishop of Ely, also had three illegitimate children, as a result of a relationship with his housekeeper. His bastard daughter Mary married Sir Henry Halsall, and John, the elder of his two illegitimate sons, was knighted in 1513 and founded the Hanford (Cheshire) branch of the Stanley family.<sup>61</sup>

Ralph Egerton of Ridley in Bunbury, Cheshire (d.1528) was succeeded in his estates by his legitimate son, Richard, but in his will dated March 1526 he bequeathed a farm at Hole and a house in Nantwich to his young bastard son Ralph and the heirs male of his body.<sup>62</sup> In addition, he also left £40 for Ralph's upbringing and schooling. He also left £40 for the marriage of his bastard daughter Mary, entrusting his executors to see that a suitable marriage could be arranged, and the same sum to each of his other bastard daughters, whose names were omitted from the will. Unfortunately, the omission of the Christian names of these daughters from the will created problems which frustrated Sir Ralph's intention. One of the daughters, Beatrice, was subsequently involved in litigation with Sir Ralph's executor, William Wilbram, over her legacy, but had no remedy at common law as her Christian name was not given in the will.<sup>63</sup>

Thomas, illegitimate son of Thomas Dacre of Gilsland (d.1525), was clearly regarded as one of the family, but seems to have received little in the way of financial provision, eventually making his fortune through service to the crown. Thomas was originally closely associated with his legitimate half-brother, William, though he took pains to distance himself after the latter was tried for treason and he himself was arrested on suspicion of acting as an accessory. He spent some time serving in Ireland, and later returned to the north as an associate of Sir Thomas Wharton.<sup>64</sup> In 1537 he was considered as a possible candidate for the not entirely desirable role of keeper of Tynedale, but although he was considered able, he was regarded as 'too poor' for that office, and would need at least an additional £40 a year.<sup>65</sup> His fortunes improved in

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<sup>60</sup> *Oxford DNB* 52 p. 172.

<sup>61</sup> *Oxford DNB* 52 pp. 221-2; J L Thornley, *Monumental Brasses of Lancashire and Cheshire* (Hull, 1893) p.122.

<sup>62</sup> *Trans. Lancashire and Cheshire Historic Society* lxxix (1917) pp. 110-111

<sup>63</sup> *Ibid.* pp. 110-112. TNA:PRO C1/783/22-23. Sir Ralph seems to have had at least two other bastard daughters: Elizabeth and Alice.

<sup>64</sup> *Oxford DNB* 14 pp. 875-6; C Roy Huddlestone and R S Boumphrey, *Cumberland Families and Heraldry* (Cumberland and Westmorland Antiquarian and Archaeological Society Extra Series, 23, 1978) p.82. Lord Dacre of Gilsland also had an illegitimate daughter, Elizabeth, who married Thomas Musgrave.

<sup>65</sup> *Letters and Papers, Foreign and Domestic, Henry VIII, Volume 12 Part 2: June-December 1537* (1891), p. 250. His legitimate half-brother had also been suggested for the office, but 'would rather lose a finger of each hand' according to the Duke of Norfolk.

1542 when he was granted the house and site of the former Augustinian priory of Lanercost. In 1545 he was granted a pension of £20 and he was later knighted.

In summary then, where there were legitimate sons, provision for bastard sons could vary from something very similar to the arrangements made for legitimate younger sons, enabling them to maintain the same level of status, down to a minimal provision for basic living expenses or education. Factors which influenced this included the wealth of the father and the level of freedom he had to determine the succession to his estates, and also the status of the mother and the nature of the relationship between them.

## Scenario 2: Legitimate Daughters and Bastard Sons

Philip Marmion (d.1291) of Tamworth had a total of four legitimate daughters from his two marriages. He was able to provide for his bastard son Robert through his acquisition of the wardship of Isabel, the daughter and heiress of Giles FitzRalph. As a result of his marriage to Isabel, Robert acquired the manors of Nether Whitacre, Perry Croft and Glascote (Warks.).<sup>66</sup> Sir Roger Bertram of Mitford, Northumberland, whose only legitimate heir of his body was a daughter, Agnes, gave the manor of Throphill to his bastard son, Thomas. Agnes inherited Mitford and Felton, but Sir Roger alienated most of his extensive possessions.<sup>67</sup> Bertram's actions may however have been due to financial problems, rather than concern over illegitimate status, for he was said to have been 'indebted to divers Jews'.<sup>68</sup>

Sir William de Kerdiston of Kerdiston, Norfolk, had an illegitimate son, also called William, who had been born prior to his father's second marriage to Alice de Norwich. Sir William's legitimate heir was Sir John de Burghersh, the son of his legitimate daughter, Maud, who had married Sir John de Burghersh senior. In 1341/2, before the birth of his grandson, William senior had made a settlement of his estates on himself and his third wife, with remainders to his son Roger and his male issue and to William, brother of Roger. He later made another settlement, from which the younger John was excluded on the grounds that he had a sufficient estate. When he died in 1361, both Maud and Sir John de Burghersh senior were dead and their son John was still a minor. The Norfolk inquisition found that the heir to the Kerdiston estate was William Kerdiston, son of the deceased, whereas the York and Suffolk inquisitions

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<sup>66</sup> CP VIII p.514; VCH Warks 4, pp. 248-9, 251-255

<sup>67</sup> CP II pp. 160-1; CCR 1272-9 pp. [195-205], *Ancient Deeds* nos. A 4769-4773

<sup>68</sup> CCR 1272-9 p. 151.

found the heir to be John de Burghersh, son of Maud, daughter of the deceased, although the Suffolk inquisition also found that William had taken possession. The Lincoln inquisition found that William was heir, except for a part of the estate to which John de Burghersh was heir. In view of the conflicting returns, a further enquiry was held, during which the settlement of 1341/2 was produced and it was found that William the elder, his wife and son Roger having died, William the younger had taken possession.<sup>69</sup> In 1370-1 Sir John de Burghersh was involved in a legal dispute over the property, during which he asserted that William was a bastard. The parties came to an agreement in November 1371 in which William's right prevailed. Sir John de Burghersh received Skendleby (Lincs) and Stratford (Suffolk), but relinquished his claim to the Kerdiston manors in Norfolk, along with Hunmanby (Yorks.) and Bulkamp and Heenham (Suffolk).<sup>70</sup>

William de Kerdiston's experience in defending his rights may have proved useful to his son-in-law, William Argentine.<sup>71</sup> The Argentines were a well-established family in Hertfordshire, Cambridgeshire and Suffolk. Sir John Argentine was the grandson of Reynold d'Argentine of Melbourn (Cambs.) and Great Wymondley (Herts.) who had married a daughter of Hugh de Vere, Earl of Oxford and received a personal summons to Parliament in the late thirteenth century.<sup>72</sup> Sir John had three legitimate daughters by his wife Margaret, the daughter of Robert Darcy of Great Sturton (Lincs.), but no legitimate son to succeed him and he accordingly attempted to pass the bulk of his estates to his illegitimate son William.

In May 1381, at the time of William's marriage to Isabel Kerdiston, Sir John obtained a royal licence to entail Great Wymondley and the advowson of the priory and chapel there on William and his wife, Isabel de Kerdiston.<sup>73</sup> In the same year he also made entails of lands in Little Melton (Norfolk), and the manor of Melbourn (Cambs), and gave William and his wife immediate possession of the manors of Chalgrove (Oxon), Fordham (Essex), Weston (Herts) and Newmarket (Suffolk). He also arranged that Halesworth, his main residence in Suffolk, should pass to William after the death of his own wife. It was clearly his intention that William should be recognized as his heir.

Sir John died on 25 November 1382 and his legitimate heirs were not prepared to allow themselves to be disinherited without a struggle. However, William was of age

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<sup>69</sup> *CIPM* XI 102.

<sup>70</sup> *CP* VII, 190-9; *TNA:PRO* E 210/1093.

<sup>71</sup> *House of Commons* II pp. 50-52.

<sup>72</sup> *CP* I p.196.

<sup>73</sup> *TNA:PRO* C/143/398; *CPR* 1381-85 pp.19-20.

and well able to look after his own interests. Sir John's legitimate heirs were found to be his daughter Maud, who was the wife of Sir Ivo Fitzwaryn (of Caundle Haddon, Dorset, who variously represented Dorset, Devon and Somerset as a knight of the shire) and his grandchildren Margaret Naunton (daughter of Sir John's daughter Joan) and Baldwin St George (son of Sir John's daughter Elizabeth and a minor at the time). William wisely took steps to secure the documents that proved his rights to the property. In March 1383, Ivo Fitzwaryn and his wife obtained a commission of oyer and terminer to investigate their allegation that the prior of Wymondley had been seized by certain 'evildoers' on Newmarket Heath when on his way to conduct the funeral of his Priory's patron, Sir John Argentine, and had been forced to send for certain deeds which Sir John had entrusted to him for safekeeping and deliver them to William Argentine.<sup>74</sup> It was further alleged that the evildoers then assaulted Ivo and Sir John's widow, Margaret, and disrupted the funeral. How much truth there was in this version of events is not clear, but William was certainly able to prove his right to the property in question without undue difficulty and had therefore presumably secured documentary proof of his claims. In January 1383 a Hertfordshire inquisition had found that Sir John had held Great and Little Wymondley in chief by serjeanty and that his heirs were Margaret Naunton, Baldwin St George and Maud Fitzwaryn. But on 8 April, the escheator was ordered to investigate William Argentine's case, and a further inquisition in May confirmed that the property had been enfeoffed with reversion to William as he claimed.<sup>75</sup> Similarly, on 23 February, a Norfolk inquisition had found that Sir John held Ketteringham as of fee and that his heirs were Margaret Naunton, Baldwin St George and Maud Fitzwaryn, but on further investigation it was found that he had also previously held messuages in Little Melton which he had granted to feoffees who had granted them back to him for life, with remainder to William his son and Isabel de Kerdiston.<sup>76</sup> The Suffolk inquisition in February had found that Sir John held Halesworth jointly with his wife, with remainder to his son William and Isabel de Kerdiston, and in March the Cambridge inquisition had found that William had the reversion of Melbourn.<sup>77</sup>

Sir John's widow, Margaret, died in September 1383, less than a year after her husband, which may have simplified the situation. An inquisition post mortem held in

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<sup>74</sup> *CPR* 1381-5 p.260.

<sup>75</sup> *CIPM* XV Nos. 897; 898.

<sup>76</sup> *CIPM* XV Nos. 673; 674; 899; 901; 902.

<sup>77</sup> *CIPM* XV Nos. 675; 900; 896.

Suffolk confirmed that she had had a life interest in Halesworth, with reversion to William Argentine and his wife Isabel.<sup>78</sup> On 1 November, William was granted custody of Wymondley, Melbourn and the property at Little Melton, pending judgment in the royal courts as to whether they lawfully belonged to him or the heirs of Sir John, and in January 1384 he obtained possession of Halesworth under similar conditions.<sup>79</sup> In May 1384 he won his case and obtained livery of all the entailed properties, almost 18 months to the day after his father's death.<sup>80</sup> The total value of his property is not known, but in 1412 his Cambridgeshire holdings were worth £21 per annum and those in Hertfordshire worth £30 per annum.<sup>81</sup> He suffered no further serious challenge to his possession, except a suit for the manor of Newmarket brought by his kinsman Sir Edward Butler in 1394, which was easily defeated.

In 1399 he acted as cupbearer at Henry IV's coronation. This was in accordance with his tenure of Great Wymondley, a moiety of which was held by grand serjeanty for the service of rendering the King a silver-gilt cup at his coronation feast. William's father, Sir John, had performed this service at the coronation of Richard II. It is worth noting that Sir Ivo Fitzwaryn claimed the right to perform this role in the right of his wife, but Argentine prevailed, and in May 1400 strengthened his position by obtaining royal confirmation of a charter granted by King Stephen to one of his ancestors.<sup>82</sup> Fitzwaryn's challenge may have represented a last ditch attempt to secure the property, rather than a particular desire to perform this service, since the two were indivisibly linked.<sup>83</sup> However, William was secure in possession by this stage, and the service later descended with the manor to the Allington family, remaining with the holders of the manor of Great Wymondley down to the coronation of William IV.<sup>84</sup>

When Sir William Argentine died, in possession of his estate, in 1419, his heir was his six year old grandson, John, but the boy died four years later, leaving his sisters, Elizabeth and Joan as coheirs to the estates. Sir William's widow subsequently sold the wardship of the girls to William Allington of Horseheath (Cambs.) and they were subsequently married to Allington's legitimate son William and his bastard son,

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<sup>78</sup> *CIPM* XV No. 905.

<sup>79</sup> *CFR* X pp. 11-12 ; 29-30.

<sup>80</sup> *CCR* 1381-5 pp. 378-9.

<sup>81</sup> *Feudal Aids* VI pp 408 and 461.

<sup>82</sup> *CPR* 1399-1401 p.293.

<sup>83</sup> Tenure of the manor was 'the essence of the serjeanty' according to J H Round, *The King's Sergeants and Officers of State* (London,1911) p. 267.

<sup>84</sup> Round, *King's Sergeants* p.267. The Allingtons flourished and eventually obtained first an Irish peerage (of Killard), then an English peerage (of Wymondley) in the seventeenth century but the male line failed in 1723. [*CP* I pp. 106-108].

Robert.<sup>85</sup> The Argentine case is particularly interesting as it demonstrates an illegitimate son being favoured not only over collateral relations, but over legitimate daughters.

At around the same time as Sir John Argentine was making arrangements to disinherit his legitimate daughters in favour of a bastard son, Otto Bodrugan was arranging the future succession to the Bodrugan estates. The Bodrugan family illustrates just how fragile the line of male succession could be. At start of the fourteenth century they were a well-established and influential gentry family of Cornwall. By the time he died Sir Henry Bodrugan (c.1263-1308) had an estate comprising eleven main manors and a number of lesser holdings. His son Sir Otto Bodrugan (d.1331) had six sons who reached adulthood, Henry, William, Nicholas, Thomas, John and Otto. Yet by the end of the century there were no remaining legitimate heirs in the direct male line. Of Sir Otto's six sons Henry died just a few weeks after his father's death and before he obtained seisin of the estates.<sup>86</sup> The only child of William's to reach maturity was a daughter, Elizabeth, who married Sir Richard Cergeaux. After William's death in 1362 most of the Bodrugan lands passed into the hands of Elizabeth and her husband and remained in Sir Richard's possession 'by the courtesy' after his first wife's death. Little is known of Nicholas, but no surviving offspring are recorded. Thomas and John both entered the church and were dead by 1362.<sup>87</sup> It therefore rested with the youngest son, Otto, to preserve the family line. This he managed with only partial success as he had no legitimate son. He did however have an illegitimate son, William, and a legitimate daughter, Joan, who married Ralph Trenewith, by whom she had two sons, Otto and William. In 1386 Otto senior chose to settle the reversion of the Bodrugan estates (most of which were still in the possession of Sir Richard Cergaux) on his legitimate grandsons rather than his illegitimate son.<sup>88</sup> Although Otto junior died young, William survived, changed his name to Bodrugan and thus continued the Bodrugan line. A separate settlement made by his father in 1382 had given the illegitimate William a reversion in one messuage, one carucate of land and 100s of rent at Markwell and Carburrow after the death of Cergeaux.<sup>89</sup> This was not the first time that Markwell had been the portion of an illegitimate Bodrugan child, for William Bodrugan (d. 1307),

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<sup>85</sup> IPM on John, TNA C 139/10/27; Proof of age of Joan, who married Robert Allington TNA:PRO C 139/36/71; Proof of age of Elizabeth, who married William Allington C139/36/72.

<sup>86</sup> Maclean, *Trigg Minor* I p. 530.

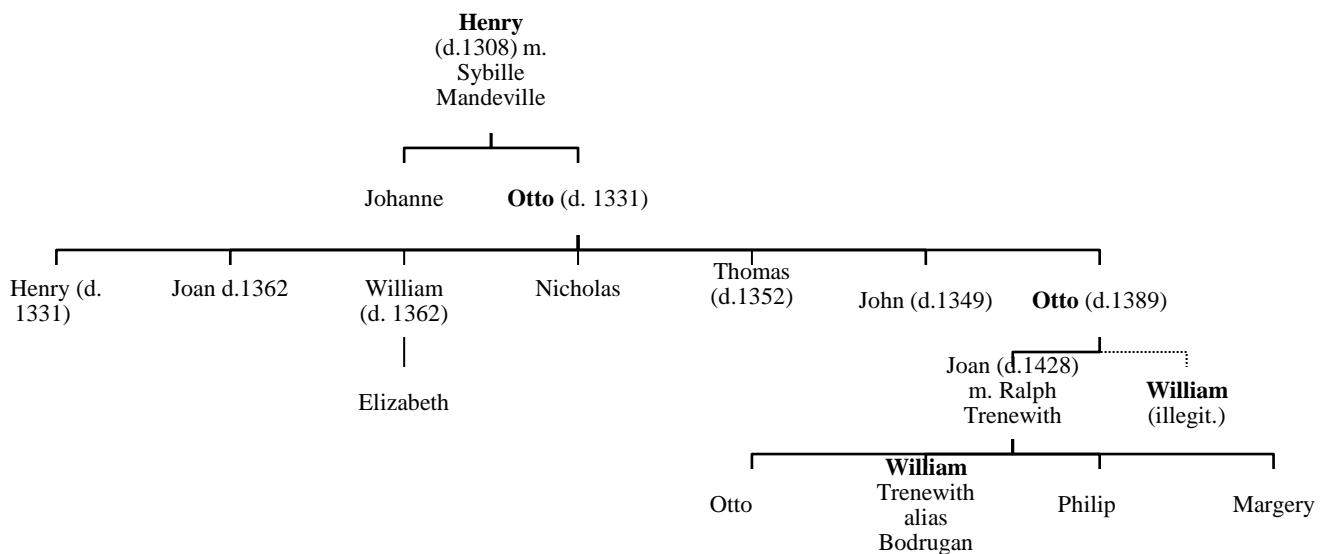
<sup>87</sup> J Wetter, *Bodrugans. A Study of a Cornish Medieval Knightly Family* (Lostwithiel, 1995) pp.3-4. The date of Nicholas's death is unknown, but he does not appear to have left any surviving offspring.

<sup>88</sup> *Cornwall Feet of Fines* ii nos. 757 and 758. This entail would take effect following the death of Sir Richard Cergeaux, who still held part of the estate by courtesy following the death of his wife.

<sup>89</sup> *Ibid.* no. 723.

archdeacon of Cornwall, (an uncle of the earlier Sir Henry who died in 1308), had granted it to the husband of his illegitimate daughter, Elizabeth, Adam de Markwell.<sup>90</sup> Under the settlement of 1386 William also had a reversionary interest in the manor of Tregrehan, but only in the event of the deaths of his legitimate nephews and nieces without heirs of their bodies.<sup>91</sup> In favouring a legitimate grandson through the female line rather than an illegitimate son, Otto Bodrugan thus took a different approach from that of Sir William Argentine. One key difference in this case is that much of the family estate was not in Otto's hands. Reassembling the patrimony after the death of Sir Richard Cergaux was to prove a difficult enough task without the additional factor of illegitimacy to complicate matters.<sup>92</sup>

**Figure 1. Simplified Bodrugan Family Tree<sup>93</sup>**



Although William Bodrugan the bastard did not fare particularly well in terms of landed settlement, he was at least able to maintain the status of a gentleman. He represented Helston in the parliament of April 1384 and Launceston in the parliament of February 1388. It has been suggested that these elections owed more to his father's

<sup>90</sup> Wetter, *Bodrugans* p.2 The Archdeacon had acquired several manors, of which Markwell was one.

<sup>91</sup> *Cornwall Feet of Fines*. No. 760.

<sup>92</sup> Otto himself had married an heiress, Joan de Trelowthan, who had brought him the manor of that name. [Wetter, *Bodrugans* p.4].

<sup>93</sup> Based on Wetter, *Bodrugans*.

standing in the locality than his own abilities.<sup>94</sup> If so, this would indicate closer family ties and more willingness on the part of his father to provide for his illegitimate son than the landed settlement might suggest. His integration into the wider Bodrugan family can be demonstrated by his support of his legitimate nephew and heir to the Bodrugan estate, William Bodrugan (alias Trenewith), in a dispute with the Trevarthian family, and his witnessing of charters both of his nephew and his father's wife.<sup>95</sup> He was also involved with his nephew, William, in trying to regain control of the manors of Tremodret and Trevelyn from Richard Cergeaux's widow and daughters by fairly unscrupulous means.<sup>96</sup> In 1402 it was found that Bodrugan's case rested on a forged document. Forgery may have been a family speciality: Sir Henry Bodrugan, the grandson of William's legitimate nephew, was accused of illegally altering wills and testaments to his own advantage in the 1470s.<sup>97</sup>

Like Otto Bodrugan, John Wilcotes of Great Tew, Oxon, a younger son who acquired a landed estate in Oxfordshire through an advantageous marriage, did not favour an illegitimate son over the legitimate female line. He left his illegitimate son Thomas with a reversionary interest in his estates at Dean and Chalford and Great Tew, after his wife and daughters. Thomas was also granted other lands and tenements.<sup>98</sup> In the event, after long disputes over John Wilcotes' will, the reversions fell in and Thomas took possession of Dean and Chalford and Great Tew more than twenty years after his father's death, having apparently spent much of the intervening period serving in France.<sup>99</sup> Similarly, the estates of William Spernore, of Spernall, Warwickshire, went to his daughters Margaret and Joyce. William junior, his illegitimate son, became a retainer of Henry of Monmouth.<sup>100</sup> William Case (d.1494), a gentleman from Norton-under-Hamden (Somerset) who served as a knight of the shire for Somerset in 1491-2,

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<sup>94</sup> *House of Commons* II p. 270.

<sup>95</sup> Wetter, *Bodrugans* pp. 37, 59. Joan Bodrugan had married John Trevarthian after the death of Ralph Trenewith.

<sup>96</sup> *CCR* 1396-9 pp. 268, 321, 371. Cergeaux's second wife was Philippa, daughter of Sir Edmund Arundel.

<sup>97</sup> *Oxford DNB* 6 p.415. This Henry Bodrugan was himself the presumed father of a bastard, John Beaumont, whose claim on the estates formerly held by his mother's husband was considered in Parliament during the reign of Henry VII (Nicolas, *Adulterine Bastardy* (London, 1836) pp. 57-9) See above p.70.

<sup>98</sup> He is presumed to be illegitimate or he would have inherited Great Tew under an entail drawn up in 1398. *House of Commons* IV p. 863.

<sup>99</sup> M D Lobel, *History of Dean and Chalford* (Oxfordshire Record Society xvii, 1935) pp.58-61.

<sup>100</sup> *House of Commons* IV pp. 424-6; *CPR* 1405-8 p.294.



mentioned two bastard sons in his will, but they were only to receive a share of his chattels if both of his legitimate daughters died before reaching the age of 20.<sup>101</sup>

Thomas Montagu, fourth earl of Salisbury (d.1428), had no legitimate son, but had a legitimate daughter, Alice, and an illegitimate son, John, who received a bequest of 50 marks in his father's will.<sup>102</sup> This son, generally referred to as the Bastard of Salisbury, followed a military career, serving in France during the 1430s and 1440s, where he was captain of Gournay and Gerberoy (1430-31), captain of Argentan (1431-4), Lieutenant at St Lô (1434-5) and captain of Fresnay (1446-8). He was described in the early 1440s as lord of Montgomery, but probably derived little in the way of income from this estate.<sup>103</sup>

In contrast with the case of Sir William Argentine, this case provides a good example of the precedence of a legitimate daughter and heiress over a bastard son. Salisbury's daughter, Alice, was married by February 1421 to Richard Neville (d.1460), the younger son of Ralph Neville, earl of Westmorland.<sup>104</sup> On Salisbury's death his heir male was Richard Montagu, his uncle.<sup>105</sup> Yet the earldom and most of the late earl's estates went to his daughter and her husband, whose right to the title was confirmed by the Privy Council in May 1429, although Neville's right to the associated seat in parliament had apparently to be referred to the Lords, and was confirmed only until the King reached his majority.<sup>106</sup> Richard Montagu received only a bequest of £100 and the lands which were held in tail male (including the manors of Amesbury and Winterbourne in Wiltshire and Canford in Dorset, though Thomas' widow held one-third of each of these in dower).<sup>107</sup>

There are several points to be borne in mind when considering why Montagu did not attempt to do more for his bastard son, as Sir John Argentine had done. Firstly, his father had been executed and attainted for his part in the conspiracy of the earls of Kent and Huntingdon to murder Henry IV. Although Thomas Montagu had been granted seisin of the estates his father had held in fee tail on proving his age in 1409, it took longer for him to secure reversal of the attainder.<sup>108</sup> A petition in 1414 was

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<sup>101</sup> TNA:PRO PROB 11/10.

<sup>102</sup> *Test. Vet.* p. 216.

<sup>103</sup> *Oxford DNB* 38 p. 769; M W Warner: 'The Montagu Earls of Salisbury c.1300-1428: A Study in Warfare, Politics and Political Culture' (University of London PhD Thesis, 1991).

<sup>104</sup> *CP XI* p. 395.

<sup>105</sup> *CCR* 1422-9 p. 430; *CIPM XXIII* nos. 274, 278, 280, 282,283

<sup>106</sup> Sir H Nicolas, *Proceedings and Ordinances of the Privy Council of England III* (London, 1834) pp. lix-lxi, 324-5.

<sup>107</sup> *Test. Vet.* p. 216; *CIPM XXIII* nos. 396, 398 .

<sup>108</sup> *CCR 1405-9* pp. 433, 443-5, 447, 455-8; *1409-13* p.1.

unsuccessful and it was not until 1421 that his petition to be fully restored as heir in blood was granted. Even then he recovered only entailed lands, not those held in fee simple.<sup>109</sup> It would therefore have been difficult for him to attempt a resettlement in favour of a bastard. Secondly, by 1421 his daughter and apparent heiress had married, and the Nevilles would therefore have been interested parties.<sup>110</sup> Furthermore, Salisbury may not have married his second wife until 1424, and the birth of a legitimate son was still a realistic possibility, since he was only aged about 40 when he was fatally wounded at the siege of Orleans.<sup>111</sup> Even so, the relative size of the cash bequests to his bastard son and to his heir male give an indication of Montagu's conception of the relative status of a bastard son and a legitimate uncle and heir.

Sir William Sturmy (d. 1427), a diplomat and speaker of the House of Commons, was another landowner who had no legitimate son, though he had a bastard son called John. His heirs were his daughter Agnes and John Seymour, son of his elder daughter Maud, similar circumstances to those in which Sir John Argentine had arranged to transfer his property to his illegitimate son William some 25 years earlier, yet Sir William did not follow Argentine's example. However, there were later allegations of fraud involving John Sturmy and a cousin, Robert Erle, concerning a supposed deathbed enfeoffment of the manors of Wolf Hall, Stichcombe, Standen, Stapleford and Burbage and lands in Pickedwood and Crofton (Wilts) to John Benger in which it was claimed that John Sturmy and Robert Erle suppressed the news of Sir William's death.<sup>112</sup> Whether Sir William really elected to make a deathbed enfeoffment with a view to providing for his illegitimate son, or whether it was a fraud is uncertain, but either way John Sturmy did not derive any benefit from it. The case dragged on into the 1450s, but the manor of Crofton and main family seat of Wolf Hall passed into the Seymour family.<sup>113</sup> Like Otto Bodrugan, Sir William nevertheless took responsibility for his illegitimate son's future, ensuring his position in local society. In 1422, Sir William secured John Sturmy's election to the Commons for Ludgershall,

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<sup>109</sup> CP XI p.393. C Given-Wilson (ed.), 'Henry V: Parliament of April 1414', item 12; 'Henry V: Parliament of November 1414', items 13-14; 'Henry V: Parliament of May 1421, Text and Translation' item 21, *PROME*. The attainder was not fully reversed until 1461. (Rosemary Horrox (ed.), 'Edward IV: Parliament of November 1461, Text and Translation'. item 33 *Ibid.*).

<sup>110</sup> G H White, in considering why the Earldom was deemed to have descended to Alice Montagu and her heirs, and not the heir male, Richard, despite the Earldom having apparently been created with remainder in tail male, pointed, *inter alia*, to the respective power and importance of Alice's husband, Richard Neville and Richard Montagu. CP XI Appendix F.

<sup>111</sup> *Oxford DNB* 38 p. 769.

<sup>112</sup> *CPR 1446-52* pp. 554-6.

<sup>113</sup> *VCH Wilts* xvi pp. 17, 27.

along with his grandson and heir, John Seymour. Robert Erle represented Great Bedwyn in the same parliament.<sup>114</sup> John Sturmy was also one of the executors of his father's will and received a bequest of a gold cup. Sir William did not state John's illegitimacy explicitly in his will, in which he is referred to merely as *filio meo*.<sup>115</sup>

Sir Thomas Cobham of Sterborough (Surrey), had a legitimate daughter, Ann, from his marriage to Ann, the daughter of Humphrey Stafford and widow of Aubrey de Vere, who was his heiress. Aged four at her father's death, she was married first to Edward Blount, Lord Mountjoy, who died whilst still a minor, and then to Edward Burgh. However Sir Thomas left his manor of Pentlow (Essex) with the advowson of the church and also land and the advowson of the church in Cavendish (Suffolk) and some lands in Kent to his illegitimate son Reginald. He also bequeathed a number of items of plate to Reginald, who would appear to have been a minor, since he was only to receive them on reaching the age of 20 or on his marriage. In the event of Reginald's death before coming into his inheritance, these items were to be sold and the funds distributed for the good of the souls of Sir Thomas and of Reginald. Reginald's mother was apparently a sister of Sir Gervase Clifton, who is described as Reginald's uncle in the will, in which he is named as one of Reginald's trustees.<sup>116</sup>

Sir Richard Nanfan of Trethewel (Cornwall) and Birtsmorton (Worcs.) died in 1507, leaving no male heir of his body, though he had at least two legitimate daughters and two bastard sons, John and William. Sir Richard left the Birtsmorton lands, which had been purchased by his grandfather in 1424/5, to his bastard son John in his will. The Nanfans were an old Cornish family and Sir Richard's Cornish lands passed not to John, but to James Erisey, his heir general and one of the executors of his will. John eventually gained possession of Birtsmorton, although only after a suit against Richard Nanfan's widow, Margaret. In his will, Nanfan bequeathed his 'great red horse that came from Calais' to his bastard son John, who was also the residuary legatee.<sup>117</sup> William, who was born by 1485, received little in the way of direct provision from his father, but benefitted through patronage by means of connections with Cardinal Wolsey. He represented Dorchester in the parliament of 1529.<sup>118</sup>

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<sup>114</sup> *House of Commons* II p.523.

<sup>115</sup> TNA:PRO PROB 11/3.

<sup>116</sup> *VCH Surrey* IV p. 305; TNA:PROB11/6; *Test. Vet.* pp .323-4; Wright, *Essex* I p. 565.

<sup>117</sup> *Oxford DNB* 40 p.140; TNA: PRO C1 /341/25; Wedgwood, *The Commons, 1439-1509* p. 623.

<sup>118</sup> S T Bindoff (ed.) *History of Parliament: The Commons 1509-1558* (3 vols, London, 1982) III p.1

The will of John Stockdale, another alderman of York, made in February 1507, shows a clear hierarchy in the monetary bequests. In his will he left £20 to his legitimate daughter, Isabel, and ten marks each to his bastard son and daughter, who are described as such in the will. The daughter, who would appear to have been quite young, was living with a cousin of Stockdale's at Hessell, who received a bequest of 26s 8d for her trouble. Stockdale clearly believed in keeping things in the family; his illegitimate son, John, was at Kirkstall Abbey, where Stockdale's brother was Abbot. Stockdale also bequeathed 20s each to two nephews.<sup>119</sup>

### Scenario 3: Legitimate Sons and Bastard Daughters

Richard Bonaventure, a London goldsmith, left rents in Cripplegate to his illegitimate daughter Juliana in his will of 1274. His legitimate daughter Joanna was to receive rent 'at the Red Cross' and his legitimate son and heir received a tenement in Westchepe and rents in Godronelane.<sup>120</sup>

William Roos, 7<sup>th</sup> Lord Roos of Helmsley, had a large legitimate family comprising five sons and four daughters (Beatrice, Alice, Margaret and Elizabeth) but also left £40 in his will of 1412 to an illegitimate daughter, Joan ('*filie mee illegitime*'). Of his legitimate daughters, only Elizabeth was mentioned in the will, but the Rievaulx Chartulary also mentions daughters called Beatrice (a nun), Alice and Margaret.<sup>121</sup> It is possible that they were not mentioned in the will because they were already married or in a religious order by that time, although bequests to married (or religious) daughters were hardly unusual.<sup>122</sup>

The Norfolk esquire William Shelton (d.1421) held the manors of Great Snoring, Thursford and two manors Shelton called 'Overhall' and 'Netherhall' and land in Hardwick with the advowsons of Thursford, Great Snoring and Hardwick, together worth about over £40 p.a. at the time of his death. His heir was his 17 year old son, John. He provided for an illegitimate daughter, Amice, by means of an annuity of 40s, from his manor in Kerdiston, which he had conveyed to feoffees for the performance of his last will.<sup>123</sup>

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<sup>119</sup> *Test. Ebor* IV p.p. 256-7. The son may have been a monk at Kirkstall, where Stockdale's brother was abbot.

<sup>120</sup> *Husting* I p21.

<sup>121</sup> *Reg. Chichele* II pp. 22-28; *Test. Ebor.* I pp. 357-60; *Chartulary of Rievaulx*, ed. J C Atkinson (Surtees Society 83, 1889).

<sup>122</sup> Margaret was married to James Tuchet, Lord Audley by 1415. *CP* I p. 341.

<sup>123</sup> *CIPM* XXI nos. 806-7.

In his will of 1428, the lawyer John Pigot of Ripon left his law books to his legitimate son John, monetary bequests of 40 marks each to his other legitimate sons Richard and Roger and 100 marks to his daughter Margaret for her marriage. His illegitimate daughter Matilda (*'filiae meae bastard'*) was to receive the lesser amount of just £10 for her marriage. The provision for these daughters was intended to secure their future through marriage. Pigot's married daughter Joan was to receive a bequest of just 40 shillings.<sup>124</sup>

John Cokayn of Derbyshire (d.1504) was succeeded by his grandson Thomas, son of his legitimate son Thomas. By a deed dated 21 November 1494 he had provided his bastard daughter, Jane, with a life interest only in a parcel of land in Little Clifton worth 5 marks per annum.<sup>125</sup>

#### **Scenario 4: Legitimate daughters and bastard daughters**

Despite the doubts about his sexual preferences, Piers Gaveston, Earl of Cornwall, had a daughter, Joan, by his wife, Margaret de Clare. J S Hamilton has argued that there is also evidence to suggest that the 'Amie de Gaveston' who served as a damsel of the Queen's Chamber in the 1330s was another daughter, but illegitimate.<sup>126</sup> Hamilton bases his argument on the generosity of the King in celebrating the birth in 1312 of Gaveston's daughter by Margaret, which suggests that the birth of another daughter to the couple would not have gone unrecorded. He points out that after Gaveston's death, careful provision was made for his widow (who was the king's niece) and legitimate daughter. Joan was raised in the convent at Amesbury (a popular home for royal nieces) and a marriage to Thomas de Multon, Lord Egremont was proposed, though she died whilst still a minor. The arrangements for Amie were of a lesser order. She married John de Driby, a king's yeoman, an individual whom Hamilton considers 'a suitable marriage for a damsel of the chamber endowed with a modest income provided through the queen's patronage, but by no means a suitable marriage for the legitimate daughter of an earl.' There is of course a circular argument in deducing that Amie must have been illegitimate because of the level of provision made for her, and

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<sup>124</sup> *Test. Ebor.* I p.416.

<sup>125</sup> *CIPM Hen. VII II* pp. 527-9.

<sup>126</sup> J S Hamilton, 'Another Daughter for Piers Gaveston? Amie de Gaveston, Damsel of the Queen's Chamber', *Medieval Prosopography* 19 (1998) pp 177-186. Hamilton was refuting the claims made in a series of articles in *The American Genealogist* in the 1960s by John G Hunt that Amie was a second, legitimate daughter of Gaveston and Margaret de Clare.

then using that as evidence of the differences in the levels of provision for illegitimate daughters. However, Hamilton's case for Amie's illegitimacy seems plausible.

The will of Walter, Lord Fitzwalter (10 April 1431), is interesting as the monetary bequests showed no distinction between the testator's legitimate daughter Elizabeth, his two bastard daughters, Maria and Gabrielle, and Anna and Joanna, his wife's two daughters from her previous marriage to William Massy. Each was to receive the sum of 40 marks towards her marriage.<sup>127</sup> The identity of the mother of his bastard daughters is unknown, but the generosity of his provision may be related to the fact that his two sons had died in infancy and that his legitimate daughter and heiress was less than a year old, having been born in July 1430.<sup>128</sup>

Sir John Leeke (d.1522) left equal portions of 100 marks each to his legitimate daughter, Anne and his three bastard daughters by his mistress Anne Mainwaring: Susan, Elizabeth and Dorothy, as well as to a further unborn child, if it should live.<sup>129</sup> Leeke had married Jane Foljambe in 1489 when he was significantly under age. Although the marriage produced a son, by 1517-18 Jane was lodged in a nunnery, at the expense of her brother Geoffrey Foljambe.<sup>130</sup> Leeke evidently regarded Anne Mainwaring in the light of a wife and it was she, rather than Jane, whom he appointed as an executor of his will.

## Summary

Provision made for illegitimate children by those who also had legitimate male or female heirs of their body could thus vary considerably. Illegitimacy was not the only or in some cases even the primary factor which determined the level of provision made. Various other considerations could influence the level of provision made, including the nature of the relationship and relative status of the parents and even, in the case of Sir John Argentine, the desire for a male to continue the family line. Further examples of the use of illegitimate children as quasi-heirs will be considered in the next chapter.

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<sup>127</sup> *Reg. Chichele* II pp. 469-70.

<sup>128</sup> *CP* V pp. 483-4; *Oxford DNB* 19 p. 949.

<sup>129</sup> TNA PROB 11/21; printed in D G Edwards (ed.) *Derbyshire Wills* pp. 56-7.

<sup>130</sup> Wright *Derbyshire Gentry* p.52.

# Chapter 5: Illegitimate children as substitute heirs

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*The bastards were often admitted to the succession where the lawful children were minors and the dangers of the situation were pressing; and a rule of seniority became recognized, which took no account of pure or impure birth<sup>1</sup>*

Some landowners either had no legitimate children at all, or had legitimate children who predeceased them. This chapter will examine the circumstances in which some of them used legal devices to transfer all, or a significant part of their estate to illegitimate children, and the constraints which affected their freedom of action to use their bastards as *de facto* heirs.

## **Bastard heirs on the continent**

In parts of continental Europe, most notably the Iberian Peninsula and Italy, legitimation of bastards was possible. This provided a realistic option for parents who wanted a bastard to inherit in the absence of a legitimate heir of the body, though much depended on the circumstances and type of illegitimacy. The relative ease with which legitimation could be achieved meant that it was possible for a bastard to become the heir in the absence of legitimate sons, and it was also useful to have illegitimate sons in reserve. Manfredo Repeta of Vincenza had four legitimate sons, and three illegitimate, born after his wife ceased to bear children. Two of his legitimate sons and the two eldest bastards died in infancy. The youngest bastard, Riccardo, was born in the family home and integrated into the lineage through the names he was given.<sup>2</sup> The most extreme example of bastard succession in Italy is probably the House of Este of Ferrara, which was led by princes of illegitimate birth for a period of almost 150 years until 1471, because of a preference for legitimated bastards over legitimate daughters.<sup>3</sup> The historian Jacob Burckhardt was much exercised by this apparent acceptance of bastards within the elites of Italian city states, particularly in the fifteenth century, equating illegitimacy of power and illegitimacy of birth, which he believed to be closely linked.

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<sup>1</sup> Burckhardt, *Civilisation of the Renaissance in Italy*, p.30.

<sup>2</sup> Grub, *Provincial Families of the Renaissance*, pp. 38-9.

<sup>3</sup> Bestor 'Bastardy and Legitimacy'.

He observed that in the fifteenth century there was not a single Italian princely house in which bastards were not tolerated.<sup>4</sup>

Burckhardt argued that the Italian experience was very different from that of northern Europe, where bastards might be provided for, but in ways that kept them distinct from the main line. In France, illegitimate children could theoretically acquire noble status from their father, but this did not confer rights of inheritance unless they were legitimated. The situation was complicated by customary laws which differed according to region. In the Holy Roman Empire, illegitimate offspring of nobles could not acquire noble status without legitimation; and although possible, legitimations were rare as only legitimation by subsequent marriage provided inheritance rights; legitimation by rescript did not.

### **Bastard heirs in England – the McFarlane hypothesis**

In England, which lacked formal mechanisms for legitimation, bastards of noble birth were generally provided with an appropriate livelihood, as noted in the previous chapter. The difference was that they were able to take on the estates and status of their father only by means of legal devices which circumvented the legal disabilities attached to illegitimacy. It was in effect a *de facto* equivalent to the continental legitimation by testament. The bastard remained illegitimate, but this ceased to matter if he had obtained his father's property and status regardless of the circumstances of his birth. The use and the entail, by providing a means by which landowners could exercise more control over the descent of their estates, made it possible for bastards to become *de facto* heirs. K B McFarlane claimed that the new flexibility which the use, in particular, gave landowners to dispose of their estates according to their own inclinations rather than strict rules of primogenitary inheritance led to an increase in the status of bastards during the later Middle Ages.<sup>5</sup> Doubts about McFarlane's notion that the use and the entail were widely utilised in order to undermine normal primogenitary practice have been expressed in more recent work, but it is nonetheless true that they were used for this purpose by some individuals and in particular to provide for bastards who had no rights of inheritance at all.<sup>6</sup> There were, however, limits to what could be achieved by these means.

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<sup>4</sup> Burckhardt, *The Civilization of the Renaissance in Italy* p.30.

<sup>5</sup> McFarlane, *English Nobility* p. 73.

<sup>6</sup> See S J Payling, 'Social mobility, demographic change, and landed society in late medieval England', *ECHR* 45 (1992) pp.51-73.



The case cited by McFarlane as the earliest example of the employment of a prototype use to benefit an illegitimate son was that of the last Vescy lord of Alnwick. This case merits detailed examination, for the attempt of William de Vescy of Alnwick to enable his bastard son William de Vescy ‘of Kildare’ to inherit at least part of the family estate clearly reveals the possibilities and constraints involved in providing for a bastard son by this means. William’s need was perhaps more urgent than most; with the death of his son and heir apparent, John, in 1295 at the age of 25, he had no legitimate son to succeed him and his heir general was a distant relative. William was the second son of William de Vescy (d. 1253) and had succeeded his childless brother, John, in 1289. After the death of John de Vescy the younger, the heir general appears to have been Gilbert de Aton, a descendant of Margery de Vescy, the daughter of Warin de Vescy, the younger son of William de Vescy (d. 1183).<sup>7</sup> William de Vescy of Kildare, the son of a liaison with Debforgaill, daughter of the lord of Desmond, was, failing the birth of another legitimate heir, the only individual who could continue the Vescy name and blood through the male line. As a bastard, he could not inherit by common law, but he could benefit from the circumvention of the common law rules of inheritance.

The Vescys were a northern family whose rise to eminence had begun in the early twelfth century with the marriage of Eustace FitzJohn, a minor baron and official of Henry I who held the manor of Saxlingham (Norfolk), to Beatrice, heiress of Yves de Vescy, the lord of Alnwick and Malton. During the ensuing two centuries the family successfully steered a tricky course between service to the English crown and rebellion and by the end of the thirteenth century their range of landed interests had expanded to encompass Scotland, Wales and Ireland as well as their original powerbase in northern England.<sup>8</sup> Through their mother, Agnes Ferrers, the Vescy brothers stood to gain a share of the Pembroke inheritance, though Agnes’ longevity meant that they ultimately had little time to enjoy it. Her mother had been Sibyl, one of the daughters and coheirs of William Marshall, earl of Pembroke. Agnes outlived her eldest son John and, when she died in 1290, it was William who inherited her estates in Kildare, an inheritance

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<sup>7</sup> It is possible that Warin de Vescy, from whom Gilbert de Aton’s claim originated, was also not legitimate. According to a pedigree printed in Dugdale’s *Monasticon* VI pt 2 p.957 ‘ex iste Will. bastard genuit Warinum, qui vocatur Warinus de Vescy... Qui Warinus desponsavit Matildem filiam Walranni de Wellon, et genuit ex eâ Matildem et Marjoriam, filias et haeredes; quarum una fuit desponsata Gilberto de Aton’. On William de Vescy of Kildare’s death, there seems to have been some doubt as to the identity of the right heir of William de Vescy senior and Gilbert de Aton appears to have had difficulty in obtaining livery of his inheritance. This may explain the absence of any protests at the time of the Vescy settlement. [*CIPM* V no. 534; TNA: PRO SC8/15/705].

<sup>8</sup> Keith Stringer, ‘Nobility and Identity in medieval Britain and Ireland: the de Vescy family, c.1120-1314’ in Brendan Smith (ed) *Britain and Ireland 900-1300: Insular Responses to Medieval European Change* (Cambridge, 1999) p.199.

which seems to have affected the course of his life in more ways than the simply financial. A few months later he was appointed Justiciar of Ireland, a post which he held for four years, before being dismissed amid allegations of treason. Whilst the accusations of treason may have been unfair, Vescy was clearly engaged in local feuding which was making his position untenable.<sup>9</sup> Shortly after his dismissal, Vescy suffered another blow. His only son by his wife, Isabella de Periton, died at Conway, bringing the legitimate line to an end.<sup>10</sup> By now, Vescy held the barony of Sprouston in Roxburghshire (Scotland); the liberty of Kildare (Ireland); Caerleon (Wales); Alnwick and Tughall (Northumberland); Malton, Langton, Brompton, Wintringham and Brind, Gribthorp, Thornton and Newsholme (Yorks); Caythorpe (Lincs.) and Eltham (Kent) as well as townhouses in Lincoln, Pontefract and London. The English lands alone were estimated to be worth over £600 p.a. in 1254, excluding the lands held in dower by Agnes de Vescy.<sup>11</sup> He also had a tenuous claim on the Scottish throne through his grandmother Margaret, illegitimate daughter of William the Lion, King of Scots.

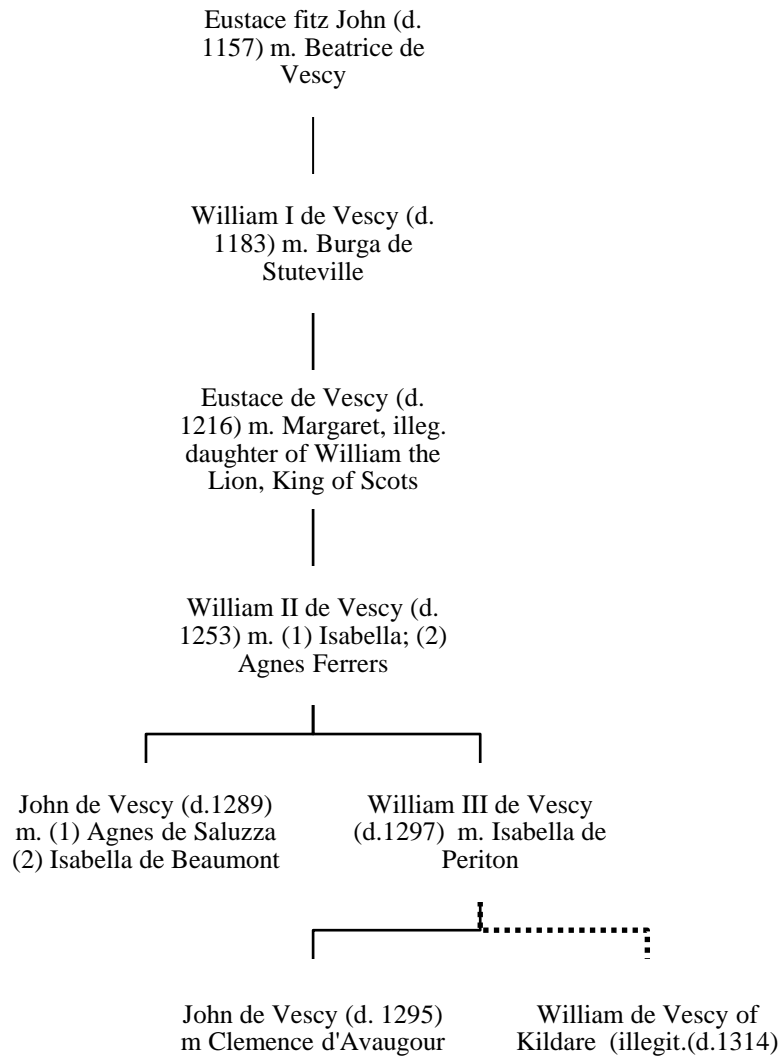
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<sup>9</sup>Stringer, 'Nobility and Identity' pp 234-6.

<sup>10</sup> *CP XII ii* pp 269-285. The pedigree of the Vescys can be found in the *Percy Chartulary* p267.

<sup>11</sup> Stringer, 'Nobility and Identity' p.205.

**Figure 2. Simplified Vescy family tree**



William de Vescy's plan was to convey the available parts of his Lincolnshire, Yorkshire and Northumberland estates, including the main family seat at Alnwick, to Anthony Bek, bishop of Durham. Bek then regranted the Lincolnshire and Yorkshire estates, though not Alnwick or Tughall in Northumberland, to William for life, with remainders to William de Vescy of Kildare and his heirs and then to William's right heirs.<sup>12</sup> The manors in which William de Vescy of Kildare was to have the reversion included Malton, Langton, Wintringham and Brompton in Yorkshire and Caythorpe in Lincolnshire. Newsolme was held in dower by Clemence, widow of William de Vescy's legitimate son John.<sup>13</sup> Alnwick and Tughall were, in default of legitimate heirs of the

<sup>12</sup>Percy Chartulary, pp. 265-66; *Yorks Arch Soc Record Series CXXI* (1955) p. 161.

<sup>13</sup>CCR 1288-96 p.144.

body of William de Vescy senior, to remain to the bishop. Eltham had previously also been granted to Bek.<sup>14</sup>

As a legal device for the conveyance of estates to a bastard, the plan worked in the short term. William senior died on 19 July 1297. On 15 August of that year, an order was given to the escheator on this side of the Trent to release to William de Vescy of Kildare the manor of Caythorpe in Lincolnshire, in accordance with the fine levied before John de Metingham and the Justices of the Bench between William de Vescy, deceased, and the bishop of Durham in the twenty-fourth year of the reign, and a similar order was given to the escheator North of the Trent regarding Malton, Langton, Wintringham and Brompton in Yorkshire.<sup>15</sup> William de Vescy of Kildare did homage for Caythorpe on 6 May 1298, paying 100s for his relief.<sup>16</sup> He was presumably in possession of Malton by December 1298, when a writ was directed to his bailiffs concerning the delivery of a thief imprisoned there to the sheriff of Yorkshire.<sup>17</sup> The barons of the Exchequer obviously regarded him as the legitimate successor to his father, for in 1299 and 1303 William de Vescy of Kildare obtained writs acquitting him of their demands for repayment of his father's and uncle's debts.<sup>18</sup> Inquisitions post mortem show that he held the manors concerned at the time of his death and the juries were familiar with the terms of the enfeoffment. Their returns show that they knew that William de Vescy of Kildare was a bastard but that he held the manors in fee tail and that since he died without heir of his body, the next heir was the right heir of William de Vescy, whoever that might be. Their only problem was with the identification of the next heir.<sup>19</sup> The enfeoffment had worked. The bastard held the lands for his life and after his death without issue they were to return to the heir general, avoiding an escheat. William de Vescy of Kildare also owned two houses in Lincoln by burgage which later bequeathed to be sold, the proceeds to be distributed for his soul among his servants.<sup>20</sup>

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<sup>14</sup> C M Fraser, *A History of Anthony Bek, Bishop of Durham 1283-1311* (Oxford, 1957) pp. 107-8.

<sup>15</sup> *CCR* 1296-1302 p. 54. According to the inquisition post mortem of Roger de Mowbray, held in 1301, William de Vescy of Kildare held the manors of Brumpton, Langton, Wintringham, Malton and Neusom, as well as the towns of Soureby, Brakenberou, Suthcome, Hesel and Swannysland [*CIPM III* pp. 361-2].

<sup>16</sup> *CFR* 1272-1307 p. 399.

<sup>17</sup> *CCR* 1296-1302 p. 226.

<sup>18</sup> *CCR* 1296-1302 p. 233; *CCR* 1302-1307 p. 39.

<sup>19</sup> *CIPM V* 534.

<sup>20</sup> *CIPM V* no. 534. Although an inquisition taken after the death of Thomas of Lancaster shows that he held certain lands in Brompton as escheat on the death of William de Vescy of Kildare [*CIPM VII* no. 82].

William de Vescy of Kildare thus received his estates, and had a personal summons to parliament in 1313 and 1314.<sup>21</sup> Only his death at Bannockburn prevented him from saving the family line; in the event, with him, the male line of Vescys died out. The legal constraints surrounding William de Vescy of Kildare had therefore been at least partially circumvented. He had however only gained a portion of the Vescy inheritance and the question remains as to why William de Vescy senior transferred only the Yorkshire and Lincolnshire estates to his bastard son.

One theory is that he intended no such thing. There were later rumours that Bek had in effect swindled William de Vescy of Kildare out of this part of his inheritance.<sup>22</sup> Some corroboration of the story may be provided by an undated petition in which William de Vescy of Kildare asked the king to enforce the covenants between his father and the bishop of Durham to invest him in the lands which his father gave to the bishop, of which he had no part yet, to his disinheritance.<sup>23</sup> It nevertheless seems strange, as Bean observed, that such an important estate as Alnwick was not specifically identified, if it was the subject of this petition.<sup>24</sup> Bean suggested that the petition may have related to the Yorkshire and Lincolnshire estates, or possibly Scottish ones, since it survived with records relating to Scotland. Yet this explanation also seems unsatisfactory as William de Vescy of Kildare seems to have received the Yorkshire and Lincolnshire lands fairly promptly, whilst no Scottish estates are mentioned in any of the surviving documents of the transactions between Vescy and Bek. In any case the main Scottish estate of Sprouston had been surrendered to the Crown.<sup>25</sup> Even if Alnwick were the subject of the petition, however, it does not prove that William senior truly intended Alnwick to go to his bastard son, as the petition may reflect a bargaining position rather than a genuine grievance. Moreover, the extant records of the transactions seem to confirm that the reversion of Alnwick was never intended for William the younger.<sup>26</sup> This great prize was perhaps the price of ensuring Bek's support.

Alexander Rose noted that the surviving documents do not include an official record of the conveyance of Alnwick, merely a private copy, and suggests that the

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<sup>21</sup> F. Palgrave, ed., *The Parliamentary Writs and Writs of Military Summons* (2 vols in 4 parts; Record Commission; London, 1827-1834) pp 1560-1.

<sup>22</sup> The evidence relating to this story was thoroughly explored by JMW Bean, 'The Percies' Acquisition of Alnwick' *Archaeologia Aeliana*, 4<sup>th</sup> series, xxxv (1954).

<sup>23</sup> *Cal Scot. 1307-10*, no. 187, p.35. This appears to be the same document as TNA:PRO C 47/22/4/53, which is tentatively dated to 1300.

<sup>24</sup> J M W Bean, *The Estates of the Percy Family 1416-1537* (Oxford, 1958) pp. 5-6n.

<sup>25</sup> Possibly there was some delay in delivering part of the Yorkshire estates.

<sup>26</sup> *Percy Chartulary* ed. M T Martin (Surtees Society CXVIII, 1909) pp. 219-225; 349-351.

bishop may not have been above a little forgery.<sup>27</sup> The Percy Chartulary contains a draft concord, dated at Stapleford on 29 October 1295 between William senior and Bek, in which it is clearly stated that in the event of Vescy's death without an heir of his body, the Yorkshire and Lincolnshire lands were to go to William Vescy of Kildare, whilst Alnwick and Tughall were to remain to the bishop and his heirs.<sup>28</sup> Rose argues that since no copy of this agreement exists in the Exchequer records, it may have been altered. A final concord relating to the Yorkshire and Lincolnshire manors was registered, and appears in the Feet of Fines, but the Alnwick conveyance exists only in a private copy in the Percy Chartulary.<sup>29</sup> Whilst fraud is not impossible, there is little positive evidence to support it.<sup>30</sup> The question arises of why Alnwick should have been dealt with in a separate fine if it was Vescy's intention to devise it in exactly the same way as the Yorkshire and Lincolnshire estates. On the other hand, there are official records acknowledging both Bek and William de Vescy of Kildare as successors to William senior's estates. On 2 March 1299, the sheriff of Northumberland was ordered not to pursue the bishop of Durham, tenant of certain of the lands held formerly by William de Vescy, deceased, for debts of William or his brother John, in accordance with letters patent issued by the king in consideration of William's surrender of Kildare and Sprouston to the crown. A similar order was issued to the sheriffs of York and Lincoln in respect of William de Vescy of Kildare.<sup>31</sup> If Bek was involved in a swindle, it was a successful one. It is more likely, however, that the official record of the Alnwick conveyance merely went astray.

A more plausible explanation for Vescy's disposition of his estates is that he was limited by political constraints, both in the wider sense and in terms of national politics. He needed the assistance of a powerful friend in order to secure the transfer of his estates and there were few more powerful in the locality than the bishop of Durham. Bek may well have driven a hard bargain, Alnwick being the price of his support. Moreover, as Stringer points out, Vescy was in a relatively weak position at the time, having been recently dismissed from his post of Justiciar of Ireland in 1294. It may be significant that Bek and Earl Warenne had been appointed as keepers of the northern

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<sup>27</sup> Alexander Rose, *Kings in the North* (London, 2002) pp. 152-4.

<sup>28</sup> *Percy Chartulary* pp.349-350.

<sup>29</sup> *Percy Chartulary* pp. 265-6. The fine relating to the Yorkshire and Lincolnshire estates is held in the Feet of Fines, *Yorkshire Feet of Fines 1272-1300*, Yorkshire Archaeological Society CXXI (1955) p. 161 and is referred to in subsequent documents (*CCR* 1296-1302 p.54).

<sup>30</sup> Bean observed that an examination of the original of the *Percy Chartulary* had not shed any light on the matter.

<sup>31</sup> *CCR* 1296-1302 p. 233.

counties on 5 October 1295.<sup>32</sup> Alnwick was a strong fortress in a vulnerable area. As David Carpenter observed, families such as the Vescies, whose landed interests spanned the border, were ‘genuinely Anglo-Scottish.’<sup>33</sup> Vescy had been replaced as Justiciar of Ireland following allegations of treason, and the family had a rather chequered history of rebellion interspersed with royal service. It may well be that sacrificing Alnwick was necessary in order to achieve royal support for his plans. Vescy appears to have been content to allow Kildare, another politically sensitive area, to revert to the crown. In February 1297 he granted the liberty, castle and county of Kildare to the King, in return for which he was pardoned all his own debts to the crown and those of his brother John, including debts from his period as justiciar of Ireland and Justice of the Forest beyond the Trent. He received a regrant of the estates for life only in June 1297. The Scottish estate of Sprouston was dealt with in the same way.<sup>34</sup> The plan after 1295 appears to have been to turn his bastard son into a member of the English nobility who could carry on the family name even if the family seat was no more, rather than allow him to find a role in Scotland, where the Vescys had a weak claim to the throne, or among his Irish kin in Kildare, where he could potentially have been a thorn in the side of the Crown.<sup>35</sup> It may be significant that of the Yorkshire and Lincolnshire estates transferred to William de Vescy of Kildare only Caythorpe was held in chief.<sup>36</sup> However, the weakness of Vescy’s position should not be exaggerated. He was reappointed as Justice of the Forest North of the Trent on 24 September 1295 and was sent to Gascony on the King’s service in late 1295, receiving a grant that in the event of his death whilst on the King’s service, the king would charge his heirs with the debts due from him at the Exchequer, and his executors should have free administration of his will.<sup>37</sup> It should also be borne in mind that the Yorkshire estates were the most valuable, and that in the

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<sup>32</sup> Stringer, ‘Nobility and Identity’.

<sup>33</sup> David Carpenter, *The Struggle for Mastery. Britain 1066-1284* (London, 2003)

<sup>34</sup> *Cal.Ireland* 1293-1301 pp. 172-4 and 200.

<sup>35</sup> Vescy had actually made a claim to the Scottish throne on the basis of his descent from William the Lion (via an illegitimate female line) following the death of Margaret, the Maid of Norway, in 1291, although he did not pursue it very energetically, and abandoned the attempt shortly before Edward pronounced his adjudication in November 1292. These events were nonetheless recent enough for Edward to have them in mind.

<sup>36</sup> Alienation of land held in chief required a licence from the Crown, but Bean has shown that these were easier to obtain from c. 1294 onwards. [Bean, *Decline of English Feudalism* p.114]

<sup>37</sup> *CPR* 1292-1301 p. 168. This was a valuable privilege normally granted to leading magnates or those who had provided particularly valuable service to the crown, with only 16 such grants being made by Edward I, according to Bean, *Decline of English Feudalism*, p.34.

political situation of the time estates in Northumberland might have seemed more vulnerable.<sup>38</sup>

There is yet another possibility, however. William senior may simply have felt that it was not right or appropriate for a bastard to succeed to the whole estate. The choice of Caythorpe, which had been his own portion as a younger son, may also be significant. This question of the limiting effects of social convention will be explored more closely in the case of the last Earl Warenne.<sup>39</sup>

One point which is not clear from the surviving evidence is the age of William de Vescy of Kildare at the time of his father's death. According to Dugdale, he was a minor when the arrangement with Bek was made.<sup>40</sup> Graystones' chronicle refers to him as *parvulus*. The charge against Bek was that he had been entrusted with the lands to keep them to the use (the words *ad opus* were specifically used in the chronicle account) of the young son until he came of age and that he broke this trust. This would seem right if William junior had been conceived whilst William senior was in Ireland as Justiciar (1290-94). Yet he is recorded as having done homage for Caythorpe in 1298 when he can have been no more than eight by this reckoning.<sup>41</sup> He appears to have received the Yorkshire and Lincolnshire estates without much delay, suggesting that he was of age. There is no mention of any guardians. There is also a faint possibility that he was married by 1297. Although his surviving inquisition post mortem returns do not mention any wife, in 1335 Matilda, late the wife of Thomas Nevill of Cletham, was found to have held lands in Tathwell, Maltby and Raithby, Lincolnshire, as dower of the right of William de Vescy of Kildare, the lands having been granted to him by William de Vescy the elder, but this does not necessarily imply that she was William's wife.<sup>42</sup> Not all of the estates were immediately available. The deaths in relatively quick succession of John de Vescy senior (William's brother), John de Vescy junior (William's son) and William himself meant that there were three widows with claims of dower on the estate: Isabella Beaumont, Clemence d'Avaugour and Isabella de Periton respectively. Isabella de Beaumont had dower in parts of the Alnwick barony, and one

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<sup>38</sup> The estimated values in 1219 for the Yorkshire, Northumberland and Lincolnshire estates respectively (including those in dower) were £135 8s 4d, £101 13s 4d and £50. [*Testa Nevill* I pp. 246-248; 250; 286].

<sup>39</sup> See below pp. 145-58.

<sup>40</sup> Dugdale *Baronage* p.95.

<sup>41</sup> *CFR* 1272-1307 p. 399. Prof Paul Brand has kindly drawn my attention to litigation heard in 1298 in which William Vescy de Kildare was described as being of such a tender age that he had no discretion. [*CP* 40/123 m. 39]

<sup>42</sup> *CCR* 1333-37 p. 403.



third of Sprouston, Clemence in Newsholme, Gribthorp, Thornton and two thirds of Sprouston, and Isabella de Periton in Tughall.

William de Vescy successfully managed to transmit a significant proportion of his estates to his illegitimate son, ensuring that the latter would be able to attain the same status in life. In this respect, William de Vescy of Kildare was a *de facto* heir of his father. However, there were limits to what could be achieved. In order to ensure success, he required the assistance of a powerful feoffee, Antony Bek, and the goodwill of the King. To obtain these, concessions needed to be made, which involved the sacrifice of the more politically sensitive parts of his estate, including the family seat of Alnwick itself. Although William de Vescy of Kildare acquired only a portion of his father's estate, there can be no doubt that he was intended as a substitute for a legitimate heir. The estates in Scotland, Ireland and Northumberland which did not fall to William de Vescy of Kildare did not pass to the right heir of William de Vescy senior, but were permanently alienated to the crown and to the bishop of Durham.

At the level of the country gentry the case of Nicholas Musard's illegitimate son Malcolm is less clear-cut. The Musard family was a gentry family with principal residences at Miserden (Gloucs.) and Staveley (Derbys.) The last of the legitimate male line, Nicholas Musard, as a clerk in orders could have no legitimate offspring, and when he died in 1300 his heirs were his sisters and their heirs.<sup>43</sup> However, whilst his coheirs received shares in the manor of Staveley, which with a value of c. £35, was the most valuable of the manors, Nicholas had previously made provision for his illegitimate children. His daughter Christiana was given lands in Staveley, whilst his son Malcolm received the larger part of the other two demesne manors of Miserden and Saintbury.<sup>44</sup> Malcolm was a retainer of Hugh Despenser the elder, and already during his father's lifetime had granted Miserden to Despenser.<sup>45</sup> Malcolm made his own base at Saintbury, obtaining a pardon in 1300 for having entered the manor without licence.<sup>46</sup> There he led a lawless and violent gang, whose activities included an armed raid on the house of the rector of nearby Weston-sub-Edge. In 1305, a number of Worcestershire juries made presentments concerning his activities, but although he was fined for the Weston raids, and was for a time imprisoned in Worcester, he was indicted only for

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<sup>43</sup> Nicholas Musard's right heirs were Sir Ralph de Frescheville, son of Amice, Nicolas's eldest sister, Margaret, another sister and Joan the wife of William de Shelaston, the daughter of another sister, Isabel. [CIPM IV no. 19].

<sup>44</sup> *Oxford DNB* 40 p. 13; *CP V* p. 575; *VCH Gloucs XI* p.49.

<sup>45</sup> *Ancient Deeds I*, nos. 927, 928, 934; *CPR 1292-1301* p. 536.

<sup>46</sup> *CPR 1292-1301* p.503.

receiving his page, John Baldewyn, an outlaw who had been indicted for murder. Malcolm Musard was declared innocent, and went on to serve, though not as a reformed character, as chief forester of Feckenham.<sup>47</sup> In May 1321 he was appointed constable of Hanley Castle, which had been surrendered into the King's hand by the younger Despenser.<sup>48</sup> Musard had obtained the bulk of the family lands, though not the most lucrative manor. His tactics of alienating one of his manors to a more powerful protector and leading his own violent gang appears to have been successful in securing his future, despite his illegitimacy.

Other landowners at the turn of the fourteenth century also made use of legal devices to enable a bastard son to act as a substitute for a legitimate male heir. The family of Meinill had been established at Whorlton in Yorkshire since the end of the eleventh century.<sup>49</sup> Nicholas Meinill, who inherited the estate in 1299, is not known ever to have married, but he fathered an illegitimate son, Nicholas, as a result of an adulterous liaison with Lucy, daughter of Robert de Thweng, who was then the wife of Sir William Latimer. This is a case in which not only are the name and status of the mother known, but as the case was a public scandal at the time, it is clear that this was a case of adulterine bastardy. At this time Lucy had left her husband and was seeking a divorce in the court of the Archbishop of York. In April 1307, Lucy and Nicholas Meinill were cited to appear before the dean of Cleveland on charges of adultery. The affair appears to have been over by January 1310, when Nicholas entered into a bond of £40 to abandon illicit communication with Lucy Thweng. She eventually succeeded in obtaining a divorce from Latimer in 1312, and later married Sir Robert Everingham.<sup>50</sup> In 1314 Nicholas Meinill settled a large part of his estate on this illegitimate son. The manors of Greenhow and Boynton were entailed on Nicholas Meinill the elder with remainder to Nicholas, son of Lucy Thweng and the heirs of his body, with reversion to the right heirs of Nicholas Meinill. The family seat of Whorlton (Yorks.), together with the manors of Seamer (Cleveland), Eston, Middleton, Carlton (Cleveland), Potto (Yorks.) Trenholme and the advowson of the church of Rudby, was similarly entailed, with remainder to Nicholas son of Lucy Thweng and the heirs male of his body.<sup>51</sup> In addition, in 1315 he purchased the reversion of the moiety of the manors of Wooler,

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<sup>47</sup> R H Hilton, *A Medieval Society. The West Midlands at the End of the Thirteenth Century* (Cambridge, 1966, reissued 1983) pp. 255-8; *CPR* 1313-17 p. 429.

<sup>48</sup> *CPR* 1317-21 p. 585.

<sup>49</sup> *CP* VIII p.619.

<sup>50</sup> *CP* VII p. 467 and VII p.628; TNA: PRO SC/8/324/E640 and E641.

<sup>51</sup> *CP* VIII p. 629.

Hethpool, Heatherslaw, Lowick, and Belford, Northumberland, held by Mary Muschamp, one of the two coheirs of Robert Muschamp, to hold to him and the heirs of his body, with reversion to Nicholas son of Lucy Thweng. He also obtained from Robert Huntercombe a moiety of the forest of Cheviot which was settled with reversion to Nicholas son of Lucy.<sup>52</sup> Nicholas' right heir was his brother John and he took steps to ensure that he was also provided for, with the reversion of the manor of Castle Leavington, following the death of their mother, Christine.<sup>53</sup> Lucy Thweng and her new husband Robert Everingham also settled the reversion of the manor of Yarm (Yorks.) on Nicholas son of Lucy in default of any heirs of Lucy's body by Robert.<sup>54</sup>

Nicholas son of Lucy appears to have entered the estates without difficulty. On his father's death in April 1322 he succeeded, whilst not yet of age, to Whorlton and the other Meinill lands held of the Archbishop of Canterbury.<sup>55</sup> After the death of Mary Muschamp later the same year he succeeded to the moiety of the Muschamp barony purchased by his father. There was an initial problem with the moiety of Cheviot, his father having apparently neglected to obtain a royal licence, but this was resolved in February 1327.<sup>56</sup> His standing does not appear to have been unduly affected by the circumstances of his birth and he received a personal summons to Parliament from January 1336.<sup>57</sup> In this case then, the bastard entered into an estate which included the main family seat, and was in every sense *de facto* heir of his father. He died in 1341, leaving a ten-year old daughter, Elizabeth as his heiress.<sup>58</sup>

The example of Sir Andrew Sackville as recounted by Nigel Saul in his study of the Sussex gentry is just one of a number of similar cases. Sir Andrew had had two sons by his first marriage to Joan de la Beche, but both appear to have predeceased him, and his second marriage to Maud Lovat produced no children. However, by his mistress, Joan Burgess, he had a son, Thomas, and a daughter, Alice. In September 1365, as he was nearing 60 (he was born c.1306) he enfeoffed his estates, settling them on Thomas and Alice in default of surviving legitimate issue. There was no challenge to

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<sup>52</sup> *CPR* 1313-17 p. 261; *CPR* 1340-43 pp. 398-9.

<sup>53</sup> *CPR* 1307-13 p.362; *Cal Inq. Misc.* II p.28. Christine seems to have had an eventful life, having been charged in 1290 with attempted murder of her husband and adultery with William de Greenfield (later to be the Archbishop of York who dealt with the Latimer divorce) and Walter de Hamerton. She was later exonerated by Archbishop Romeyn who found that she had in fact been driven from the marital home by her husband's cruelty. (*CP* VIII pp.626-7n.).

<sup>54</sup> *Yorkshire Feet of Fines 1300-14*, Yorkshire Archaeological Society CXXVII (1963) p.102.

<sup>55</sup> *CP* VIII p.632n.

<sup>56</sup> *CPR* 1327-1330 p.8.

<sup>57</sup> *CP* VIII p. 633.

<sup>58</sup> *CP* VIII p. 634.

this disposition of his estates when Sir Andrew died in 1369 and the illegitimate son gained possession. It was not until the death of Sir Andrew's widow, Maud, in 1393 that a challenge was mounted by a distant cousin, Sir Andrew Sackville of Fawley, who claimed to be Sir Andrew's right heir. This challenge was unsuccessful, and although sporadic claims were made by the Fawley branch of the family over the next ninety years, the transfer to the illegitimate line remained secure.<sup>59</sup> The illegitimate Sir Thomas married a daughter to Sir Edward Dallingridge and was a respected member of the Sussex gentry community. He served as a knight of the shire on three occasions.<sup>60</sup>

Sir Andrew Sackville's arrangements were made in favour of an adulterine bastard. In the case of the Foxley family, it was a pre-nuptial bastard, or bastard eisé, who benefitted. Sir John de Foxley of Bray (Berks.) and Bramshill (Hants.) (d.1378) was no stranger to unorthodox marital arrangements. His first marriage, in 1332, to Maud, daughter of Sir John Brocas, appears to have been a runaway match. At all events both John and Maud were very young at the time, perhaps no more than 14, and the marriage was not celebrated in the parish church of Bray, although a priest was involved. The officiant, William de Handloo, was suspended for a while for his part in the solemnization of the marriage outside the parish and without licence. By this marriage Sir John had three children: a son, William, and two daughters. William predeceased him, dying in 1376 without an heir of his body, but both of Sir John's daughters had issue. His elder daughter Katherine married John Warbleton (of Warbleton, Sussex and Sherfield, Hants) and her sister Margery married Robert Bullock. After his first wife's death, Sir John married Joan Martin, with whom he had three sons, Thomas, Richard and John. These sons appear to have been born before the marriage. Thomas succeeded to the manors of Bray and Bramshill, though his possession was challenged, apparently without success, in 1412 by William Warbleton, grandson of Katherine. Thomas seems to have prevailed, and his position was later strengthened by quitclaims from Margery Hertington the daughter of Margery Bullock. Thomas married twice, but had no male issue. On his death in 1436 the estates passed to his daughter Elizabeth, wife of Sir Thomas Uvedale.<sup>61</sup> Thomas' brother John was provided with the manor of Rumboldswyke (Sussex), valued at £20 p.a. in 1411-12,

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<sup>59</sup> Saul, *Scenes from Provincial Life* p.13; *VCH Oxon* VIII pp. 92-3

<sup>60</sup> *House of Commons* IV pp. 272-4.

<sup>61</sup> C Kerry, *The History and Antiquities of the Hundred of Bray* (London, 1868) pp. 101, 104; Wykeham's Register II (Hampshire Record Society, 1899) pp 295-8; Montague Burrows, *The Family of Brocas of Beaurepaire and Roche Court: Hereditary Masters of the Royal Buckhounds, with Some Account of the English Rule in Aquitaine* (1886); *VCH Berkshire* III p 102; *VCH Hampshire* IV p. 35; CCR 1429-35 pp 22-3

sufficient for him to maintain a position among the minor gentry of Sussex. He died on 30 April 1419, leaving an infant daughter, Alice, as his heir.<sup>62</sup>

The south midland knight Sir John Golafre (d.1379) had two illegitimate children by Johannet Pulham: a son, John and a daughter, Alice.<sup>63</sup> It is not entirely clear from surviving records whether Sir John senior made landed provision for his illegitimate son, but it does appear that his right heir, John Golafre (d.1442), the son of his younger brother Thomas Golafre, did not acquire all the family estates until after the death of the illegitimate Sir John, to whom he made a quitclaim of the manors of Sarsden (Oxon), and Bury Blunsdon (Wilts) in 1392.<sup>64</sup> The career of the illegitimate Sir John Golafre demonstrates how an illegitimate son could make his fortune through military or administrative service. His main source of advancement was through service to the Crown, using family and local connections to gain admission to the household of Richard II.<sup>65</sup> By 1384 he was an esquire of the king's chamber. On 16 November that year he was granted an annuity of £20, which was later increased to 100 marks.<sup>66</sup> Golafre served the king both on diplomatic missions and military campaigns. He was sent as a royal envoy to both the French and Polish courts, and took part in the Scottish campaign of 1385 and Richard's first expedition to Ireland.<sup>67</sup> Golafre's position at court enabled him to benefit to a certain degree from royal patronage in terms of offices and lands. Professor Saul has estimated his income from these sources to be in the order of £300-400 p.a. which, whilst a significant amount, would hardly have rendered him wealthy, given the expenses of maintaining his position.<sup>68</sup> Golafre married Philippa, widow of Walter, Lord Fitzwalter, who was daughter and coheiress of Sir John de Mohun. However, he did not receive much in the way of material benefit from the marriage, as the reversion of the core of the Mohun estate had been sold by Mohun's widow to Dame Elizabeth Luttrell in 1376.<sup>69</sup> His status as a trusted royal servant may be

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<sup>62</sup> *CIPM* XXI nos. 225, 762; *Sussex Arch. Collections* x (1858) p. 135.

<sup>63</sup> Nigel Saul 'The Fragments of the Golafre Brass in Westminster Abbey' *Transactions of the Medieval Brass Society* XV i (1992) p. 19.

<sup>64</sup> *CCR* 1392-6 p.78. The document also refers to a manor of 'Bachesore' in Gloucestershire, which cannot now be identified.

<sup>65</sup> Saul, 'Golafre Brass', p.21.

<sup>66</sup> *CPR* 1385-9 p.219.

<sup>67</sup> Saul, 'Golafre Brass' pp. 22-3.

<sup>68</sup> *Ibid.* p.24.

<sup>69</sup> *CP V* p 479; IX p 24.

demonstrated by the king's order that he be buried in Westminster Abbey.<sup>70</sup> His sister, Alice, became a nun, and later abbess, at the Augustinian convent at Burnham.<sup>71</sup>

Sir Robert Martin of Athelhampton, Dorset, had three illegitimate sons with Agnes, daughter of Nicholas Montfort, whom he later married. Sir Robert attempted to provide for these sons, Robert, Richard and William by settling property on them, but it was not without problems. In 1358 he had conveyed the Somerset manors of Brown and Shepton to Agnes, with remainder to her sons Richard and William. In 1365, after he had married Agnes, Sir Robert settled his manors of Walterston and Pulston (Dorset) in tail male with successive remainders on Robert, Richard and William, and attempted to ensure that Athelhampton would pass to one of these sons in preference to any legitimate sons borne after the marriage. However, after Sir Robert's death, in 1375, his heir was found to be his great-nephew John Gouvitz, and the Martin brothers had a lengthy legal struggle to regain their inheritance.<sup>72</sup> Robert Holme, a wealthy mercer from York left £1,000 marks, a house in Goodramgate and other holdings in the city to his son Robert. It was not stated explicitly in the will that Robert junior was illegitimate, but the will referred to Robert Holme senior's two wives and to a Beatrice Forden, described as the mother of his only child, Robert.<sup>73</sup>

Another example of a father without a legitimate male heir making efforts to ensure provision for an illegitimate son out of the family estate is that of Sir William Dronsfield.<sup>74</sup> Sir William was a member of a gentry family which had been established in Yorkshire by the mid-thirteenth century, and at the time of his death in 1406 he was sheriff of York and held the manors of West Bretton, Gunthwaite, Newhall, Burgh and Bulcliff with assorted holdings in the surrounding area.<sup>75</sup> As a retainer of Henry Bolingbroke, Dronsfield took advantage of the royal favour after Bolingbroke seized the throne to make provision for his illegitimate son, Richard Kesseburgh, by means of a resettlement of his estates in August 1406. Failing any issue of Dronsfield and his wife, Grace, Kesseburgh was to have the reversion of the lands in Cumberworth, High Hoyland, Wickersley, Fryth, Carhouse, Sandal and Ingburchworth, with successive remainders to the heirs of his body and then to William Dronsfield's right heirs. The only significant exclusion was Dronsfield's principal seat, the manor of West Bretton,

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<sup>70</sup> Lipscomb, I p.395.

<sup>71</sup> CPL V p. 549; Lipscomb, III, p.208.

<sup>72</sup> *House of Commons* III p.698.

<sup>73</sup> *House of Commons* III pp. 398-400.

<sup>74</sup> *House of Commons* II pp. 801-2.

<sup>75</sup> He was dead by 15 September 1406. *CFR* XIII p. 44.

which was to remain to Dronsfield's right heirs. Kesseburgh was also to have land which William had purchased in Wollay and the remainder of purchased property in Bargh, in the event of the death of William Dronsfield's siblings Thomas, John and Joan without heirs.<sup>76</sup> This was thus similar to the Vescy case of a century before in that the bastard succeeded to most of the land except the principal seat, although in this case the right heirs acquired the latter. In Dronsfield's will, made at the same time, he bequeathed to Richard Kesseburgh a tapestry bed with two pairs of sheets and two pairs of blankets.<sup>77</sup>

Sir John Pelham, the Lancastrian knight, also managed to transfer the bulk of his property to his illegitimate son, John, to the exclusion of his right heirs, the children of his two sisters.<sup>78</sup> In this case, there was not really an issue over the main family seat, for most of the property had been accumulated during Sir John's lifetime. His father and grandfather had served as county coroners and he had inherited only a smallholding at Warbleton (Sussex) and part of the manor of Gensing, but he made his fortune in the service of the Lancastrian regime, acquiring a number of lucrative offices and wardships. By the time of his death in 1429, his income from rents was in excess of £870 per annum.<sup>79</sup> The settlements he made during his lifetime in favour of his bastard son, John, to the exclusion of his right heirs, were successful. Among the lands of which John Pelham the younger took possession were the manors of Crowhurst, Burwash and Bibleham and the rape of Hastings in Sussex, the reversions of which had been granted to his father by Henry IV, and which were collectively worth £51 10 s 2¾d.<sup>80</sup> Sir John junior also seems to have acquired at least part of the family land at Warbleton, which was not held in chief. In 1407 Sir John senior had granted a parcel of land at Warbleton to the prior and convent of Holy Trinity, Hastings, for them to rebuild their church and priory, which were suffering from the effects of coastal erosion. The priory later purchased further lands at Warbleton from Sir John junior.<sup>81</sup> Sir John senior also made his illegitimate son one of the executors of his will, along with his wife and two others, but John's illegitimacy is not explicitly stated in the will, where he is simply described as '*filium meum*'.<sup>82</sup>

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<sup>76</sup> Hunter, *South Yorks.* II pp. 242-3.

<sup>77</sup> *Test. Ebor.*I (Surtees Soc. 4, 1836) pp. 344-5.

<sup>78</sup> His heirs were the son of his sister Agnes, John Colbrand and Joan, wife of Thomas atte Hale, the daughter of his sister Joan. [*CIPM* XXIII no. 222].

<sup>79</sup> *Oxford DNB* 43 p.470; *House of Commons* p. 43.

<sup>80</sup> *CPR* 1422-9 p.533; *CCR* 1422-9 p.435; *CIPM* XXIII no. 222.

<sup>81</sup> *CPR* 1405-8 p. 322; 1408-13 p. 451; 1441-6 p. 44.

<sup>82</sup> *Reg Chichele* II pp.408-9. But see also below p. 218 regarding later redactions of Pelham documents.

## Chapter 5

Some plans to enable a bastard son to inherit were less successful as another Lancastrian knight, Sir Henry Hoghton, was to discover. Sir Henry was the younger son of Sir Adam Hoghton of Hoghton, but was fortunate enough to be provided with an adequate estate from the family holdings, including lands at Mollington (Cheshire), the manor of Chipping (Lancs) and lands in Alston, Hothersall and Dilworth. His prospects were further enhanced by his position within the retinue of John of Gaunt, Duke of Lancaster and his association with the latter's son, later Henry IV. Hoghton's personal affairs were however rather tangled. In 1403 he obtained a dispensation to enable him to marry Joan Radcliffe, who was not only a former mistress, but was related to him in the second and third degrees. Furthermore, Sir Henry had previously had a relationship with a woman related to Joan in the third degree, who was perhaps the mother of his illegitimate son, Richard.<sup>83</sup> Certainly, when his marriage to Joan proved childless, the couple attempted to settle property from Joan's inheritance upon the bastard. This property included the manors of Salesbury, Little Pendleton and Clayton-le-Dale as well as lands in Clitheroe, Oswaldtwistle, Preston, Ribchester and Dulton. This attempt met with considerable opposition from the Talbots, the rival claimants, and eventually after arbitration in 1449 Richard Hoghton was left with Little Pendleton and revenues of £20 from Salebury.<sup>84</sup>

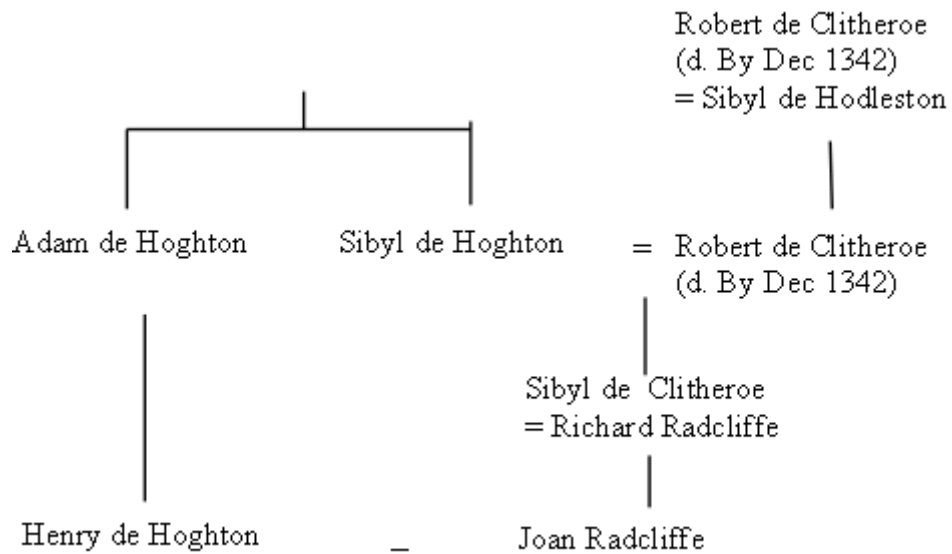
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<sup>83</sup> *CPL V* p. 578.

<sup>84</sup> *House of Commons II* pp. 387-389; *CPL V* p.578; *VCH Lancashire VI* pp. 254, 393.



**Figure 3: Simplified family tree showing relationship of Henry de Hoghton and Joan Radcliffe**



In some cases a father's attempts to settle the reversion of his estates on his illegitimate offspring were ultimately unsuccessful. John Chenduyt was a member of a family that had been established in Cornwall since the thirteenth century, and whose main seat in the county the manor of Bodannon, which had been settled by his grandfather in fee tail.<sup>85</sup> John was not entirely secure in his tenure; in 1407 an attempt had been made to deprive him of his estate on the grounds that it was forfeit to the Crown as the property of Sir Robert Tresilian, the former chief justice who had fallen foul of the Merciless Parliament. Although Chenduyt eventually proved that he held the property by inheritance from his father, he had to face further challenge from John Colshull I who had married Tresilian's widow. Chenduyt and his wife Joan, widow of Richard Glyvyan, had no legitimate offspring and in 1425 he settled the bulk of his estates by a fine levied at Westminster. According to this settlement, in default of heirs of John Chenduyt's body the estates would descend to his illegitimate son Richard, with remainder to Joan, Chenduyt's illegitimate daughter, who was wife of John Pengelly, and in the event of their deaths without heirs of their bodies, successive remainders to William, Lord Botreaux, Sir Walter Hungerford and his wife Katherine, Sir William Talbot and his wife Alianora, John Tretherff, Ralph Trenewith and Ralph Botreaux. It is

<sup>85</sup> Maclean, *Trigg Minor* I pp. 516.

worth noting that the fine specifically referred to Richard and Joan as Chenduyt's bastard children, rather than identifying them by reference to their mother.<sup>86</sup> Four years previously he had made direct provision for his illegitimate children by which Joan and her husband received lands in Penpethy and Bodwin, and Richard received the manors of Cant and Tremore.<sup>87</sup> Chenduyt died on 13 December 1426. An inquisition post mortem held in Cornwall on 28 May 1427 found that Chenduyt had died seised of the manor of Bodannon in fee tail, and that his next heirs were his kinsmen Ralph Trenewith and Thomas Rescarrek, as descendants of the sisters of John Cheynduyt's father, Thomas. A further inquisition held in October of the same year reported the 1425 settlement, a copy of which was shown to the jury. By this time, however, Richard Chenduyt was already dead. It was also found at the same time that John Chenduyt's lands in Penpethy and Bodwin had been granted in 1421 to Joan and John Pengelly and the heirs of Joan's body; with successive reversions to Richard Chenduyt, Sir Walter Hungerford and Katherine his wife and Sir William Talbot and Eleanor his wife etc. and that John and Joan were seised of this property. The manors of Cant and Tremore had likewise been settled in 1423 on Richard Chenduyt, with reversions to Joan Pengelly, William Lord Botreaux and the others named in the 1421 settlement. Copies of both these settlements were shown to the jury.<sup>88</sup>

Chenduyt thus not only provided for his bastard offspring by settling certain lands on them during his own lifetime, but also attempted to settle the reversion of the bulk of his estate on them, in preference to his right heirs. Unfortunately for both him and them his plan failed. The death of Richard Chenduyt shortly after his father meant that he was unable to benefit, but under the terms of the 1425 settlement, Bodannon should have reverted to his sister Joan, wife of John Pengelly. However, in June 1428, an order was issued to the escheator to take the fealty of Thomas Rescarrek and to partition Bodannon into two equal portions, and deliver seisin to Thomas Rescarrek and John, son of Ralph Trenewith.<sup>89</sup> Had Richard lived, he might have succeeded in retaining the estates. Whilst a live adult male bastard might have stood a good chance of keeping the estates passed on to him by his father, the husband of a bastard daughter found it much more difficult to secure possession.

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<sup>86</sup> *Cornwall Feet of Fines* ii, 964.

<sup>87</sup> *CIPM* XXII, 808.

<sup>88</sup> *CIPM* XXII, 805, 807, 808.

<sup>89</sup> *CFR* XV p.230-1.

As time went on, the complexity of pre-existing landed settlements began to fetter landowners' discretion to make provision from their estates. The courts' interpretation of the duration of entails evolved over time, so that by the 1420s it had come to be understood that the restraint on alienation was perpetual.<sup>90</sup> Sir John Basynges of Empingham, Rutland settled part of his estate on his illegitimate son, John, to the disadvantage of his sister and heir, Alice. The arrangement was made in 1439, shortly after the death of Alice's husband, Thomas Makworth. Minor properties in the midlands including the manors of Egmonton (Notts.) and Roxham (Lincs.), with a total value of around £5 per year, were settled on John and the heirs of his body. He was to have life interest only in the family seat of Empingham, worth £20 p.a. He was also to have the reversion of lands in North Luffenham, South Luffenham and Tixover in which his (also illegitimate) sister Alice, was to have a life interest.<sup>91</sup> In 1445, Sir John made further arrangements for his Kent estates, the issues of which were to be used for payment of his debts and a marriage portion for the bastard daughter, the property reverting to Sir John's right heirs after two years. From one point of view, it was only less important properties that were to be permanently alienated to the bastard, John. However, the life interest in Empingham suggests that Sir John might have gone further, had the property not been entailed. As it happened, despite, or possibly because of, the younger Basynges's swift re-entailment of the property to more powerful feoffees, Sir John Talbot, Sir James Ormond, Ralph, Lord Cromwell and John Sutton, Lord Dudley, the Makworths took executive action, breaking into Empingham and murdering John Basynges junior.<sup>92</sup>

Sir Richard Beauchamp, Lord St Amand, (d. 1508) had no legitimate heirs of his body and devised the bulk of his estates to his illegitimate son by Mary Wroughton, Anthony St Amand.<sup>93</sup> Anthony certainly managed to gain possession of some of these estates, including the manor of Ramerick (Herts) which he conveyed to St John's College Cambridge in 1520-1,<sup>94</sup> and the manor of Grendon Underwood (Bucks) which he conveyed to the trustees of Thomas Pigott of Whaddon in 1520.<sup>95</sup> He was still

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<sup>90</sup> Biancalana, *Fee Tail and Common Recovery* pp. 120-121.

<sup>91</sup> TNA:PRO C 139/22/41; *CIPM* XXVI nos 426-9; Blore *Rutland* p. 127.

<sup>92</sup> S J Payling, 'Murder, Motive and Punishment in Fifteenth-Century England: Two Gentry Case-Studies' *EHR* 113 pp. 1-17. Payling suggests that suspicion over Cromwell's intentions may have been a significant factor.

<sup>93</sup> TNA:PRO PROB 11/16.

<sup>94</sup> *VCH Herts* III p. 23.

<sup>95</sup> *VCH Bucks* IV p. 52.

holding the manor of Ion in Lower Gravenhurst (Beds) in 1531.<sup>96</sup> However, if he ever had possession of Basildon (Berks) he held it for only a very short time as it was sold by Sir John Hussey and his wife to Henry Bridges in 1509. He had to face a claim from Thomas Brook for the manor of Knotting, (Beds.) which was submitted to the Archbishop of Canterbury for arbitration and decision was ultimately given in favour of Thomas.<sup>97</sup> Anthony St Amand married Anne, daughter of Thomas West, Lord la Warre, with whom he had a daughter, Mary.<sup>98</sup>

In June 1516 Thomas Stafford of Tattenhoe (Bucks) made a will which not only made significant provision of lands and tenements for his bastard son William, but threatened his right heirs that they would lose the reversions to which they were entitled under his settlement if they ‘interrupt, vex or trouble the foresaid William Stafford...of any part of my lands, tenements or hereditaments to him willed.’<sup>99</sup> He also left £10 to John Bentley, the parson of Mursley (Bucks.), for William’s education. In the event of the bastard son William, son of Alice Denton, dying without heirs of his body, the reversion of the estates was to go successively to Thomas’s nephew William, his second son, Thomas’s nephew Humphrey, Humphrey’s second son, John Constable, and the right heirs of Thomas Stafford. It appears that the other Staffords were not prepared to allow the estates to go to a bastard son without a fight, and litigation in Chancery followed.<sup>100</sup>

In the inquisition post mortem on Thomas Stafford, his right heir was found to be his nephew Humphrey Stafford of Blatherwick (Northants.), the son and heir of his eldest brother, Humphrey. The mother of William Stafford the bastard, Alice, who was widow of William Ingoldsby, accused Bentley and Humphrey Stafford of abducting him.<sup>101</sup> A dispute arose later between William and Humphrey, and the latter sent the title deeds in a great coffer to Woburn Abbey for safe custody, and William Stafford, bastard, sued the abbot for their recovery, an action which the abbot considered to be malicious and vexatious.<sup>102</sup> William also brought an action against Thomas Worley, the surviving feoffee.<sup>103</sup> Eventually some form of compromise was reached and in 1525

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<sup>96</sup> *VCH Beds* II p. 337.

<sup>97</sup> *VCH Beds* III p. 140.

<sup>98</sup> *VCH Wilts* X p. 23.

<sup>99</sup> *The Courts of the Archdeaconry of Buckingham 1483-1523* (Buckinghamshire Record Society XIX, 1975) pp. 226-7.

<sup>100</sup> *VCH Bucks* III p. 433.

<sup>101</sup> TNA:PRO C 1/421/33, C 1/421/34, C 1/421/81.

<sup>102</sup> TNA:PRO C 1/567/69 - 74.

<sup>103</sup> TNA:PRO C 1/567/75 -77.

there was an agreement by which William Stafford the bastard received grant of the manor of Tattenhoe to himself and his wife Eleanor for life for an annual payment of £10 to William Stafford of Bradfield. William the bastard evidently obtained Great Linford (Bucks.), for he died seised of this manor in 1529.<sup>104</sup> Thomas Stafford's attempts to provide for his bastard to take over his estates were thus only partially successful, despite the dire warnings in his will.

## Summary

A number of landowners did make serious attempts to endow their illegitimate children with a major part of their estates, but levels of success varied. In some cases the ultimate failure of the scheme was attributable to the premature death of the illegitimate children, but in other cases the disinherited relatives were able to mount a challenge. It helped if the bastard had a powerful champion or protector to defend their legal interests, but even that was insufficient to ensure a successful outcome in the face of really determined opposition, such as that of the Makworths.

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<sup>104</sup> *VCH Bucks* IV p. 389.

## Chapter 6: Illegitimate children not used as substitute heirs

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*But, though it be prolific, the multitude of the impious shall  
be of no profit,  
And from its bastard slips shall not send its root deep,  
Nor shall establish a firm foundation.<sup>1</sup>*

The reasons why a landowner who lacked a legitimate son might want to transmit his estates to a bastard son are fairly obvious: to continue, as far as was possible, the family name and bloodline. For some, this was an achievable goal, as can be seen in the previous chapter. Other landowners in similar circumstances, however, were either unable or unwilling to follow this course. This chapter will consider the bastards who might have been, but were not, substitute heirs and the reasons why they found themselves in this position.

It is clear that it was possible at the start of the fourteenth century for a landowner of baronial rank who lacked a legitimate male heir of his body to transmit the bulk of his estates to an illegitimate son, if he was so determined. Despite this, not all those members of the peerage who had an illegitimate son to compensate for their lack of a legitimate heir followed the examples of William de Vescy and Nicholas Meinill.

### **The marital difficulties and illegitimate children of Earl Warenne**

The career of John, the last earl Warenne (1286-1347), is of particular interest in this regard. He fathered at least eight bastards, no fewer than six of whom, among them three sons, appear to have survived him. He had no recorded legitimate issue and made numerous resettlements of his estates, yet on his death his estates were divided between his nephew Richard FitzAlan, son of his sister Alice, and the Crown.

The Warennes were certainly no strangers to illegitimacy. A bastard had already held a place in the long line of earls Warenne, although under rather different circumstances. John's great-great-grandfather was Hamelin Plantagenet, an illegitimate brother of Henry II, who had married the Warenne heiress in 1164.<sup>2</sup> One of their daughters was the mother of Richard fitz Roy, a bastard son of King John.<sup>3</sup> The last

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<sup>1</sup> *The Book of Wisdom*, 4.3.

<sup>2</sup> *CP XII* a pp. 499-500.

<sup>3</sup> Given-Wilson and Curteis, *Royal Bastards* p.128; *Oxford DNB* 57 p.409.

earl's grandfather, the sixth earl, another John de Warenne (d.1304), was the earl who is reputed to have brandished a rusty sword during Edward I's *Quo Warranto* hearings to demonstrate his right as the descendant of one of the Conqueror's companions.<sup>4</sup> If there is any kernel of truth behind this engaging anecdote, he conveniently forgot to mention that he was the grandson of a bastard and his claims relied on descent through the female line. He also fathered at least two bastards of his own.<sup>5</sup> The sixth earl's son, William, had died before his own son John was born and so, on the death of his grandfather in 1304, John de Warenne inherited the earldom of Surrey and a large and estate, spread across Surrey, Sussex, Wales, Norfolk and Yorkshire. As he was a royal ward, his marriage had been arranged by the King. On 15 May 1305, it was proposed that he should be married to Joan, daughter of Henry Count of Bar and a granddaughter of Edward I, and it is said that he 'willingly accepted' the marriage.<sup>6</sup> He was granted seisin of his inheritance on 7 April 1306, though he was not yet twenty-one.<sup>7</sup> The marriage took place on 25 May 1306. Joan, aged 10, was only half his age, and the marriage was not a success.

Warenne's marital difficulties were to become notorious. By 1311 Warenne was living openly with a mistress, Maud Nerford. On 22 November of that year, the Archbishop of Canterbury, Robert Winchelsea, wrote to the bishop of Salisbury with a mandate for the excommunication of the earl for his failure to appear before the archbishop in the matter of his adultery with Maud.<sup>8</sup> The scandal continued for the next few years. On 21 May 1313 the King tried to postpone the publication of Winchelsea's sentence of excommunication of Warenne until he himself had returned as Warenne had been charged with the preservation of the peace whilst the king was overseas.<sup>9</sup>

Maud was probably the daughter of Sir William Nerford and his wife Petronella, daughter of Sir John Vaux, a neighbour of Warenne's estates in Norfolk.<sup>10</sup> Her own marital status is not entirely clear. She was said in Winchelsea's letter of November 1311 and a later citation of Warenne to be the wife of Simon de Driby. Driby, who can

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<sup>4</sup> G Lapsley, 'John De Warenne and the Quo Warranto Proceedings in 1279', *Cambridge Historical Journal* II (1927) pp. 110-132.

<sup>5</sup> See pp. 199-201.

<sup>6</sup> *CCR* 1302-1307 p. 321. Joan was at this time still in France. On 18 October the bishop of Coventry and Lichfield was granted powers to make arrangements concerning her coming to England [*CPR* 1301-7 p.386].

<sup>7</sup> The order to the escheator to deliver seisin was dated 7 April 1306. [*CCR* 1302-1307 p.373].

<sup>8</sup> C T Flower and M C B Dawes, *Registrum Simoni de Gandavo Diocesis Sarebiriensis AD 1297-1315* (Oxford, 1934) pp. 414-416.

<sup>9</sup> *CCR* 1307-1313, p. 683

<sup>10</sup> Blomefield, *Norfolk* vi p.230 n.

probably be identified with the king's yeoman and steward of the household of that name, whilst Winchelsea was archbishop, had apparently secured a divorce from Maud on the grounds of her notorious conduct '*eam coram reverend patre domino R dei gratia Cant' Archiepiscopo totius Anglie primate in forma iuris abiuravit*'.<sup>11</sup> He seems to have been able to remarry. He died in 1322, without surviving issue, and his inquisition post mortem and several other royal records refer to a wife named Margery, although Maud was still living at this time.<sup>12</sup> Driby witnessed a charter of Warenne's in 1316, at the height of Warenne's divorce proceedings, so he apparently bore no grudge about the matter.<sup>13</sup> Maud is recorded as the mother of two of Warenne's bastards, and was almost certainly the mother of at least one more, but was not necessarily the only woman to bear Warenne a bastard.

The key to understanding Warenne's behaviour is that Maud was not simply a mistress or concubine. As Winchelsea's letter of 1311 reveals, Warenne was behaving as if Maud was his lawful wife, '*ac si esset eius uxor legitima*.' He wanted to marry her and went to extraordinary lengths in his attempts to divorce Joan in order to do so. His first attempt was made before the archbishop of York, William Greenfield. His case was that he had, when a minor and a ward of the late king, been forced to marry Joan, even though he was related to her in the third and fourth degrees. The petition mentioned three factors that could have invalidated the marriage: minority ('*in minori aetate*'), absence of freely given consent ('*ad compulsionem*') and consanguinity of which he had been ignorant at the time. In fact, at 19, Warenne would have been considered of age for marriage, even if ten-year-old Joan was still too young and, as has been seen above, he is recorded as having 'willingly accepted' his suggested bride. The archbishop duly served a citation on the Countess to appear before him at York on 2 October 1314.<sup>14</sup> William de Rothwell, rector of Normanton and professor of civil law, and Henry de Wylton, rector of Corney, were appointed to hear the case.<sup>15</sup> Presumably as a result of Joan's response, Greenfield then asked the bishop of Durham to ask Maud Nerford to attend before him in order to answer certain articles concerning the weal of her soul.

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<sup>11</sup> London, Lambeth Palace Library Reg. Walter Reynolds, f. 52v.

<sup>12</sup> At his death, Driby held lands in Norfolk and Lincolnshire, including land at Old Buckenham, (Norfolk) held jointly with Margery, his wife and the manor of Driby (Lincs.), held by Simon and Margery of their joint purchase. (*CIPM* vi p. 234). The order to the Escheator beyond Trent to deliver his lands to his brother and heir, Robert, saving to Margery her dower was given 16 June 1323 [*CFR 1319-27* p.214]. Margery held a third part of tenements in Baston (Lincs.) as dower in 1334 [*CIPM* vii p.405].

<sup>13</sup> CPR 1313-17 p. 525.

<sup>14</sup> *Letters and Papers from the Northern Registers* pp. 228-230.

<sup>15</sup> A Hamilton Thompson (ed.), *Register of William Greenfield, Archbishop of York 1306-1315*, II, (Surtees Society cxlix, 1934) p. 188.



The bishop dutifully delivered the citation to the manor of the abbot of Byland at Clifton, where Maud was supposed to be staying, though he was unable to see Maud in person, being prevented from doing so by members of Warenne's household.<sup>16</sup> The problem with Warenne's attempt to gain a divorce on the grounds of consanguinity was the existence of a dispensation for intermarriage within the fourth degree of kindred which had been obtained from Pope Clement V at the time of the marriage.<sup>17</sup>

The York attempt having failed, a further attempt was made before the archdeacon of Norfolk. This time Maud herself brought the case on the basis of pre-contract. On 8 March 1315 Robert, chaplain of Yaxley, who was deputy to the archdeacon's official, delivered notice to Joan de Bar that she was cited to appear before the archdeacon, Thomas Gerdeston, or his commissary to answer in a case of matrimony and divorce between Maud and John de Warenne. However, the citation was served on the countess when she was in attendance on the queen in the crypt of St Stephen's. For this breach of protocol the archdeacon's official was committed to the Tower, and the archdeacon was ordered to appear before the next parliament.<sup>18</sup> The problem at this point seems to have been the tactlessness of the archdeacon's official. The following year, Warenne and Maud tried again, this time in London, and initially it looked as if all was going well. On 20 February 1316 the king granted protection for Maud and her advocates, witnesses etc. in the cause of pre-contract between her and John de Warenne, earl of Surrey, and also similar protection for Warenne and his men, advocates, proctors and witnesses in the cause of divorce between him and Joan de Bar.<sup>19</sup> On 23 February Warenne undertook that he would be bound to the King for the £200 yearly, for the maintenance of Joan de Bar while the plea of divorce was pending in the Church courts.<sup>20</sup> On 24 February the earl was granted licence to bring his suit for divorce in the court Christian before Masters Gilbert de Middleton and William de Bray, canons of St Paul's, London, and the prior of Holy Trinity, Aldgate. The same licence also permitted Maud to recommence proceedings for pre-contract before the same judges or others, on withdrawing the suit which she had brought before the official of the archdeacon of Norfolk. It seems that both the King and Warenne expected that

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<sup>16</sup> *Reg. Greenfield* ii p.191-2; *Letters and Papers from the Northern Registers* p.230-232.

<sup>17</sup> *CPL* iii p.173.

<sup>18</sup> I S Leadam and J F Baldwin (eds.), *Select Cases before the King's Council* (Selden Soc xxxv, 1918) pp. lxvi-lxix, 27-32.

<sup>19</sup> CPR 1313-1317, p. 401.

<sup>20</sup> CCR 1313-1318, p. 325.

the divorce would be granted, for Warenne agreed to enfeoff Joan of 740 marks a year of land within a quarter of a year after the pronouncement of the divorce.<sup>21</sup>

Meanwhile, Warenne attempted to resettle his estates in anticipation that the divorce would be obtained. On 24 June 1316 he granted his Yorkshire, Surrey, Sussex and Welsh estates, together with the towns of Grantham and Stamford (Lincs.) to the king.<sup>22</sup> The king took possession on 1 July 1316 and on 6 July regranted the estates to Warenne for life only.<sup>23</sup> But a month later, on 4 August 1316, the king granted Warenne fresh charters regranted to him the surrendered estates (excepting the manor of Kennington, Surrey, which he retained, and the towns of Stamford and Grantham, which were regranted to Warenne for life only, with reversion to the king) this time on different terms. The Surrey, Sussex and Wales estates were granted with remainders to ‘John de Warenne son of Matilda de Neirford, and the heirs male of his body, and failing such issue to Thomas de Warenne son of the said Matilda, and the heirs male of his body, with final remainder failing such issue to the heirs of the body of the said earl’, and the Yorkshire estates with remainders to Matilda, for her life, with successive remainders to John de Warenne and Thomas de Warenne, sons of the said Matilda and to the heirs of the body of the earl.<sup>24</sup>

Warenne thus successfully managed to resettle his estates in such a way as to endow his two bastard sons by Maud Nerford. As with William de Vescy, there was a substantial inducement for the king to agree to the settlement, in this case the reversion of the two wealthy Lincolnshire towns of Grantham and Stamford. The crucial difference between this case and the Vescy one is that Warenne was clearly intending to divorce his wife and marry the mother of the bastard sons. It is not clear how old the boys were at this stage, though they cannot have been much beyond the early teens. Presumably, at this time these were his only sons by Maud. If he had been able to marry Maud as planned any further offspring born after the marriage would have been covered by the reversion to heirs of the body of the earl. Where the plan failed was that, contrary to expectations, the divorce was not obtained. Warenne’s subsequent hostility towards the earl of Lancaster suggests that he felt that Lancaster was in some way to blame.

It appears that relations between Warenne and Maud broke down following the failure of the divorce attempt. In 1320, Warenne petitioned Edward to suspend a

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<sup>21</sup> *CPR* 1313-1317 p. 434.

<sup>22</sup> *CCR* 1313-18, p. 347.

<sup>23</sup> *CPR* 1313-1317 pp. 483-5.

<sup>24</sup> *CPR* 1313-1317 pp. 528-9.

commission sitting against some of his retainers by the procurement of 'Lady de Nerford' as the plaintiff was her son John and all the justices were her men, saying that they were doing harm to him since he had 'ouste de sa companye Maud de Nerforde.'<sup>25</sup> Quite when this split occurred is not clear. However, on 12 February 1323 the King granted protection to Warenne and those accompanying him on the King's business in the north of England including one Thomas de Nerford.<sup>26</sup> This Thomas was more likely to have been Maud's brother, Sir Thomas Nerford (d. 1375), than the younger of the two bastard sons mentioned above, but it is interesting that a Nerford was still associated with Warenne after an apparently acrimonious split.

If there had been any reconciliation between Warenne and Nerford, it appears to have been short-lived. In 1317 Warenne, possibly seeking revenge, embarked on what amounted to a private war with Thomas of Lancaster, during the course of which his men abducted the Countess of Lancaster, Alice de Lacy, who was not an entirely unwilling victim. Lancaster gained the upper hand and there was an exchange of lands to Warenne's detriment, with Lancaster taking control of Warenne's castles and estates in Wales and Yorkshire. These then fell into the King's hands following Lancaster's attainder in 1322. The Surrey and Sussex estates remained under the settlement of 1316. Maud Nerford had also lost property as a result of the conflict, and although she was able to petition the King in 1323 for the restoration of tenements that she had purchased in Wakefield, of which she had been disseised by Lancaster, her situation was not about to improve.<sup>27</sup> In 1326 the earl resettled what remained of his estates, taking the opportunity to deprive Maud and her sons of succession, and of settling the Surrey, Sussex and Welsh estates on his sister, Alice, wife of Edmund, earl of Arundel, and her son, leaving Maud with an interest only in the manor of Hatfield, not far from

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<sup>25</sup> TNA:PRO SC8/87/434. The original commission dated 1 December 1319 is in *CPR* 1317-21 p.474. The commission was reissued in the same terms on 8 July 1320 [*Ibid.* p.537]. It was alleged that John Sprygi, Simon Plesent, Robert de Reppes and John Caunceler had broken John de Neyreford's close at Wesenham, Norfolk and carried away his goods. Richard Kaeuper, 'Law and Order in Fourteenth Century England: the Evidence of Special Commissions of Oyer and Terminer', *Speculum* liv (1979) pp 734-784 assumes that the John de Nerford mentioned was Maud's son, but this is not necessarily the case. The 'Lady de Nerford' is more likely to be Petronilla, the mother of Maud and her brothers, John, Thomas and Edmund.

<sup>26</sup> *CPR* 1321-1324 p.237. Warenne had earlier made a life grant of the manor of Saddlescombe (Sussex) to a Thomas de Nerford [TNA:PRO C 143/107/10, 8 Edward II]. The theory this was Maud's brother, rather than one of his bastard sons, otherwise known as Thomas de Warena, is supported by a subsequent grant by Warenne to Maud's other brother, Edmund, of his reversion in a messuage, land and rent in Harrowby, Donesthorpe, Grantham and Barkston. [TNA:PRO C/143/112/12].

<sup>27</sup> TNA:PRO SC 8/157/7833.

Warrenne's castle of Conisbrough.<sup>28</sup> Meanwhile, the two boys had been admitted to the Order of St John of Jerusalem in London. The Yorkshire estates were now regranted to Warrenne for life, with reversion to the king.<sup>29</sup> Ensuring the survival of the family name through the transfer of estates to an illegitimate son was clearly at this stage not a priority. It was only to be expected that Maud would be less than happy with this arrangement. Edmund, earl of Arundel, undertook on behalf of himself and his heirs to recompense the king for the value of any of the Yorkshire lands that Maud might temporarily recover until their reversion to the king or his heirs.<sup>30</sup>

Warrenne's relations with his wife appear to have improved slightly by the early 1330s - perhaps because the relationship with Maud Nerford was over. On 31 May 1331 he issued a charter confirming grants to Lewes Priory 'for his own soul and that of the countess, Joan de Bar, his consort', which was witnessed by Joan herself and her chaplain, among others, including one of Warrenne's illegitimate sons.<sup>31</sup> Fairbanks compares this charter with one from 1316, when he confirmed his and his ancestors' donations to the Priory of Thetford.<sup>32</sup> Then it had been Maud Nerford and their children, rather than his wife, whose souls he had been concerned about: '*ac etiam pro salute animae Matildis de Nereford et antecessorum suorum, et puerorum nostrorum.*'<sup>33</sup>

In the mid-1330s Warrenne was still regarding his Arundel relations as his preferred heirs. On 6 June 1335 he released to the King his castle and manor of Castle Acre, Norfolk and on the following day the estate was regranted to him for him and his heirs, with remainder to Richard earl of Arundel, the son of Warrenne's sister Alice and Edmund earl of Arundel.<sup>34</sup> The improved relationship with Joan did not last, however. By 1344 the earl's marriage was once again in question. In February of that year Pope Clement VI wrote, at the request of the queens of France and England, to the bishop of Winchester asking him to 'warn and compel John, earl of Warrenne, to receive and treat with marital affection his wife, Joan de Barre, whom he married by virtue of a dispensation granted by Clement V (they being related in the fourth degree), and having

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<sup>28</sup> CPR 1324-7 pp. 271-2. This document is noteworthy in that the lands were regranted to John de Warrenne and his wife Joan, with reversions to Edmund earl of Arundel and Alice his wife, and their son Richard and his wife.

<sup>29</sup> CPR 1324-7 p.270; CCR 1323-27 pp.479-80.

<sup>30</sup> CCR 1323-7 p.573.

<sup>31</sup> Lewes Chartulary ed. L F Salzman (Sussex Record Society xxxviii, 1932) pp. 69-71. One of the witnesses was 'Sir William de Warena'. This could refer to either of the earl's bastard sons of that name, one of whom was a monk of Lewes. These sons are discussed further below.

<sup>32</sup> F R Fairbanks, 'The Last Earl of Warrenne and Surrey, and the Distribution of his Possessions' *Yorkshire Archaeological Journal* xix (1907) p.230.

<sup>33</sup> Dugdale, *Monasticon* ii pp.574-5.

<sup>34</sup> CPR 1334-1338 p.115.

lived together for thirty-two years; notwithstanding his pretence that the said dispensation was surreptitious, inasmuch as they are related respectively in the third and fourth degrees from a common stock'.<sup>35</sup> What exactly was meant by 'marital affection' (*affectio maritalis*) was not precisely defined, though Sheehan was of the opinion that it was in practice more concerned with outward appearances.<sup>36</sup>

At about the same time as the queens of France and England had been petitioning the pope on Joan's behalf, the earl was petitioning the pope for plenary indulgence at the hour of death for himself, his wife Joan, one of his bastard sons, Sir William de Warenne, and Margaret his wife and for Robert de Lynne, his chaplain, monk, of Castle Acre. This was granted by Clement VI just a month after his letter to the bishop of Winchester.<sup>37</sup> Why Warenne included his estranged wife along with his chaplain and his illegitimate son and the latter's wife is something of a mystery.<sup>38</sup>

Warenne then made a final attempt at a divorce. He had apparently taken legal advice on the dispensation for consanguinity obtained at the time of his marriage, which had earlier proved a stumbling block. He now challenged its validity on the grounds that the dispensation was for persons related in the fourth degree, whereas Joan was related to the common stock in the third degree, and Warenne in the fourth. Despite the opinion of 'divers doctors' on this technicality however, in June 1344 Clement VI ruled that the dispensation was valid.<sup>39</sup> This declaration not only put an end to Warenne's hopes, but set a new precedent, for some ten years later, Innocent VI provided confirmation to Sir Richard de Baskerville and Isabella, his wife, of Clement VI's ruling in the case of Warenne and Joan de Bar, that a dispensation for 'the marriage of persons related in the fourth degree of kindred shall hold good if they are related in the third and fourth degrees'.<sup>40</sup> In 1358 Innocent again confirmed the ruling, this time at the request of Sir Robert de Bures.<sup>41</sup> Warenne was becoming ever more desperate in his attempts to gain a divorce. Whilst challenging the validity of the dispensation, he also stated or confessed that there had been irregularity between himself and his relative, his wife's aunt, the Princess Mary, a daughter of Edward I, before he was married. Mary was a nun of Amesbury Abbey, but had died in 1332 and was therefore unavailable to answer to the

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<sup>35</sup> *CPL* iii p.116.

<sup>36</sup> Sheehan, 'Maritalis affectio Revisited' in *Marriage, Family and Law in Medieval Europe* p.270

<sup>37</sup> *CPP* p. 46; *CPL* iii p.145.

<sup>38</sup> This William was not one of the two sons of Maud Nerford who had been named in the 1316 settlement. See p. 158 below for further details of his career.

<sup>39</sup> *CPL* iii p. 173.

<sup>40</sup> *Ibid.* p. 522.

<sup>41</sup> *Ibid.* p. 595.

truth or otherwise of this claim. The matter was put before Clement VI who issued a mandate to the bishop of St Asaph to absolve John de Warenne from excommunication, which he incurred by intermarrying with Joan de Bar, whose mother's sister Mary, he had carnally known. A penance was to be enjoined; and as to the marriage, 'canonical action is to be taken.'<sup>42</sup> It is not clear what form this canonical action was to take. It appears that this was not quite the end of the matter, for shortly afterwards the pope had to write to the archbishop of Canterbury and his official, to stop them from pursuing Joan de Bar in the archbishop's court on this matter.<sup>43</sup> Warenne's failure to obtain a divorce in 1344 can be contrasted with the success of his nephew Richard FitzAlan, despite the fact that FitzAlan's marriage, unlike Warenne's, had produced offspring. However, FitzAlan's petition was on the basis of minority, lack of consent and coercion rather than consanguinity or precontract.<sup>44</sup>

By this time Maud Nerford was dead. On 22 November 1345 Warenne was granted licence to grant the advowson of Hatfield to the abbot and convent of Roche. Hatfield had been regranted to Warenne for life with successive remainders to Maud and her two sons, but Maud was now dead and John and Thomas had both taken religious habit in the Order of the Brethren of the Hospital of St John of Jerusalem at Clerkenwell.<sup>45</sup> Warenne's renewed attempts to obtain a divorce in the 1340s arose as a result of his relationship with another woman, Isabel Holland, the daughter of Sir Robert Holland, a member of a knightly family who had risen in the service of Thomas of Lancaster.<sup>46</sup> In the early part of 1346 Warenne attempted to resettle his estates in Surrey, Sussex and Wales, which had in 1326 been settled with reversion to his sister and her husband, Edmund FitzAlan, earl of Arundel. The document, as recorded by Dugdale, states that

*... and if God should please to send him an heir by Isabel de Holland then his wife, should the same heir be male or female, it should be joined in marriage to some one of blood royal, whom the king should think fittest; so that the whole inheritance of this earl, with the name and arms of Warenne, should be preserved by the blood royal in the blood of him, the said earl. And, in case he should depart this life without any such issue, begotten on the body of the said Isabel, that then all his castles, manors, lands and tenements in Surrey, Sussex and Wales, should after*

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<sup>42</sup> *Ibid.* p. 169.

<sup>43</sup> *Ibid.* p. 189.

<sup>44</sup> See above pp. 75-6.

<sup>45</sup> *CPR* 1345-8 p.16

<sup>46</sup> For the career of Sir Robert Holland, see J R Maddicott, 'Thomas of Lancaster and Sir Robert Holland: a study in noble patronage', *EHR* lxxxvi (1971) pp 449-472. Maddicott assumed that Isabella had in fact married Warenne.

## Chapter 6

*his decease remain to the King, to be bestowed upon some one of his own sons, on whom he should think fit; on condition that in the person of such son and his heirs, the name, honour and arms of Warenne should forever be maintained and kept.*<sup>47</sup>

In referring to Isabel as his wife, Warenne may merely have been anticipating his divorce and remarriage, but it is worth noting that in his will he described Isabel as ‘*ma compaigne*’, a term usually used to refer to a wife.<sup>48</sup> It seems that, whilst he wanted to settle his estates on any issue of his liaison with Isabel and to ensure the survival of the name and arms of Warenne, he was also concerned about legitimacy, or at least the appearance of legitimacy. He clearly regarded his relationships with Maud Nerford and Isabel Holland as a form of marriage in all but legal terms. Once again, there was a substantial inducement to the king to acquiesce in this arrangement, since one of his own offspring would benefit, whether Warenne had issue with Isabel or not.<sup>49</sup>

Unfortunately for Warenne, and for the king, Richard, earl of Arundel, the son of Edmund and Alice, was not prepared to allow himself to be disinherited so easily. He visited the king whilst he was near Yarmouth, Isle of Wight, on his way to Calais, and drew his attention to the earlier settlement agreed by Edward II. In November 1346 Edward ordered execution of the feoffment to be stayed pending further consideration, and ultimately decided that ‘in consideration of the service of the petitioner in the war of France’ it should not be put into effect.<sup>50</sup> In December 1346, he revoked the arrangement, on the grounds that he had not been ‘fully instructed of the grant of his late father.’<sup>51</sup> Richard was in his prime and needed for the war in France, and was a useful source of loans.<sup>52</sup> Warenne, however, was so infirm by this time that he had in October 1346 been excused from personal attendance at parliaments and councils.<sup>53</sup> No doubt the Warenne estates in Surrey, Sussex and Wales would have been useful to provide for Edward’s large family, but he already had the reversion of the Yorkshire estates and the price of antagonising earl Richard was one he was not prepared to pay.

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<sup>47</sup> Dugdale, *Baronage* (1675) p.81.

<sup>48</sup> *Test. Ebor.* I, Surtees Society IV, 1836 pp. 41-45.

<sup>49</sup> Given-Wilson and Curteis cited this arrangement as an attempt to settle the lands on one of Warenne’s own bastard sons, but the facts do not appear to support this interpretation. [*Royal Bastards* p.49]

<sup>50</sup> *CPR 1345-48* p. 480.

<sup>51</sup> *CPR 1345-48* p.221.

<sup>52</sup> FitzAlan had begun to make loans to the Crown in 1338 and had advanced 1,200 marks in July 1345 (which was promptly repaid). His loans were to grow larger and more frequent over the subsequent decade. See C Given-Wilson, ‘Wealth and Credit, Public and Private: The Earls of Arundel 1306-1397’, *EHR* 106 (1991) pp 1-26.

<sup>53</sup> *CPR 1335-48* p. 196.

## Chapter 6

Warrenne died on his 61<sup>st</sup> birthday, 30 June 1347, at his castle of Conisbrough in Yorkshire. Under the terms of the 1326 settlement, the Yorkshire estates reverted to the crown, and on 6 August the castles, manors, towns, lands and tenements of Warrenne north of the Trent were granted to the king's son Edmund of Langley. The Surrey, Sussex and Welsh lands passed to his nephew Richard earl of Arundel.

The last Warrenne earl of Surrey had thus died without legitimate issue. He had not, however, died without surviving illegitimate issue. Warrenne's will left bequests to the following of his children:

*Sir William de Warrenne, 100 marks and a hure of silver gilt for  
Stratherne with its band or wreath of silver gilt, two tags and  
the lace of silver gilt for the mantling and all his armour for  
jousting.*

*Sir William's wife, a 'nouche d'or', or jewelled clasp*

*Edward de Warrenne, £20*

*Joanne de Basing, a silver cup*

*Katherine, 10 marks*

*Isabel, (a nun of Sempringham) £20*

*William de Warrenne (prior of Castle Acre), a bible in French*<sup>54</sup>

Warrenne thus had six illegitimate children who survived him, in addition to John and Thomas, the sons by Maud Nerford already mentioned. It has been shown that his intention in 1316 had been for John or Thomas to inherit a large part of his estates, although he later changed this arrangement. On the eve of his death he does not appear to have made any attempts to enable his other illegitimate children to inherit. Why did he treat the other bastards differently?

It was not a case of estrangement and deathbed reconciliation. His son Sir William was provided for sufficiently to enable him to live as a knight, and he pursued a military career. In 1332 he was a witness to letters patent of his father granting 20 acres of land in fee to his serjeant or esquire, Henry de Kelsterne.<sup>55</sup> In 1333 he received a pardon for acquiring the manor of Beeston (Norfolk) for life, from John de Warrenne, earl of Surrey, without a licence and licence to remain.<sup>56</sup> and in 1340 he received a grant in fee of 122 acres of waste in Warrenne's manor of Hatfield at a rent of 10 s.<sup>57</sup> He was

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<sup>54</sup> *Test.Ebor.* I pp. 41-45. The hure was a kind of hat worn over the helmet, also known to modern writers on heraldry as a cap or chapeau of dignity. [J G Nichols, 'Watson's Earls of Warren and Surrey', *Herald and Genealogist* 7 (1873) pp 193-219] Warrenne had been granted Strathearn by Edward Bailiol in 1332, and thereafter used the title 'Earl of Surrey and Strathearn' [CP xii a p. 510].

<sup>55</sup> CPR 1340-43 pp.511-2. *Inspeximus* of letters patent of John de Warrenne dated 27 January 6 Edward III. A Thomas de Nerford, presumably Maud's brother, was also a witness.

<sup>56</sup> CPR 1330-34 p.404. This is odd, as on 7 March 1311 Edward II had confirmed the earl's grant dated 24 August 1310 of the manor of Beeston and the advowson of the church to William de Warrenne [CPR 1307-11 p.330].

<sup>57</sup> CPR 1338-40 - p. 411.



one of three commanders of the thirty men-at-arms and forty archers supplied by Warenne for the French war in 1339<sup>58</sup> and he was with Edward III in Brittany in 1342, when he was sent with Sir Walter Mauny and Sir John Stirling to reconnoitre the city of Vannes.<sup>59</sup> Sir William seems to have borne a version of the Warenne arms.<sup>60</sup> He was married by 1344, when earl Warenne petitioned the pope for plenary indulgence at the hour of death for his son and the latter's wife Margaret. He witnessed a charter of his father, granting pasture rights in Wakefield to a tenant in June 1345.<sup>61</sup> He received a general pardon for good service in the war in France in September 1346.<sup>62</sup> After his father's death he continued to serve on commissions and was granted a life annuity of 40 marks at the Exchequer in 1364 as a reward for long service.<sup>63</sup>

Edward de Warenne is a more shadowy figure, but he appears to have been the ancestor of the Warren family of Poynton (Cheshire), as was demonstrated by J G Nichols.<sup>64</sup> It seems probable that Edward was a son of Maud Nerford, since the Warren family possessed a manor formerly in the hands of the Nerfords, and their coat of arms included both the lion rampant ermine of Nerford and the checky of Warenne. In 1346, Earl Warenne petitioned the King that since his sons Edward and William de Warenne were ready to attend the king abroad, Edward might be excused from the demand to provide a man-at-arms from his lands in Norfolk, since he held no others there.<sup>65</sup> He held rights of advowson over a third part of the church of St Mary, Iteringham (Norfolk) in 1349.<sup>66</sup>

Prior William had been earmarked for a career in the Cluniac Priory of Lewes, a Warenne foundation. As a monk of Lewes he was ordained as an acolyte on 2 March 1325.<sup>67</sup> He was prior of the daughter house of Monks Horton in Kent by 1337 and was later promoted to the larger foundation of Castle Acre in Norfolk. His career demonstrates very clearly what could be achieved by a bastard with a powerful patron,

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<sup>58</sup> *CCR* 1339-41 p.301.

<sup>59</sup> *Knighton's Chronicle 1337-1396*, ed. G H Martin, (Oxford, 1995) p. 44.

<sup>60</sup> According to Watson his arms were *checky or and azure, a chief argent*. [John Watson, *Memoirs of the Ancient Earls of Warren and Surrey and their Descendants to the Present Time* (Warrington, 1782) II p.68].

<sup>61</sup> *CPR* 1343-5, p.570.

<sup>62</sup> *CPR* 1345-8 p.499.

<sup>63</sup> *CPR* 1361-4 p.511.

<sup>64</sup> This is very fully discussed by Nichols, 'Watson's Earls of Warren and Surrey'

<sup>65</sup> *Cal. Scot.* 1307-1357 p.265.

<sup>66</sup> Phyllis E Pobst (ed.) *Register of William Bateman, Bishop of Norwich I* (Canterbury and York Society, 1996) p. 82.

<sup>67</sup> *Register of John de Stratford, Bishop of Winchester 1323-33 II* (Surrey Record Soc 2011) p.448.

and what could happen when that patronage was no longer available, as will be discussed in the following chapter.<sup>68</sup>

There was another possible bastard of the last earl of Warenne, but he was not mentioned in the will. A petition, probably of 1334, by Sir Ralph Botiller refers to a 'Ravlyn fitz al Count de Garrein' who was alleged to be one of a gang that attacked one of Botiller's manors on Warenne's orders, doing £200 worth of damage. There are no other extant references to this Ravlyn or Rawlin. Possibly he predeceased his father.<sup>69</sup>

It is not clear who the mothers of these children were. If they were, as tradition has it, all children of the earl and Maud Nerford, they must all have been conceived before the split, which occurred by 1320. However, whilst Sir William was certainly born before August 1310, when he received a grant of the manor of Beeston,<sup>70</sup> there is nothing to connect him with Maud Nerford, unlike Sir Edward, and he may therefore have had another mother. Sir Edward would appear to have been Maud Nerford's son, but if he had been born before 1316, it is strange that he was not mentioned in the settlement of that date and it is therefore probable that he was born between 1316 and 1320. Prior William was born at Conisbrough, so must have been born before January 1318, by which time this castle was in the hands of Thomas of Lancaster, and he was in any case old enough to be Prior of Monks Horton in 1337.<sup>71</sup> As he was intended for the church there would have been no need to include him in the settlement of 1316. Some or all of the girls may also have been born earlier as they would not necessarily have been included in the settlement. Why did Warenne never try to settle his some of his estates on one or more of his other sons? Sir William in particular would seem to have been a potential candidate to continue the name and honour of Warenne.

It seems that Warenne was concerned with legitimacy. In 1316, when his sons by Maud Nerford were included in the settlement, he expected to be free to marry Maud. If he did so, his two sons would not be legitimate by common law - hence the need to name them explicitly in the settlement - but it was possible that he believed the marriage could at least legitimate them according to canon law. When it became clear that he would be unable to marry Maud and the relationship broke down, he resettled his estates on his heir general, his sister Alice, wife of Edmund earl of Arundel. His omission of the future Sir William from the settlement is thus explicable if he were not

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<sup>68</sup> See below pp. 202-5.

<sup>69</sup> TNA:PRO SC 8/156/7772; printed in *Rotuli Parliamentorum* ii p.88.

<sup>70</sup> *CPR* 1307-11 p.330.

<sup>71</sup> *CCR* 1339-41 pp. 18 and 82.

the son of Maud, as he could not be 'legitimated' by Warenne's marriage to Maud. He might bear the Warenne name and arms, but the earl seems to have had scruples about making an undeniable bastard his heir. His final attempt at resettlement of his estates was made in the belief that he would be able to marry Isabel Holland. She is referred to as 'then his wife' in the charter, and it is clear that he intended the arrangement to refer to legitimate issue. The letter patent of Edward III revoking the arrangement states that the estates were to have been regranted to 'the said earl and to *the heirs of his body lawfully begotten*.'<sup>72</sup> Bastard sons were regarded as part of the family and needed to be provided for, but arranging for a bastard son to 'inherit' part of the estate and continue the family name, as William de Vescy had done, seems not to have been considered by Warenne. It is interesting that although Warenne was apparently not prepared to go to the lengths of settling his estates on one of his surviving bastard sons, the proposed resettlement of 1346 allowed for the continuation of the name, honour and arms of Warenne in the person of one of the king's sons, implying that he considered the name and honour of Warenne to be more important than the true (if illegitimate) bloodline. Although he bequeathed valuable armour to his bastard son Sir William, the hure bore the arms of Strathearn, not Warenne. Possibly the knowledge that there was already a bastard in the Warenne lineage, albeit one with royal connections, affected his thinking on this point. It is also worth noting that none of the bastard children mentioned in the will are explicitly described as illegitimate in the document.

### **Earl Warenne in context: his contemporaries**

Warenne's behaviour, though perhaps extreme in terms of the number of bastards he fathered and the number of times he changed his mind about the disposition of his estates, was not very different from that of his contemporaries. Aymer de Valence, earl of Pembroke, also had no legitimate male heirs of his body but had an illegitimate son, Henry. There is no apparent evidence that the earl made any attempt to settle his estate in his son's favour. It is true that Henry predeceased his father by a couple of years, but had the earl been minded to settle his estates upon his illegitimate son he might have been expected to have put arrangements in hand at least when the latter reached adulthood or married. In the absence of any other arrangement, on the earl's death his lands were divided between the heirs of his two sisters.<sup>73</sup> Whilst he had

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<sup>72</sup> *CPR* 1345-48 p. 221.

<sup>73</sup> *Oxford DNB* 56 p.42; J R S Phillips, *Aymer de Valence, Earl of Pembroke* (Oxford, 1972) p. 18.

not been regarded as a substitute for a legitimate heir, Henry de Valence was a knight and member of his father's retinue. He accompanied the earl on his mission to the papal court at Avignon in 1317 and was captured along with his father by Jean de 'Lamhuller' or Lamouilly, remaining as a hostage in the County of Bar whilst his father set about raising the £10,400 ransom.<sup>74</sup> He had earlier married Margery, widow of Theobald de Gayton.<sup>75</sup> The position of Henry de Valence is thus comparable with that of Sir William de Warenne, the illegitimate son of his father's contemporary. Both were illegitimate sons of earls who were knighted and served in their fathers' retinues but were not regarded as potential substitutes for a legitimate heir.

Thomas of Lancaster, another of Warenne's contemporaries, also lacked a legitimate male heir of his body and had little chance of securing one, given his own marital difficulties. He had two bastard sons, Thomas and John. Again, there is no evidence of an attempt to transfer part of the estate to either of them in place of the earl's brother and right heir, Henry. Given the various land transactions in which Lancaster was involved as a result of his private war with Warenne, he could surely have managed to settle at least a reversionary interest in a part of the estate on a bastard son had he been so determined. After all, Warenne had managed something similar in 1316. There is, however, little evidence of any strong connection between Lancaster and his bastard sons. One of them, Thomas, became a knight, but unlike William de Warenne and Henry de Valence, he does not appear to have been particularly associated with his father. It is possible that he was still quite young at the time of the latter's death. Lancaster's sons seem at least to have received some support from his relatives. Thomas became a knight after spending some time at a university, and subsequently served as one of Edward III's chamberlains, participating in an attack on Sens. By 1354 he had tired of military life and sought to join the order of Friars Minor.<sup>76</sup> The other son, John, entered the church, obtaining the degrees of Master of Arts and Bachelor of Theology. He obtained benefices in Uttoxeter (Staffs.) and Charing (Kent) but efforts on the part of his kinsmen Edward III and Henry of Lancaster in the 1350s to secure him a canonry and prebend at Lincoln or Salisbury were to prove more problematic, owing to the length of the waiting lists.<sup>77</sup>

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<sup>74</sup> Philips, *Aymer de Valence* pp. 111-6; *CPR* 1313-17 pp. 573, 672, 1317-21 pp. 45, 133; *CPL* ii p. 240.

<sup>75</sup> *CPR* 1313-17 pp.552.

<sup>76</sup> *CPP* p.262.

<sup>77</sup> *Ibid.* pp. 193, 271, 288; *CPL* iii pp.346, 357, 543, 545.

During the reign of Edward II there were thus three earls who all lacked a legitimate male heir of the body but had at least one illegitimate son, yet none of them arranged for their estates to be settled on this bastard. It might be that their rank caused the difficulty. What was possible for barons such as Vescy and Meinill might not be acceptable for an earl, either from the point of view of the king, whose consent would be required, or in the view of the earls themselves, or the barons. David Crouch has stressed the importance of the dignity and ‘level of bearing and greatness’ which set apart those of comital rank.<sup>78</sup> There was likely to be a price to be paid for royal consent. In Warenne’s case, the Crown retained the manor of Kennington, Surrey and the reversion of the towns of Stamford and Grantham. Furthermore, whilst Warenne obtained royal consent to settle his estates with reversion to two bastard sons, this occurred at a time when both Warenne and the king expected his divorce and remarriage to take place. Had the precontract case been successful and Warenne married Maud Nerford, any irregularities with regard to the birth of their first two sons would no doubt have been glossed over. Had he been so inclined, Thomas of Lancaster could no doubt have tried to make a settlement on one of his illegitimate sons at a time when he was in the political ascendant. Aymer de Valence made no apparent attempt to settle the reversion of his estates on his adult illegitimate son, though he lacked a legitimate son. However, none of these cases is clear cut, and it may be unwise to read too much into them in view of the differing circumstances in each case.

Nevertheless, some support for the theory that there was a reluctance to raise a bastard to an exalted rank may be found in the history of royal bastards. Given-Wilson and Curteis point to a change in attitudes to bastardy at the turn of the thirteenth century which affected the treatment of royal bastards for at least three hundred years. William Longspée, a bastard son of Henry II, was the last royal bastard to be raised to the peerage until Arthur Plantagenet, an illegitimate son of Edward IV, was created Viscount Lisle in 1523. There were however ten other identifiable male royal bastards born during this period, although most of these were born before the fourteenth century.<sup>79</sup> Whilst this change in attitudes evidently did not prevent bastards of noble rather than royal origins from joining the ranks of the wider aristocracy, it may have been reflected in the reluctance of the earls to settle their estates on a bastard. The

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<sup>78</sup> David Crouch, *Image of Aristocracy* pp. 11-14.

<sup>79</sup> Given-Wilson and Curteis, *Royal Bastards* pp. 130-131; 174-5; 178-9. Of the ten identifiable male royal bastards there were only two in the fourteenth century (Edward II’s son Adam, and Edward III’s son John de Southeray) and one in the fifteenth (Richard III’s son John de Gloucester).

English earls were an elite group within the wider nobility. If such a change in attitudes did exist, it does not appear to have extended to Scotland, where, in about 1330, Alexander de Bruce, illegitimate son of Edward, Earl of Carrick (d.1318), was created Earl of Carrick by his cousin, King David II.<sup>80</sup>

### Further case studies

It was not only at the top of the social scale that some begetters of bastards chose not to advance a bastard son in lieu of a legitimate male heir of the body. William de Etchingham (d.1326) had no legitimate male offspring, but his bastard son Robert was sent to Robertsbridge abbey rather than made a substitute heir. William's brother Robert succeeded to the family lands.<sup>81</sup> Sir James Audley of Stratton Audley died in 1334 leaving no legitimate heir of his body, but had two sons, Peter and James, by his mistress Eve, daughter of Sir John Clavinger, and the former wife of his cousin, Thomas Audley of Heighley (d.1307). One of his bastard sons, Sir James Audley (c.1318-61) made his fortune through military service. He was granted £400 p.a. for life in recognition of his good service at Poitiers, he was later granted an additional income of 600 écus from the customs of Marmande, and acquired estates in France, where he became lord of Oléron.<sup>82</sup> Although his father made a settlement of his estates by fine in 1330<sup>83</sup> in which James and Peter were mentioned, after his death, the property apparently went to his brother and right heir, Hugh Audley, who was certainly in possession of Stratton Audley in 1335, when he complained that his houses there had been broken into, his servants assaulted and his goods carried away.<sup>84</sup>

Robert, 3<sup>rd</sup> Lord Lisle of Rougemont (d. 1399), had no legitimate issue, and disposed of the bulk of his estates during his lifetime. In November 1368 he had surrendered 86 knight's fees to the Crown and in return had been granted an exemption for life from attending Parliament or performing any form of service to the crown or payment of tenths or fifteenths against his will.<sup>85</sup> In January 1377 he obtained licence to convey the reversion of the manor of Compton (Beds.) and the town of Shefford, which was at that time held in dower by his mother Maud, to his brother and heir. He later sold the manors of Coveney, Rampton, Cottenham and Westwick (Cambs.) and the manor of

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<sup>80</sup> *CP III* p.57.

<sup>81</sup> Saul, *Scenes from Provincial Life* pp.4-5.

<sup>82</sup> *Oxford DNB* 2 pp. 934-5 ; *CPR* 1358-61 pp. 252-3.

<sup>83</sup> C.P. 25(1)/189/17/41.

<sup>84</sup> *CPR* 1334-8 p.214.

<sup>85</sup> *CCR* 1364-8 pp. 493-98; *CPR* 1367-70 pp. 174-5.

Pishobury (Herts.) to Lord Scrope of Bolton for £3,000.<sup>86</sup> A dispute subsequently arose about this, John Windsor claiming that he had been unlawfully dispossessed of Rampton, Cottenham and Westwick.<sup>87</sup> Lord Lisle's brother and illegitimate son, both called William, appeared as his attorneys in the subsequent hearings and so may be assumed not to have opposed his property transactions.

The illegitimate son, William, seems to have made his own fortune largely through military service to the crown in Ireland and France and to a lesser extent through marriage.<sup>88</sup> On 23 November 1392 he was retained for life by the King, for which he was granted 40 marks per year, and on 13 March 1394 this annuity was increased to £40.<sup>89</sup> On 11 February 1397, he and Amy Fitzellis were granted a further annuity of £30.<sup>90</sup> His marriage to Amy, who was the widow of John Fitzellis of Waterperry (Oxon.), brought him a life interest in the manor of Waterperry. He later acquired the manor of Great Wilbraham (Cambs.) from his uncle. Lisle's career in royal service was not unduly inconvenienced by the change of dynasty in 1399. His annuities were confirmed on 5 October 1399 and in August 1401 he received a further grant for life of two tuns of wine a year.<sup>91</sup>

William's status does not appear to have been significantly affected by his illegitimacy. He was retained by the King several years before his legitimate uncle,<sup>92</sup> and he filled a range of offices, including as an envoy to treat with the Burgundians in 1404, as lieutenant to the earl of Warwick as captain of Calais, and as sheriff and escheator of Oxfordshire and Berkshire. He was elected as a knight of the shire for Oxfordshire in April 1414, 1417 and 1426.<sup>93</sup> The question that remains is why Lord Lisle, who had no legitimate heir of his body, disposed of the bulk of his estates and chose not to make greater provision for his illegitimate son. The proceedings before the King's council in the case brought by John Windsor suggest a possible explanation. Lord Lisle explained in a letter that he was unable to attend in person as he could not travel because of 'the very great infirmity and malady from which I suffer and have

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<sup>86</sup> *CPR* 1374-77 p.402, *CCR* 1392-6 pp.373-7.

<sup>87</sup> 'Richard II: January 1394', *PROME*. URL: <http://www.british-history.ac.uk/report.aspx?compid=116499> Date accessed: 27 September 2012.

<sup>88</sup> *House of Commons* III pp 612-4; CP viii pp. 77-8n.

<sup>89</sup> *CPR* 1391-6 pp. 198.

<sup>90</sup> *CPR* 1396-9 p.80.

<sup>91</sup> *CPR* 1399-1401 pp.11 and 533.

<sup>92</sup> William Lisle senior was retained in November 1397.

<sup>93</sup> *House of Commons* III p.612.

long suffered.<sup>94</sup> This letter was written in 1390, but it is at least possible that Lord Lisle may have already started to suffer from some illness or infirmity as much as 22 years earlier, which would explain why he had surrendered the 86 knight's fees in return for exemption from attending parliament or performing service.

In 1406, Robert Chippeleigh of Milverton (Somerset) left two tenements in Milverton called 'Newplace' and 'Brompfordplace' to his wife, Alice, and the lawfully begotten heirs of her body, with reversion to William, his bastard son, whom he explicitly described as such, and the legitimate heirs of his body. He thus apparently placed any legitimate offspring born to a subsequent marriage of his wife above his own bastard son. He did however make a personal bequest of two gowns to William. To place the latter bequest in context, he also made personal bequests of a single gown to various associates, whilst his wife was to receive all the goods, movable and immovable in his hall, chamber and kitchen, four oxen, two cows, a silver cup, six silver spoons and the grain growing in his fields, in return for finding a chaplain to pray for his soul and those of his parents for a whole year.<sup>95</sup> William therefore seems to have been regarded more highly than most of the beneficiaries, but not as highly as the testator's wife and her legitimate offspring.

In principle, it was easier for burgesses to provide for illegitimate children, as they had more freedom to dispose of property held by burgage tenure. Yet John Lerversegge (d.1411/2), a merchant of Kingston-upon-Hull, who had no legitimate son and might therefore have chosen to regard his bastard son Richard as his heir, instead arranged for him to have a career in the church.<sup>96</sup> Richard was in 1401 granted the most generous form of dispensation, which permitted him to be promoted to all, even holy orders; to hold any mutually compatible benefices with and without cure, including canonries and prebends and elective dignities, major or principal respectively, personates or offices in metropolitan, cathedral or collegiate churches; to resign them simply or for exchange as often as he pleased; and not to need to mention his illegitimacy and dispensation in future graces.<sup>97</sup> Lerversegge was a leading member of the mercantile community who served as mayor on six occasions and represented the

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<sup>94</sup> 'Richard II: January 1394', *PROME*. URL: <http://www.british-history.ac.uk/report.aspx?compid=116499> Date accessed: 27 September 2012.

<sup>95</sup> TNA:PRO PROB11/ 2A, *Somerset Medieval Wills* i p. 20.

<sup>96</sup> There is a possibility that Lerversegge had a legitimate daughter named Joan. In 1440, Joan, the widow of John Fitling, another leading citizen of Hull who, like Lerversegge, served as mayor on several occasions, left a bequest in her will of £5 for masses for the souls of John and Helen Lerversegge, which suggests that she may well have been their daughter. [*House of Commons* III p. 595; *VCH York East Riding* i p.3].

<sup>97</sup> *CPL* V p. 402.



borough in Parliament in 1407, and was also a landowner. He had been employed as receiver of the lordship of Beverley and two other manors for Thomas Arundel when he was Archbishop of York, which may have helped him to secure the necessary papal dispensations. Richard was described as the son of an unmarried man and an unmarried woman, which may also have been a factor in obtaining such an open-ended dispensation. Another burgess, William Middelton, a London grocer, left a life interest only in certain tenements to his bastard son John, with remainder to the Mayor and Commonalty of the City in his will dated 20 November 1419.<sup>98</sup>

John, Bastard of Clarence, also served in France, retrieving the corpse of his father, Thomas Duke of Clarence, who had been killed at the battle of Baugé in 1421, for which service he received a grant of an annuity of £100 per annum from the Irish manors of Newcastle-Lyons, Esker, Tassagard and Crumlin.<sup>99</sup> However, he was not well provided for. At one stage, possibly c.1431 he petitioned the commons, to ask his uncle, King Henry V, account of his poverty, to be sent to France or elsewhere to serve the King, or to make other provision for his sustenance.<sup>100</sup> In July 1431 he was granted the office of constable of the castle of Dyvelyn in Ireland. Sir John Cornwall, Lord Fanhope (d. 1443), had no surviving legitimate issue, but had two illegitimate sons, John and Thomas. He left the sum of 800 marks to these illegitimate children. After his death, his manor of Ampthill (Beds), where he had built a castle, was to be sold to Ralph, Lord Cromwell. There was some dispute about the sale, with Cromwell suing Nicholas Assheton, one of Lord Fanhope's feoffees for not selling the manor to him in accordance Fanhope's will, and Henry Duke of Exeter, whose stepmother (Elizabeth, sister of King Henry IV and widow of John Holand, Duke of Exeter) had married Fanhope mounting a rival claim. The case went to arbitration. The outcome is uncertain, but it appears likely that the Duke of Exeter obtained the manor. Whatever the rights and wrongs of this case, it does not appear that there was ever any question of the manor being transferred to either of Fanhope's bastard sons.<sup>101</sup>

Henry Grey (d.1496), last Lord Grey of Codnor, died without legitimate issue, though he had three illegitimate sons. His coheirs were his aunts, daughters of his grandfather Richard Grey, and their descendants. These were Elizabeth, who married Sir John Zouche, of Bulwick (Northants), a younger son of William, 5<sup>th</sup> Lord Zouche;

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<sup>98</sup> *Husting* p.428.

<sup>99</sup> *CPR* 1422-9 pp 489-90; 543.

<sup>100</sup> TNA: PRO SC 8/96/4753.

<sup>101</sup> *Test Vet.* I p. 246; *CP V* p.254; *Oxford DNB* 13 pp 446-7; *VCH Beds* III p. 272.

Eleanor, who married Sir Thomas Newport of High Ercall (Salop.) and Lucy, who married Sir Rowland Lenthall, of Lenthall (Hereford.)<sup>102</sup> Lord Grey made some provision from his estate for his bastard sons. The manor of Ratcliffe-on-Trent was to go to Richard Grey and the heirs of his body, with reversion to the two younger illegitimate sons, both called Henry. The two Henries were to have the manors of Towton and Barton, Notts. He also willed that the younger Henry, son of Katherine Finderne, was to marry Cicely Charlelton and that his cousin, Sir Thomas Barowe should pay £100 towards the marriage of Richard and the elder Henry.<sup>103</sup> However, unlike Sir Richard Beauchamp, Lord St Amand, Grey chose not to settle the bulk of his estates on any of his illegitimate sons but instead sold the reversion of the family seat of Codnor, together with other manors in Derbyshire and Nottinghamshire to Sir John Zouche, the husband of one of his coheirs.<sup>104</sup>

Some individuals lacking legitimate heirs of their body devoted a significant proportion of their estate to pious purposes. Thomas Gippyng, a London draper, left tenements in the various tenements in the city and in Great Missenden (Bucks) for pious purposes, with the residue of his estate to be divided equally between his bastard daughters Beatrice and Juliana.<sup>105</sup> Richard Smith, burgess of Reading, and yeoman of the robes to Henry VII and Henry VIII had a bastard son, Richard, but no legitimate issue. The bulk of his property seems to have been devised for pious purposes. Smith had been a founder of the Brethren of the Mass of Jesus at Reading in 1493 and all his lands and tenements within the borough were bequeathed to the maintenance of the Mass of Jesus. Richard Justice, probably his stepson, was to have a tenement 'that I bought of Thomas Harte' for a payment of £10 to the Mass of Jesus. There were also a number of bequests of goods and chattels, particularly clothing, to friends and relatives, including his bastard son. Richard was to receive a gown of cloth furred with 'bogy' or fox, ten pounds, a goblet of silver and two small salts of silver and gilt. This bequest appears towards the end of the will, shortly before a bequest to Smith's servant, Jasper, who was to receive 'the bed that he lieth in', a saddle, a bridle, a harness, a bow with a sheaf of arrows, ten pounds, silk jacket, items of clothing made from silk and velvet, a silver pot and a gold ring. These bequests were among the most generous in the will. Most of the bequests were of clothing, gold rings and smaller sums of money, such as

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<sup>102</sup> *CP* vi pp. 130-133.

<sup>103</sup> *Ibid.*

<sup>104</sup> I H Jeayes (ed.), *Derbyshire Charters* (London, 1906) no. 905; *CPR* 1494-1509 pp.583-4.

<sup>105</sup> *Husting* II, pp. 412-3.

the bequest to Hugh Acton (a London tailor and one of Smith's executors) of a scarlet gown, a gold ring and 40 shillings. Smith's godchildren, of whom there may have been quite a number since they were not named individually, were to receive 6s. 8d apiece.<sup>106</sup>

Sir John Fenkyll was a London draper and shipowner who was elected to parliament in 1483 and 1484 and served as an alderman for the Aldersgate and Bridge wards, and as sheriff in 1487-8. He had no legitimate children. His property went to the children of his brother Edward. In his will dated 27 May 1499 he did however leave £20 from the sale of his house to Robert Spencer 'my child'.<sup>107</sup>

The naval commander Sir Edward Howard (d.1513), second son of the Duke of Norfolk, had no children from his marriage to Alice Morley, heir of William Lovel, Lord Morley, but he had two illegitimate sons. Howard was a younger son who predeceased his father, and as such did not have a significant landed estate of his own, as he appears to have held only the manor of Morley (Norfolk), which he had acquired through his marriage. His ability to provide for his bastard sons was constrained by this and his early death in a naval battle, whilst the boys were still minors. The manor of Morley went to his stepson, Henry Parker, after the death of Howard's widow. Howard did however make provision for the livelihood of his two young bastard sons in a will he made in 1512 before setting off on the fateful campaign. He ensured that one of the two would have a career in royal service by giving the King his choice of them to be his servant, and bequeathing him 'my bark called "Genett," with all apparel and artillery' and fifty pounds. The other son was commended to his friend and executor Charles Brandon (later Duke of Suffolk), 'praying him to be a good master unto him', and bequeathed the sum of one hundred marks 'because he hath no ship' in order to 'set him forward in the world.'<sup>108</sup> His intention was clearly that these illegitimate sons would follow in their father's footsteps, and would be established in the court circles of which he had been a member.

Sir Edward Poynings (1459-1521), Deputy Lieutenant of Ireland and the son of Robert Poynings (d.1461) and his wife, Elizabeth Paston, had no legitimate son to succeed him. His son John had predeceased him, but he had three illegitimate sons and four daughters. He made provision for these illegitimate children in his will of 27 July 1521, leaving his manor of Westenhanger in Kent, to the eldest, Thomas, but most of his estates, with a value of £427 4s 0¾d, passed to Henry Percy, earl of

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<sup>106</sup> TNA:PRO PROB11/18.

<sup>107</sup> TNA: PRO PROB11/11; A P Beaven, *The Aldermen of the City of London* (1908) pp. 1-8

<sup>108</sup> *Test. Vet.* II p.534; *Oxford DNB* 29 pp 335-7.

Northumberland.<sup>109</sup> This was in accordance with the terms of an agreement of 1504 in which Sir Edward had guaranteed the rights of the earl of Northumberland to the reversion of the estates which he held of the inheritances of Robert, Lord Poynings and Sir Guy Brian, in the event of his death without heirs of his body.<sup>110</sup> It would appear that his illegitimate sons were born relatively late in Poynings' life and after the agreement of 1504. Sir Edward's will of 1521 provided that his servant Edward Thwaytes should have the revenues of Westenhanger for twelve years until Thomas, the eldest, came of age, and another son, Adrian, was attending Gray's Inn in 1533. Thomas and Adrian both enjoyed successful careers as soldiers and courtiers. Thomas was present at the coronation of Anne Boleyn in 1533, and was made a knight of the Bath during the celebrations. In 1545 he was created Baron Poynings and appointed lieutenant of Boulogne. Adrian served in his brother Thomas' retinue and continued to serve in Boulogne and Calais after his brother's death. He was knighted by Queen Elizabeth on her accession.<sup>111</sup> Poynings' illegitimate daughters may have been a little older than his sons. Joan married Thomas, Lord Clinton (d. 1517) in around 1510 and was the mother of Thomas Clinton, Earl of Lincoln<sup>112</sup> Although Sir Edward was constrained in his ability to provide for his illegitimate children from his estates, they were able to follow in their father's footsteps in terms of a diplomatic and military career.

The case of Sir William Gresley of Drakelow (d. 1521), related by Susan Wright in her study of the Derbyshire gentry in the fifteenth century, provides an example of a landowner's attempt to provide for his illegitimate offspring being hampered by an existing entail. The Gresley estates had been entailed, mainly in tail male, by William Gresley's father, Sir John, in 1475. William apparently tried to break the entail by means of a common recovery of all the patrimony, including Drakelow, for the performance of his last will. According to this will part of the estate was to go to Alice Tawke, the mother of his four bastard sons, for her life, with successive remainders to

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<sup>109</sup> Bindoff, *The Commons 1509-1558* III pp. 146-7. Henry Percy's grandfather Henry (d. 1461) had married Eleanor Poynings, the granddaughter and heiress of Robert, Lord Poynings (d. 1446). Sir Edward Poynings was descended from a younger son of Robert, Lord Poynings. (*CP X* pp. 664-5) *Oxford DNB* 49 pp. 179-82.

<sup>110</sup> Bean, *Estates of the Percy Family*, pp. 116-126. The Brian inheritance should have reverted to the Poynings heirs after the death of Avice, Countess of Wiltshire in 1457, but the competing claims of various interested parties were not resolved until an agreement was reached in 1488 on the partition of the inheritance between four claimants: the Earl of Northumberland, The Earl of Ormond, Sir Edward Poynings and Sir Thomas Seymour.

<sup>111</sup> *Oxford DNB* 45 pp. 179; 183-4; *CP X* pp. 668-9.

<sup>112</sup> *CP III* p. 317, VII p. 690.

her issue and William's brothers, and the other part would go to Alice and William's eldest son, Anthony, and his issue, with remainders to his brothers. After William's death the case went to Chancery, where it was held that as William had held only the use of the property his attempt to break the entail via a common recovery was invalid and his brother George was the rightful heir.<sup>113</sup> He had however also made some provision from newly-purchased land. In February 1511 he settled lands in Snarestone (Leics), which he had recently purchased from John Corbett, on Alice with successive remainders to her sons Anthony, Thomas, Humphrey and Edward and the right heirs of William.<sup>114</sup>

## Summary

The previous chapter identified some conditions which needed to be met in order for bastards to be used as substitute heirs: that the parent was actively determined to pursue this course of action; that no powerful individuals would thereby be disinherited; that the goodwill of the chief lord of the fee or the king was forthcoming and that reliable and trustworthy feoffees could be appointed. In the case of Earl Warenne, it was mainly the first condition which was lacking. When he did try to settle his estates on two illegitimate sons in the expectation that he would marry their mother, he had the support of the king to do so, even though it was necessary to offer an inducement, and the attempt was successful at the time, even though Warenne later changed his mind when it became apparent that he would not be able to marry his mistress, Maud. His contemporaries Thomas of Lancaster and Aymer de Valence may have shared his reluctance to settle estates on illegitimate offspring. Others also chose to provide for the future of their illegitimate children in ways other than settlement of land. Whilst in some cases this may have been because they knew that such attempts were likely to be unsuccessful, it is clear that some did not feel that it was appropriate for illegitimate children effectively to inherit their estates. The latter is likely to have been the case with Robert Chippeleigh, who gave the legitimate heirs of his wife priority over his own illegitimate son.

Warenne's later attempt to settle his estates on putative offspring with Isabel Holland, though gaining the support of the king in return for another inducement, was ultimately foiled by the existence of a powerful individual who would be thereby

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<sup>113</sup> Wright, *Derbyshire Gentry* pp. 37-38, 49; Derbyshire Record Office D77/1/11/2.

<sup>114</sup> Derbyshire Record Office D77/1/61/1.

disinherited. The relative power and influence of those who would ultimately lose by any settlement was clearly of great significance for the success of any such settlement, not just for Warrene, whose plans were foiled by Richard Earl of Arundel, but also for John Chenduyt, whose illegitimate daughter and her husband were unable to defeat the rival claims of Thomas Rescarrek and John Trenewith. Thomas Montagu, Earl of Salisbury would have been well aware that there were powerful individuals with an interest in ensuring that this daughter was not disinherited.

In some cases, the efforts of landowners to settle the bulk of their estates on illegitimate children ultimately failed because of the existence of earlier entails or settlements, as in the Gresley and Poynings examples. A further precondition for a successful settlement in favour of a bastard was therefore an estate that was either unencumbered by a pre-existing settlement or entail, or if not, at least had beneficiaries who would not have the resources to upset a subsequent resettlement. The problem of previous settlements was one that was liable to arise more frequently over time as more estates were entailed and entails began to be viewed as perpetual. Although common recovery was developed by lawyers during the course of the fifteenth century as a means of addressing this problem by barring entails, it was not always successful, and failed in the Gresley case as William Gresley was found to have been made when Gresley only held the use.<sup>115</sup>

Leaving aside these legal obstacles, the question of why some landowners did not feel it appropriate to transmit their estates to children of illegitimate birth requires further consideration, which will be the subject of the next chapter.

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<sup>115</sup> Simon Payling has pointed out that the popularity of general entails in the fourteenth and fifteenth centuries meant that families lacking a direct male heir frequently found that so much of the estate was tied up that it was not possible to disinherit female heirs in favour of male collaterals with any certainty of success. The same issue would obviously apply with any attempt to favour an illegitimate son. Payling, 'Social mobility, demographic change, and landed society' pp. 51-73; for Gresley see Wright, *Derbyshire Gentry* pp. 37-8.

## Chapter 7: Attitudes to Illegitimacy: in Public and in Private

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*I am a bastard begot, bastard instructed, bastard in minde,  
bastard in valour, in every thing illegitimate*<sup>1</sup>

The previous chapters have examined how bastards were viewed by the law and how they were provided for by their parents. This chapter looks at general attitudes towards those of illegitimate birth, both within the relative privacy of the wider family group and by society more generally. Both of these aspects can be subdivided further. Within the family, the attitude of legitimate siblings who potentially stood to lose out from provision made for bastards needs to be examined separately from those of the older generation, such as grandparents, where self interest might be less likely to confuse the issue. With regard to the more public view of bastardy, there is a distinction to be drawn between formal restrictions on the activity of bastards, such as prohibition from certain offices, and informal attitudes as displayed through scandals, evidence in legal proceedings and so on.

According to David Crouch, ‘The concept of bastardy... was indeed a particular problem for the social world of the nobility.’ Because blood was the means through which lineage and nobility were transmitted, the illegitimate son of a noble could claim his father’s status. The Church claimed that in the case of an illegitimate child, the blood was tainted by the act of intercourse outside lawful wedlock, but this view was not necessarily endorsed by society as a whole.<sup>2</sup> In late medieval England nobility and gentry may have been concepts based less on blood and lineage than on following accepted patterns of behaviour and consumption and on the perceptions of others. How were bastards perceived in a world where social status was ‘continually being tested and negotiated by peers and neighbours’?<sup>3</sup>

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<sup>1</sup> Shakespeare, *Troilus & Cressida* v. viii. 10.

<sup>2</sup> Crouch, *Birth of Nobility* p.135.

<sup>3</sup> Maddern, ‘Gentility’ p.31.

## Public

### Legitimacy and Power

Burckhardt drew parallels between illegitimacy of power and illegitimacy of birth in the Italian city states. Something of the same thinking can be seen in the English political struggles of the late fifteenth century. Although royal bastards are not the subject of this thesis, it is worth paying some attention to the moment in the late fifteenth century when (alleged) royal bastardy coincided with high politics. Richard III explicitly brought the legitimacy of his young nephew Edward V into question in his claim to the throne. *Titulus Regis*, which set out Richard's justification for seizing the throne, claimed pre-contract between Edward IV and Eleanor Butler, which would have rendered his subsequent marriage to Elizabeth Grey (née Woodville) invalid and the children of that marriage illegitimate. The allegations, as formally recorded in the proceedings of parliament in January 1484 were as follows (my emphasis):

*And here also we considre howe that the seid pretended mariage bitwixt the abovenamed King Edward and Elizabeth Grey was made of grete presumpcioun, without the knowyng and assent of the lordes of this lond, and also by sorcerie and wichecrafte committed by the said Elizabeth and hir moder Jaquet duchesse of Bedford, as the comon opinion of the people and the publique voice and fame is thorough all this land, and hereafter, if and as the caas shall require, shalbee proved sufficiently in tyme and place convenient. And here also we consider howe that the said pretended mariage was made privaly and secretely, without edicion of bannes, in a private chambre, a prophane place, and not openly in the face of the church aftre the lawe of Goddes churche, bot contrarie therunto and the laudable custome of the church of Englund. And howe also that at the tyme of contract of the same pretended mariage, and bfore and longe tyme after, the seid King Edward was and stode married and trouthplight to oone Dame Elianor Butteler, doughter of the old erle of Shrowesbury, with whom the same King Edward had made a precontracte of matrimonie longe tyme byfore he made the said pretended mariage with the said Elizabeth Grey, in maner and fourme abovesaid. Which premisses being true, as in veray trouth they been true, it appereth and foloweth evidently that the said **King Edward duryng his lif, and the seid Elizabeth lyved togedre sinfully and dampnably in aduultre, ayenst the lawe of God and of his church**; and therefore noo marvaille that the souverain lord and the hed of this land, being of such ungodly disposicion and provokyng the ire and indignacion of oure lord God, such haynouse myschieffes and inconvenientes, as is above remembred, were used and committed in the reame amonges the subgettes. Also it apperith evidently and foloweth that **all thissue and children of the seid King Edward been bastardes,***



*and unable to enherite or to clayme any thing by enheritance,  
by the lawe and custome of Englund.*<sup>4</sup>

This was intended as a public justification for Richard's action, and not as a technical legal argument. It therefore provides evidence of the attitudes prevalent among the public at large, or at least the political classes. The first objection to the marriage, that it was made without the knowledge and approval of the Lords, was an undeniable fact, and one which rendered the marriage unpopular from the start. Royal marriages were a tool of diplomacy; for a king to marry one of his own subjects was a wasted opportunity. The second objection, that the marriage was procured by witchcraft, on the part of Elizabeth and her mother, Jacquetta duchess of Bedford, may have been intended to suggest that Edward did not act of his own free will, which would have been grounds for annulment. Although Jacquetta had been acquitted of these charges in 1470, her reputation had been damaged. The third objection, that the marriage was clandestine, was no doubt true, but did not of itself invalidate it. The pre-contract argument was plausible, in that it is quite possible that Edward could have contracted a technically valid marriage by means of a promise to marry followed by sexual intercourse. However, until and unless the matter had been tried by a church court and the marriage to Elizabeth annulled, the offspring of the marriage were technically not illegitimate. *Titulus Regis* was phrased in such a way as to focus on a moral case than a strictly legal one. Edward IV's behaviour had been sinful and contrary to the law of God and the church, and provoked God's anger. The allegation that Edward's children were bastards and unable to inherit came last. Richard would have found it very difficult to prove the illegitimacy case in the church courts.

## **Heraldry**

In considering public attitudes to illegitimacy during the fourteenth and fifteenth centuries, some examination of the treatment of illegitimacy for heraldic purposes seems to be called for. During this period heraldry evolved from its origin as a practical system for identification on the battlefield. By the sixteenth century possession of a coat of arms had come to be regarded as a status symbol, denoting nobility in the wider sense. This shift in the purpose of heraldry was noted by Sir Anthony Wagner, and later explored in depth by Maurice Keen.<sup>5</sup> The ways in which illegitimacy was, or was not,

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<sup>4</sup> 'Richard III: January 1484', *PROME*. URL: <http://www.british-history.ac.uk/report.aspx?compid=116561&strquery=Grey> Date accessed: 27 September 2012

<sup>5</sup>M Keen, *Origins of the English Gentleman* (Stroud, 2002).

signalled in coats of arms is thus relevant to more general public perceptions of illegitimacy.

The villainous bastards of later literature were given to muttering dark asides about the 'bar sinister' in their coat of arms. This notion is largely the fault of romantically-minded novelists with an imperfect knowledge of heraldry. The association of the inaccurate heraldic term 'bar sinister' with illegitimacy is believed to have first appeared in Sir Walter Scott's 1823 novel *Quentin Durward*, and the expression was no doubt adopted because of the negative connotations in English of the words 'bar' and 'sinister'.<sup>6</sup> The hero of John Buchan's historical novel, *The Blanket of the Dark*, set in the sixteenth century, on being told that he is the son of Lady Elinor Percy, was reassured that 'there is no bar sinister on your shield. You were born in lawful wedlock, a second son.'<sup>7</sup> Romantically-minded antiquarians were not immune from this interpretation of illegitimacy, either. William l'Anson, writing in 1913 of the career of Lucy Thweng, some-time wife of William Lord Latimer, and mistress, *inter alia*, of Nicholas Meinill, observed that the lady was responsible for introducing the 'bar sinister' to two noble families.<sup>8</sup>

The 'bar sinister' is probably a mistranslation of the French 'barre sinister', meaning 'bend sinister', but there is nothing to suggest that the latter was used during this period as a specific heraldic mark of disgrace for an illegitimate son. It was normal for marks of difference to be used in order to distinguish between the arms of members of the same family, but there was originally no single rule as to how marks of difference should be employed. During the fifteenth century a more standardised system evolved, whereby specific marks of difference were used according to seniority: a label for the eldest son, a crescent for the second son etc. Until the late fourteenth century the same marks of difference were used for bastards as for legitimate children, but thereafter the arms of some bastards took the form of a plain or party field with their fathers' arms on a figure such as a bend, fess, chief, chevron or quarter.<sup>9</sup> The choice of the mark of difference seems to have been left to individual taste. The term 'abatement' to refer to a mark of dishonour, such as in the case of illegitimacy, first appears in heraldic writings in the sixteenth century.<sup>10</sup> It would therefore appear that there was a gradual transformation in the heraldic representation over the period from the late fourteenth

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<sup>6</sup> *Merriam-Webster's Dictionary of English Usage*.

<sup>7</sup> John Buchan, *The Blanket of the Dark* (Polygon edition, Edinburgh, 2008) p.36.

<sup>8</sup> l'Anson, 'Kilton Castle' p.90.

<sup>9</sup> A Wagner, 'Medieval Heraldry' in A L Poole ed. *Medieval England* vol 1 (Oxford 1958) pp. 363-8.

<sup>10</sup> Charles Boutell, *Heraldry, Historical and Popular*, 3rd ed. (London, 1864).

century, which mirrored the evolution of coats of arms from a means of battlefield identification to a family status symbol.

### **Public attitudes to Sexual Misbehaviour in General**

The procreation of illegitimate children is an end result of sexual misbehaviour and although a distinction needs to be drawn between the parents who have conducted the illicit liaison and the children who are themselves innocent, it is worth considering attitudes to sexual misbehaviour in general. This is an area of research which has received a certain amount of attention in recent years, particularly from historians of gender, though the studies have generally been based on material from local courts and thus tend to refer more to 'middling folk' than the gentry and nobility.<sup>11</sup>

At the parliament of May 1413 the commons submitted a petition that complained about the behaviour of ecclesiastical ordinaries. One of their grievances related to the fact that the ordinaries were in the habit of dealing with those found guilty of adultery or lechery by imposing fines of 40 shillings or more. The commons' complaint was twofold. Firstly, this practice meant that 'your lieges of your same kingdom are greatly impoverished,' and secondly, that it did not act as an effective deterrent: 'while such sins are further encouraged and committed; whereas by the law of God it ought to be the case that such sinners are chastised by corporal punishment, so that these sins might be more swiftly eradicated from amongst the people.' How much can really be read into this petition is doubtful, but it suggests that adultery was sufficiently widespread for fines to be common and potentially lucrative, and yet the petitioners regarded it as morally reprehensible, or felt that they should at least claim to do so.<sup>12</sup>

Studies of church and manorial court records have suggested that there was particular concern about wrongdoing in the years around 1300, which had declined by around 1330 and remained low for the rest of the fourteenth century, rising again during the next two centuries to a peak around 1600.<sup>13</sup> Among the misdemeanours which were causing concern were sexual offences such as fornication and adultery. Marjorie McIntosh noted that whereas disapprobation of these activities by local courts was on

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<sup>11</sup> See for example Neal, *Masculine Self*; McSheffrey 'Men and Masculinity'; Karen Jones, *Gender and Petty Crime in Late Medieval England. The Local Courts in Kent, 1460-1560* (Woodbridge, 2006), and below, pp.184-6.

<sup>12</sup> 'Henry V: May 1413', *PROME*. URL: <http://www.british-history.ac.uk/report.aspx?compid=116518> Date accessed: 27 September 2012. The complaint about fines being used as a means of generating income rather than discouraging unacceptable practice rather resembles modern debates about the use of cameras for enforcing speed restrictions.

<sup>13</sup> McIntosh, *Controlling Misbehavior* p.23.

the increase from around 1460, this change of attitude was not reflected in moral texts, which remained remarkably static throughout the century.<sup>14</sup> This would seem to suggest that the concern exhibited in the courts may have been a reflection of wider public opinion rather than the result of a moral crusade by the clergy. McIntosh also argued that the moves towards greater regulation of misconduct by local courts originated in the local communities themselves, rather than being imposed from the centre. This would suggest that sexual misconduct, along with other forms of wrongdoing, was definitely perceived as a problem by the ‘middling’ folk who constituted the local juries in the second half of the fifteenth century at least.

Feminist studies of sexual misconduct have tended to detect a double standard in which men’s adultery was condoned or indulged, whilst adulteresses were treated more harshly, at least in theory. Ruth Mazo Karras argued that not only were women perceived as more lustful than men; the fact that their honour and virtue were defined by their domestic and sexual role meant that any wrongdoing reflected badly on their family. Men, on the other hand, could gain honour on the battlefield or by other public activity and so their reputations were not so dependent on domestic morality. Moreover, female adultery cast doubt on the actual paternity of children who would legally be assumed to be the children and heirs of the woman’s husband.<sup>15</sup> Karras also viewed concern about women’s adultery as a feature of misogynistic society in which it was ‘part of a more generalized fear and distrust of feminine independence’.<sup>16</sup>

### **Adulteresses**

There is some evidence that female adultery at the higher levels of society was a cause of concern for the church, but that the authorities struggled to deal effectively with the culprits. From 1285 it was possible for a wife who voluntarily left her husband to live with an adulterer to forfeit her claim to dower as a result of c.34 of the statute of Westminster II.<sup>17</sup> However, the replacement of the traditional dower rights with marriage settlements in jointure and the post-mortem disposition of estates following the widespread introduction of the use meant that any effects were relatively short-lived. Adulteresses who were also heiresses were in any case a different matter. At the turn of the fourteenth century, the heiress Lucy Thweng, daughter of Robert Thweng of Kilton,

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<sup>14</sup> Ibid. pp. 196-8.

<sup>15</sup> Karras, *Sexuality in Medieval Europe* pp 87-89.

<sup>16</sup> Ibid. p.89

<sup>17</sup> Paul Brand, ““Deserving” and “Undeserving” Wives: Earning and Forfeiting Dower in Medieval England”, *The Journal of Legal History* 22 (2001) pp. 1-20.

seems to have managed to have a colourful life without suffering particularly serious consequences, despite the efforts of the ecclesiastical authorities.<sup>18</sup> Married in August 1294 at the age of 15 to William, son of Sir William Latimer, she may already have been sexually active. According to l'Anson, a child was born in December of the same year, rather too soon after the wedding, and within a year of her marriage she had left her husband and was living at Kilton as the mistress of her cousin, Marmaduke Thweng.<sup>19</sup> l'Anson's account may be confused, but there is certainly evidence that she had willingly left her husband in 1303 and Marmaduke Thweng appears to have been implicated in this 'abduction'. She later returned to Latimer, only to become the mistress of Nicholas Meinill of Whorlton, and shortly began proceedings to obtain a divorce from Latimer on the grounds of consanguinity. In March 1307, Latimer was excommunicated for failing to pay the legal costs, but Lucy's adultery soon became an issue and within a month or two of Latimer's excommunication, Lucy and Meinill were cited for adultery. In 1309 Lucy was ordered to undertake penance in Watton Priory. However, she appears to have escaped remarkably lightly. She eventually agreed to separate from Meinill, and to pay a fine of £40. She subsequently obtained her divorce from Latimer and went on to marry, not her former lover, Nicholas Meinill, but Robert de Everingham, after whose death she married again, her third and final husband being Bartholemew de Fanacourt.<sup>20</sup> The son born during Lucy's marriage to William Latimer was held to be Latimer's legitimate heir, and her son by Nicholas Meinill, whilst not legitimate, still acquired the bulk of the Meinill estate.<sup>21</sup> Lucy herself seems to have escaped serious censure – her eventual punishment being a £40 fine rather than any form of public humiliation. The penance required of Ela, wife of Robert, Lord FitzPayne, was perhaps more draconian. Ela, the widow of John Le Mareschal, had married Robert FitzPayne, as his second wife, in 1319. According to Archbishop Mepham's mandate in 1332 to the bishops of neighbouring dioceses to which he feared she would flee, Ela had been found guilty of adultery with both married and single partners, including clerics in holy orders, though John de Ford, rector of Okeford Fitzpayne, was the only one of Ela's conquests named. Her penance was to abstain

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<sup>18</sup> Lucy was heiress to the share of the inheritance of the Brus family of Skelton which had been acquired by her grandfather's marriage to Lucy, one of the sisters and co-heiresses of Peter de Brus. This included the manors of Danby, Acklam, Brotton, Yarm, Great Moorsholme and a moiety of the wapentake of Langbaugh [*VCH York North Riding* II pp. 218, 221; 321-2; 329; 336-7; 409].

<sup>19</sup> l'Anson, 'Kilton Castle'. Unfortunately, l'Anson does not provide references for many of his assertions.

<sup>20</sup> Lucy's career is summarized in Prestwich, 'An Everyday Story of Knightly Folk' pp 151-162.

<sup>21</sup> See above pp.133-4.

from eating meat on Mondays and Wednesdays, except on medical advice, and to perform a penance on a Sunday between Michaelmas and the feast of St Luke every year for seven years, offering a lighted candle of four pounds of wax at the altar of the cathedral church in Salisbury, proceeding barefoot from the west door. She was to offer alms of 40s to the Friars Preacher and same sum to the Friars Minor, and 20s to other poor persons and beggars. In addition, she was required to give alms to the poor and beggars in each of the FitzPayne manors.<sup>22</sup> Furthermore, for the period of seven years, in order to avoid the temptations of vanity, she was forbidden to adorn her head with gold, silver or precious stones or to paint her face or colour her eyebrows as was the habit of fashionable ladies. Despite her conduct, Ela was not repudiated by her husband, whom she survived.<sup>23</sup>

Michael Prestwich mentions several other early fourteenth century cases of sexual misconduct, from which it appears that the ecclesiastical authorities had difficulties in controlling such activity, and that notoriety in this context did not necessarily harm the woman's prospects. Anastasia de Fauconberg, the daughter of Ralph Neville, was excommunicated for adultery with John de Lilford; Isabella de Merley was accused of adultery with her brother-in-law John de Amundeville; and Lucy, the wife of Sir John Barton of Fryton (Yorks.) ran off with one of the monks of St Mary's York. Isabella's punishment, later suspended, was to be whipped around the marketplaces of Durham and Bishop Auckland, but her behaviour did not improve.<sup>24</sup> According to Thomas Tropenell, Constance, the inappropriately named second wife of Sir Henry Percy of Great Chalfield, committed adultery with Robert Wyvill, Bishop of Salisbury (d.1375), and bore him an illegitimate son. Her 'naughty lyf' apparently drove her husband to embark on a pilgrimage to Jerusalem, from which he did not return, having died en route, in Cologne. Wyvill was, it seems, neither as learned as his predecessors, nor particularly handsome, and contemporary chroniclers observed that the Pope would never have appointed him had he actually seen him. However, he succeeded in recovering Sherborne Castle for his see from William Montague, Earl of Salisbury.<sup>25</sup>

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<sup>22</sup> These included Worth, Okeford, Wraxall and Marshwood in Dorset, Cary, Rodway and Stogursey (Somerset), Stourton (Wilts) and Wisley (Surrey). [*CP V* pp. 451-3].

<sup>23</sup> *Reg. Stratford*, 1323-1331; *CP V* pp. 451-5.

<sup>24</sup> Prestwich, 'An Everyday Story of Knightly Folk' pp. 160-1

<sup>25</sup> Hyde Cassan, Stephen, *Lives and Memoirs of the Bishops of Sherborne and Salisbury* (Salisbury, 1824) pp.216-225; *Oxford Dictionary of National Biography*, Oxford University Press, May 2009 [<http://www.oxforddnb.com/view/article/95046>, accessed 1 Oct 2012]

In 1361 Constance, who had retained possession of Great Chalfield, and her third husband Sir Philip FitzWaryn resettled the manor on themselves and their legitimate issue, with remainder to Robert son of Constance.<sup>26</sup> Despite the concern of the ecclesiastical authorities, it would seem that at the elite levels of lay society during the fourteenth century adultery was not so shocking although it is possible that heiresses such as Lucy had more freedom in this respect than other women of her class. Earl Warenne's mistress, Maud Nerford, seems to have fared rather less well: being divorced by her first husband, failing to marry Warenne and then losing her estates as a result of Warenne's private war with Lancaster.<sup>27</sup>

A century later, and at a slightly lower social level, is the case of Alice Wodehouse, daughter of John Wodehouse of Roydon, Norfolk and Crowfield, Suffolk. In 1418 she was married to Thomas Tuddenham, the second son, and eventual heir, of Sir Thomas Tuddenham of Eriswell, Suffolk, who was in her father's wardship. The couple lived together until about 1425, during which time she had given birth to a son. Like Lucy Thweng, she took the initiative in attempting to resolve her marital problems. Following her public assertions that the marriage was unconsummated and that the child's father was Richard Stapleton, her father's chamberlain, a formal separation took place, and Alice entered Crabhous Nunnery by 1429. In 1436, proceedings to annul the marriage, which would allow Tuddenham freedom to remarry, took place. One of the witnesses, Robert Holley, a kinsman and executor of Alice's father, gave evidence that Tuddenham, on hearing that Alice was publicly asserting that the child was not his and that there had never been any carnal relations between them, had sent him to inform her father, John Wodehouse: 'And when Wodehouse was informed he instructed Holley to go to Alice and tell her if she wished to have her father's blessing and avoid his anger she should abstain from saying such things which reflected on the honour of her husband and herself.'<sup>28</sup> Alice appears to have orchestrated her own downfall by means of her claims, which suggests that any public disgrace resulting from being a known adulteress was not that great; it was at least preferable to marriage to Tuddenham.<sup>29</sup> This

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<sup>26</sup> *Tropenell Cartulary* I pp. 277, 280. Robert did not inherit Great Chalfield, which passed instead to Isolde, the eldest daughter of Constance and Sir Philip.

<sup>27</sup> See pp. 151-55 above.

<sup>28</sup> Norfolk and Norwich Record Office, Register of Thomas Browns, 1436-45 f 116d, printed in R Virgoe, 'The Divorce of Sir Thomas Tuddenham', C Barron, C Rawcliffe and J T Rosenthal (eds.) *East Anglian Society and the Political Community of Late Medieval England: Selected Papers of Roger Virgoe*. (Norwich, 1997) pp. 117-131.

<sup>29</sup> Tuddenham himself appears to have had an illegitimate son, Henry, who was granted the freedom of Ipswich in 1450 and was later involved in a legal dispute with William Paston II. Colin Richmond 'East

case may be indicative of a shift in attitudes; unlike some of the notorious ladies of the previous century, Alice remained in the nunnery. However, there was little trace of a significant change in attitudes in the higher echelons of society. Barbara Harris found that the attitude of the Yorkist and early Tudor aristocracy towards adulteresses was not particularly censorious. Whilst they might face a loss of property, they did not suffer social ruin and exclusion from aristocratic society.<sup>30</sup>

Sir Thomas Tuddenham was one of the enemies of the Paston family. Another, John Heydon, also seems to have had marital difficulties. A letter of Margaret Paston from 1444 mentions the case of Heydon's wife:

*Heydonnis wyffe had child on Sent Petyr Day. I herd seyne þat herre husbond wille nowt of here nerre of hyr child þat sche had last nowdyre. I herd seyn that he seyde that yf sche come in hesse presence to make here exkewse that he xuld kyt of her nose to makyn [here] to [be] know wat sche is, and yf here chyld come in hesse presence he seyde he wyld kyllyn.<sup>31</sup>*

Margaret's report of this example of an adulteress who was repudiated by her husband after giving birth to an illegitimate child is non-judgemental, but the Pastons' continuing feud with Heydon meant she was hardly a disinterested observer. The lady in question was Eleanor Winter, daughter of Edmund Winter, with whom the Pastons had been engaged in an acrimonious dispute over the manor of East Beckham, and so a certain amount of *schadenfreude* on Margaret's part might be expected. In this case it appears that the woman was blamed, but her family's relationship with her husband was not permanently damaged. Her father remained on good terms with his son-in-law, making him supervisor of his will, and bequeathing him a book of chronicles.<sup>32</sup>

### Adulterers

Men of high status do not seem to have been harshly judged. Michael Hicks points to the absence of social disgrace for noblemen involved in sexual misconduct, suggesting that adultery and the procreation of illegitimate children were even expected.<sup>33</sup> Studies of English court records show that it was not necessarily the case that women were treated more harshly by the courts and that in practice men and

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Anglian Politics and Society in the Fifteenth Century: Reflections 1956-2003' in C Harper-Bill (ed.) *Medieval East Anglia* (Woodbridge, 2005) p.190n.

<sup>30</sup> Barbara J Harris, *English Aristocratic Women, 1450-1550: Marriage and Family, Property and Careers* (Oxford, 2002) p.85.

<sup>31</sup> *Paston Letters* I, p.127.

<sup>32</sup> Castor, *Blood and Roses*. p. 42

<sup>33</sup> Hicks, *Edward V* p. 27.



women were punished in the church courts in roughly equal numbers.<sup>34</sup> Shannon McSheffrey and Derek G Neal have suggested that male adultery could be frowned upon, less for purely moral reasons than for demonstrating a lack of control and acting contrary to the interests of others. McSheffrey emphasised that good governance was important for both genders, but in different ways. Women were expected to be governed by male authority, but men were expected to govern themselves and failure to do so would damage their reputation.<sup>35</sup> As Neal put it, ‘the adulterer risked his vital connections, his credit’ since failure to attend to his own interests cast doubt on his ability to take proper care of those of a patron or master.<sup>36</sup> The association of adultery with lack of control and attention to business can be seen in Thomas Tropenell’s comments about William Rous’s carelessness with his inheritance and rights:

*And so for lak of sute made therfor ayene by the seid Will. Rous he afterward lost hit. For he was alwey occupied in lechery and avowtry, and toke none hede to sew therfor, but only for to devowre and selle away all his wodes and his tylestones, tymbre and his houses.<sup>37</sup>*

This view of adultery can be seen in the measures taken by some towns during the fifteenth century. In London, the mayor and aldermen declared in 1439 that fornicators and adulterers acted both to the displeasure of Almighty God and against the laws of the city.<sup>38</sup> Similarly, in Coventry, various ordinances aimed at controlling public morality were issued by the civic authorities. Concern was not limited to the behaviour of the lower classes. An ordinance of 1492 specifically refers to the behaviour of members of the civic elite, or men ‘of worship within this Citie’ who, if found guilty of adultery, fornication or usury, having previously been warned to amend their behaviour, were to lose all honour and opportunities for further advancement and to be estranged from good company.<sup>39</sup> The inclusion of usury shows that it was behaviour that could affect the interests of other citizens that was the crux of the matter.

The Cely letters provide a rare insight into the reactions of a putative bastard-begger from the merchant elite of London. On 25 May 1482, Richard Cely the younger wrote, in something of a panic, to his brother George, who was at the time on

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<sup>34</sup> Karen Jones, *Gender and Petty Crime in Late Medieval England. The Local Courts in Kent, 1460-1560* (Woodbridge, 2006) p. 130.

<sup>35</sup> McSheffrey, ‘Men and Masculinity’ pp. 260-1.

<sup>36</sup> Neal, *Masculine Self* p.71.

<sup>37</sup> *Tropenell Cartulary* I p. 295.

<sup>38</sup> Reginald R Sharpe (ed.) *Calendar of Letter Books Preserved among the Archives of the Corporation of the City of London... Letter Book K*, (London, 1911) pp. 230-1.

<sup>39</sup> M D Harris, ed. *Coventry Leet Book, 1420-1555* (Early English Text Society, Original Series, 134, 135, 138, 146) p. 544.

the continent, for advice on a problem that was worrying him. He was concerned that a girl he called 'Em' was with child, and that he might be the father.<sup>40</sup> At this time, Richard was seriously considering marriage. In March he had been 'spoken to for a wife in two places' and just three days before the date of the letter cited above, he had been encouraged to see 'Rawson's daughter'.<sup>41</sup> His lapse could therefore have had serious implications for his future, though he seems to have been fortunate in this instance. The identity of 'Em' is unknown, though she may possibly have been one of his mother's servants, and there is no further reference in the correspondence to this affair. Richard did go on to marry Rawson's daughter, Anne, so his marital prospects do not seem to have been seriously affected. Perhaps his brother George was indeed able to help Richard to solve the problem, or it may even have been a false alarm.<sup>42</sup> This case does however show that fathering an illegitimate child could be regarded as a serious matter.

On the other hand, in certain circumstances, begetting a bastard might be regarded as a less serious offence. Karen Jones relates the case of William Brice of Kent who was accused in 1506 of 'suspiciously' keeping a young woman whom he claimed to be his illegitimate daughter. The city jury in Canterbury apparently accepted this argument, but fined him for keeping her as his harlot anyway, whilst the official of the archdeacon's court was less convinced, and referred to her as his 'pretended' daughter. Brice evidently considered that having fathered an illegitimate child in the past was a more acceptable misdemeanour to which to admit than living with a 'harlot' in the present.<sup>43</sup>

Richard Helmholz identified a definite shift in the attitude of the ecclesiastical courts towards the procreation of illegitimate children in the sixteenth century. His study of act books of the English church courts between 1370 and 1600 found that there was definite concern about sexual misconduct in the medieval period. He found cases indicating concern about 'harbouring', or knowingly permitting illicit sexual activity to take place under one's roof, in virtually all act books during the period of his study. However, from the latter part of Elizabeth's reign prosecutions relating to the harbouring of pregnant women began to appear in the act books. This was partly related to the effects of the Elizabethan Poor Law and a concern to ensure that an illegitimate

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<sup>40</sup> *Cely Letters 1472-1488* no. 169.

<sup>41</sup> *Ibid.* Nos. 146 and 168.

<sup>42</sup> Alison Hanham, *The Celys and Their World. An English merchant family of the fifteenth century.* (Cambridge, 1985) pp. 268-9.

<sup>43</sup> Karen Jones, *Gender and Petty Crime in Late Medieval England.* p.158.

child did not become a charge on the parish. However, there were also cases where prosecution took place even when the child was dead and the mother had fled, indicating that the concern was not simply financial, and that the prosecutors, at least, considered it morally wrong to permit an illegitimate birth on one's property.<sup>44</sup> Whilst illicit sexual activity was frowned upon in later medieval England, there was no singling out for especial censure of those who had illegitimate children as a result.

### Attitudes to bastard children

If bastard-begetters were regarded as morally reprehensible, it was still possible for bastard children to be viewed as innocent victims. The rumours which surrounded the acquisition of Alnwick by Antony Bek at the turn of the fourteenth century may well have been groundless but they do provide some insight into fourteenth-century attitudes. The story as related by Dugdale is as follows:

*[Bek], being irritated by some slanderous words which he had heard that the Bastard spoke of him, by his Deed, bearing date 19 Nov An. 1309 sold the Castle and Honor of Alnwicke to Henry de Percy (a great Man in the North) from whom the Earls of Northumberland, still possessors thereof, are descended.*<sup>45</sup>

This is obviously of little value as evidence of the nature of the transaction between Vescy and Bek. Dugdale's version of the Bek story was based on Thomas Gray's *Scalachronica*.<sup>46</sup> Gray, a Northumberland knight, wrote his chronicle more than forty years after these events took place, and is unlikely to have had direct knowledge of the events he described.<sup>47</sup> Another late source, *The Chronicle of Alnwick Abbey*, did not contain the same allegation; however, since the Percies had been *in situ* as lords of Alnwick and patrons of the Abbey for something over sixty years by the time of writing, this omission may not be significant. An account written closer to events can be found in the chronicle attributed to Robert Graystones, a monk of Durham, who wrote of Bek that:

*Castrum de Alnewyk, quod ei W de Vesci contulerat, confidens in eo quod illud ad opus filii sui parvuli et illegitimi W*

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<sup>44</sup> R H Helmholz, 'Harboring Sexual Offenders: Ecclesiastical Courts and Controlling Misbehavior', *The Journal of British Studies* 37 (1998) pp. 258-268.

<sup>45</sup> Dugdale, *Baronage* p.95. It should be noted that a memorandum on the pedigree of the Vescy family printed in Dugdale's *Monasticon* VI pt. 2 pp. 956-7 makes no reference to the allegation of fraud by Bek, stating (correctly) that Vescy enfeoffed Bek with Alnwick and the reversion of Eltham and that except for Kildare and Sprouston, William Vescy of Kildare received all other lands.

<sup>46</sup> Dugdale cited his source as Leland's excerpts from the *Scalachronica*.

<sup>47</sup> The *Scalachronica* was written whilst Gray was a prisoner in Edinburgh during the winter of 1355-6. Chris Given-Wilson, *Chronicles: The Writing of History in Medieval England* (London, 2004), p.46.

## Chapter 7

*conservaret, et ei adulto traderet, accepta pecunia, H de Percy vendidit.*<sup>48</sup>

As a monk at Durham, the author was well-placed to know about events, but the poor relationship between the bishop and priory at the time means that he cannot be regarded as an unbiased observer. What the chronicle evidence does show is that rumours circulating among those who were not particularly well-disposed towards the bishop cast him in a bad light by claiming that he had betrayed Vescy's trust by depriving the innocent young bastard son of his inheritance. William Vescy of Kildare is portrayed as the victim. The point of the anecdote was the supposed venality of the bishop in betraying his trust for personal gain rather than the action of William de Vescy in trying to provide for his bastard son.

Some individuals showed a remarkable lack of concern for public opinion about illegitimacy. This in itself may suggest that bastardy was not such a great social stigma – perhaps less of an embarrassment than the humble origins that the Pastons were at such pains to conceal. The most striking example of this is Sir William Plumpton. His son Robert was the product of a second, clandestine, marriage to Joan Wintringham. Since the marriage reportedly took place in the 1450s and was not made public until 1468, Sir William does not appear to have worried unduly about any consequences for his son of being presumed a bastard. In the meantime his subterfuge had ensured good marriages for the granddaughters who were presumed to be his heiresses. In January 1464 Sir William had received £400 for the marriage of Margaret Plumpton, the elder, to Brian Roccliffe and £333 for the marriage of Henry Sotehill to her younger sister Elizabeth.<sup>49</sup> The problems later experienced by Robert Plumpton arose not from perceptions of illegitimacy as such, but from the actions of the aggrieved husbands of Margaret and Elizabeth, once his legitimacy had been certified and Sir William had disposed of his estates in Robert's favour. It is worth noting, however, that the clandestine marriage only became public because Sir William had been summoned to appear before the official of the civil court at York to account for his behaviour in harbouring Joan Wintringham in his house 'to the great peril of his soul and grievous scandal of the faithful' and it was only after the official, William Poteman, had certified

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<sup>48</sup> *Historiae Dunelmensis scriptores tres* (Surtees Society, 9, 1839) p. 91. Whether this chronicle was written by Graystones or some other monk of Durham is not entirely certain, but is not of great significance as far as its reliability as a source for this transaction is concerned. (*Oxford DNB* 23 pp. 901-2)

<sup>49</sup> *Plumpton Letters* pp. 8-9; 258; 261; 263; 332; K Dockray 'Why did the Fifteenth Century English Gentry Marry?' in *Gentry and Lesser Nobility in Later Medieval England* ed. M Jones (Gloucester, 1986).

the validity of the marriage in 1472 that Robert was recognised as his father's heir. In 1475 Sir William resettled his estates on himself with remainder to Robert Plumpton junior, son of Sir William and Joan his wife. At the same time he provided his bastard sons with a life interest in certain lands in the manor of Ockbrook (Derbys.)<sup>50</sup>

Where bastardy had definite negative connotations was in connection with legal disputes. As discussed in chapter 3, bastardy was a bar to inheritance and allegations could therefore be made in the context of legal proceedings, sometimes vexatiously. An interesting example of this can be found in the Tropenell Cartulary, where John Lyngever of Kingston Deverill (Wilts.) stated that William King and John Leveden tried to force him to sell a life interest in land in Chicklade, (Wilts.), or '*suche meanes and suche labour wold be made ayenst me as were like to be prove a bastard, or ellis a bondman, and than shold I, neither my children never enjoye it.*'<sup>51</sup> Similar allegations were made against the Hody family in the 1470s.<sup>52</sup> Being alleged a bondman was of course another issue which could affect landholding, as the Pastons' experience demonstrates.<sup>53</sup> There is no evidence that Lyngever actually was either a bastard or a bondman, and the inclusion of both in the threat strongly suggests that this was purely vexatious, but the complications of proving that he was neither would be sufficient to prevent him or his children having quiet possession of the land. It was this that formed the essence of the threat.

Some further light is shed on medieval attitudes to illegitimacy by the dispute over the Brokholes inheritance, which is the subject of an interesting collection of fifteenth century correspondence.<sup>54</sup> If the startling allegations of one party to the dispute are to be believed, bastards were used to substitute for legitimate children who had inconveniently died, not as replacement heirs in the way discussed in chapter 5, but as actual substitutes. The dispute followed the death in 1419 of Ellen, wife of Geoffrey

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<sup>50</sup> *Plumpton Letters* pp. 263-6; *Plumpton Correspondence* ed. Stapleton p. lxxviii.

<sup>51</sup> *Tropenell Cartulary* II p. 42.

<sup>52</sup> *House of Commons* III p.384; According to an account of the family dating from the 1470s, Adam Hody, the grandfather of the future chief justice of King's Bench, was a bondman of Lord Audley and Hayward of Woolavington. His son John (d. 1440), who rose to become chancellor of Wells, later purchased the manumission of his brother and his family. [*Somerset and Dorset Notes and Queries* xviii (1925) pp.127-8 . Interestingly, *Somerset and Dorset Notes and Queries* xxiv pp. 22-5 refers to a further allegation of pre-nuptial illegitimacy, but does not give details.]

<sup>53</sup> The Pastons were keen to conceal their relatively humble origins, but an anonymous opponent of the family circulated an account of the family's history, 'A Remembrance of the Worshipful Kin and Ancestry of Paston', in which Clement Paston was described as a husbandman who held bond land. (*Paston Letters* I xli). On 17 May 1448 the Pastons' chaplain James Gloys was involved in an altercation with John Wyndham, during the course of which Wyndham grossly insulted the family by referring to them as 'churlsh of Gimingham'. (*Paston Letters*, 29).

<sup>54</sup> *The Armbrugh Papers*.

Brokholes, whose two daughters, Joan and Margery, became the heiresses of the Roos, Brokhole and Mancetter inheritances. Margery had married John Sumpter by whom she had had a son, also called John, and had died. John Sumpter junior was therefore the heir to Margery's share of the inheritance. He too died, in July 1420, before the division of the estates was finally settled. His inquisition post mortem was not held until October 1426, when it was found that his sisters, Christine and Ellen, aged fifteen and fourteen, were his heirs, and would thus be entitled to shares in the inheritance. According to Joan Brokholes, who was by this time married to Robert Armburgh, the girls were not the legitimate daughters of John Sumpter and Margery, but bastard daughters of John Sumpter. Joan's case was not only that the girls were illegitimate, but that they had been substituted for the real Christine and Ellen, who were also dead. It was claimed that John Sumpter had secretly buried the real Christine and Ellen and sent two bastard daughters of his own, as Christine and Ellen, away to friends of his with whom they stayed for five or six years, after which time he successfully produced them at the inquisition as the genuine heirs.<sup>55</sup> This claim seems remarkably far-fetched, and suggests desperation on the part of Joan and her husband (who seems not to have had property of his own) rather than a genuine plot on the part of Sumpter, who would have needed to have conveniently had two bastard daughters of approximately the right age who would not be missed. If the claim was true, then Sumpter had found a most ingenious way of providing for two bastard daughters. If, however, as is far more likely, it was a fabrication, then Joan and her supporters must have felt that the allegation of bastardy added a further dimension to the case than simply claiming the girls to be imposters. If Sumpter was widely believed to have committed adultery, the claim that the girls were bastards may have added verisimilitude to their case, and also provided an excuse to drag Sumpter's personal morals into the case and, thus, the suggestion that he was badly governed and untrustworthy. An anonymous account of the dispute states that 'John holde divers women by side his wyf which ... is openly known.' This same account of the case also provides a definition of bastardy as understood by the writer: 'for a child that is got[en] in suche maner women schuld be called *filiuis populi* that is for to say...peple and may clayme no manne to theyre fader.'<sup>56</sup> Joan's efforts appear to have been to little avail. The Sumpter moiety of the manor of Brockholes was retained by Ellen, and passed to the Holt family as a result of

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<sup>55</sup> *Ibid.* p. 193.

<sup>56</sup> *Ibid.* p. 6.

her second marriage to Ralph Holt c. 1439. Joan's moiety eventually passed also to Ellen as Joan's heir.<sup>57</sup>

An interesting approach to the rights of illegitimate children can be found in the case of Sir Robert Brackenbury (d.1485). Brackenbury was a retainer of Richard Duke of Gloucester, who flourished in royal service following Gloucester's assumption of the throne in 1483. He was killed fighting for Richard at Bosworth, and attainted in Henry VII's first parliament. He had two legitimate daughters, Anne and Elizabeth, and a bastard son.<sup>58</sup> In 1489 Anne successfully petitioned parliament for the reversal of her father's attainder, on behalf of herself and her sister Elizabeth. The reversal specifically excluded Brackenbury's bastard children, but stipulated that in the event of Anne and Elizabeth dying without heirs of their body 'that then the bastard sonne of the seid Sir Robert be next heire unto the seid Anne and Elizabeth, and enherite all the landes and tenementes wherunto the same Anne and Elizabeth, by vertue of this acte, bee enabled and restored.'<sup>59</sup> In this case, parliament was explicitly confirming the rights of a bastard child to be considered an heir, albeit one with lower priority than that of legitimate daughters.

### **Social Position and Public Activity of Bastards**

On the continent, where nobility was defined by birth and bloodline, illegitimacy was a status issue which could limit opportunities for those of illegitimate birth, though there were local variations. According to the fifteenth century Spanish chronicler Diego de Valera, Spain had a particularly lax approach to nobility, even for bastards:

*In Germany nobility lasts as long as the nobles live 'honestly' without meddling in base jobs; in Italy all the legitimate descendants of nobles are nobles until they sink into poverty. These matters are the least refined in Spain, especially in Castile, where even if they are bastards who have not been legitimised by the prince, or even if they have sunk into base occupations, or are the least adorned with good customs, as they should be, yet for the most part everyone allows them to be hidalgos as long as they can prove that their fathers and grandfathers were exempt from taxation – although this is against all legality and against the laws of our kingdom, which require that nobility should be lost as a result of bad customs, base occupations, or defective birth...<sup>60</sup>*

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<sup>57</sup> *VCH Herts* III p. 127; *CCR* 1447-54 pp.473-4.

<sup>58</sup> *Oxford DNB* 7 pp.153-4.

<sup>59</sup> From: 'Henry VII: January 1489', *PROME*. URL: <http://www.british-history.ac.uk/report.aspx?compid=116566&strquery=Brackenbury> Date accessed: 05 August 2012.

<sup>60</sup> Diego de Valera, *Espejo de verdadera nobleza* ed. D. Mario Penna in *Biblioteca de autores españoles*, vol CXVI (Madrid, m 1959) p.105, cited in Angus MacKay, 'The Lesser Nobility in the Kingdom of Castile' in Jones (ed.) *Gentry and Lesser Nobility*.

In England concern about illicit sexual activity tended to be aimed at the licentious behaviour of the fathers, more than the possible products of their adulterous liaisons, as discussed above. This contrasted with the situation on the continent, where bastards themselves could be excluded from membership of the civic elite.

In Florence, there were restrictions on the political activity of bastards. A law of 1404 prevented any illegitimate from sitting on the major executive and legislative councils of the city and from various other posts, although with limited success, since a further measure was enacted in 1428 setting a fine of 500 florins for bastards who filled such an office despite their origins.<sup>61</sup> A similar approach was taken in Venice. In 1376 the Great Council narrowly passed a measure to prevent the illegitimate sons of nobles from inheriting their fathers' status. It was not universally popular, passing only on the third reading, and even then with just 51% of the vote. As with many prohibitive measures, the need for the introduction of such a rule suggests that bastard sons had been accorded noble status previously. The legislation was apparently unsuccessful. The Council's concern was to prevent denigration of the regime through the admission of individuals of dubious status. The likelihood of a bastard having a mother of low birth was as at least as much of an issue as the illegitimate birth itself. Forty-six years later, this was made more explicit when a further measure was passed, with rather more enthusiasm, which aimed to deny noble status to any sons of noble fathers and mothers of servile status, even if they were legitimate.<sup>62</sup> In 1526, the Council of Ten introduced a requirement for the registration of all noble marriages in order to address a situation in which many bastard sons had achieved noble status.<sup>63</sup>

In contrast, political and administrative activity by bastards does not appear to have been an issue in England, where illegitimate sons could and did fill local administrative posts and secure election to parliament. For example, there were seventeen bastards or probable bastards who served as knights of the shire or burgesses in parliament between 1386 and 1421. There is little doubt about the birth of nine of them, Sir William Argentine; William Bodrugan; Sir William Lisle; William Martin; James Nash; Sir Thomas Sackville; Sir Nicholas Stafford; William Thickness and Sir Alfred Trussell. The origins of the other eight are less certain: Edmund Ford; William

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<sup>61</sup> Kuehn, *Renaissance Florence* p.83.

<sup>62</sup> Stanley Chojnacki, *Renaissance Venice* (pp. 22, 56)

<sup>63</sup> Chojnacki, *Renaissance Venice* p.65, citing Marino Sanudo, *Diarii*, vol 41 cols 201-3. According to Sanudo's account, the Council had identified thirty suspected bastards, whose credentials required further investigation.



Fulbourn; Robert Holme; John Russell; Robert Russell; John Selman; William Walsall; John Wood. Whilst these individuals constituted less than one percent of the total of 3,168 MPs for the period, there is no evidence that their birth caused any disadvantage to their political career.

The careers of Sir William Argentine, William Bodrugan, Sir William Lisle, Sir Thomas Sackville and Nicholas Stafford have already been discussed.<sup>64</sup> William Martin represented Dorset in the Parliament of September 1397, but little trace of him remains in contemporary records and he is not known to have held any other office.<sup>65</sup> James Nash (d.1400) of Hereford followed his father, Richard, into the legal profession, and, like Richard, represented Hereford in Parliament on several occasions. Both James and Richard appear to have been in the service of the Earl of March. Shortly after the deposition of Richard II, James was appointed crown attorney in the court of King's Bench. His illegitimacy appears not to have been in doubt; on 9 June 1400, following his death, a commission was set up to enquire what lands he held in the city and county of Hereford, in which he was described as a bastard who had died without heir. His standing in the community is perhaps indicated by the willingness of the mayor and commonalty of Hereford to comply with the post-mortem wish of his father for the foundation of a chantry in Hereford cathedral to offer masses daily for the souls of himself and his son.<sup>66</sup> William Thickness was actively involved in the local government of Newcastle-under-Lyme, serving nine terms of office as mayor, and was a senior member of the borough's merchant guild from 1389. He represented the borough in parliament on six occasions.<sup>67</sup> Sir Alfred Trussell, a pre-nuptial bastard, born before the marriage of his father Sir Theobald and his mistress Katherine, sat as a knight of the shire for Warwickshire on four occasions and was sheriff of Warwickshire and Leicestershire 1402-3, and escheator 1407-8.<sup>68</sup>

Edmund Ford (d.1440), who represented Bath in the parliament of February 1388, was a member of a prominent Bath family who had invested their wealth in property outside the city. Edmund did not acquire the bulk of his father's property until after the death of his younger brother, Thomas, and appears to have been a prenuptial bastard.<sup>69</sup> Although he served only once as an MP, he appears to have been a respected

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<sup>64</sup> See above pp. 100,110-115, 135 and 162.

<sup>65</sup> *House of Commons* III p. 698.

<sup>66</sup> *House of Commons* III pp. 814-5; *CPR* 1399-1401 p. 314.

<sup>67</sup> *House of Commons* IV p. 583.

<sup>68</sup> *House of Commons* IV p. 664-5.

<sup>69</sup> *House of Commons* II pp. 100-101. He did however obtain Swainswick, a manor purchased by his father, on the latter's death.

member of the community. He was in demand as a trustee and was twice entrusted with the keeping of the property of a mentally deficient heir.<sup>70</sup>

William Fulbourn (d.c. 1441), who represented Cambridgeshire in the parliament of December 1421, is not known definitely to have been illegitimate, but there are reasonable grounds for believing him to be either illegitimate son of William Fulbourn (d.1391), Rector of St Vigor's church or of a close relative of his, since he was named as heir to the latter's property, and was described as 'William Fulburne the younger, son of Alice Whytyng of Fulburne' in documents in which he was associated with the elder William. A lawyer by profession, he was employed by the bishop of Ely, and acted for a number of the East Anglian gentry. He was a justice of the peace for a period of 20 years.<sup>71</sup>

Robert Holme was also a probable rather than definite bastard, the wording of his father's will implying that his mother, Beatrice Forden, was not his wife.<sup>72</sup> Doubtful as his legitimacy may have been, his wealth and family connections ensured that he was able to occupy a similar place in society to his father Robert (d. 1396) and uncle Thomas (d.1406), who had been among the most influential men in York in the late fourteenth century. He was sheriff of York in 1388-9, mayor 1313-14, MP in 1414, a member of the council of 24 by c.1420 and member of the council of 12 from c. 1416 to 1424.<sup>73</sup>

The parentage of John Russell (d. 1437) who was chosen as knight of the shire for Herefordshire on thirteen occasions between 1414 and 1433 is uncertain, but it is possible he was an illegitimate son of Sir John Russell of Strensham (d.1405). Robert Russell was probably also related to Sir John, and may have been his illegitimate brother. Both the Russells trained as lawyers.<sup>74</sup> John Selman was probably an illegitimate son of the John Selman (d. 1426) who sat as MP for Plympton Erle on five occasions. The younger (and probably illegitimate) John was to represent the same borough on ten occasions.<sup>75</sup> William Walsall's origins are similarly unclear, but he is believed to have been either the illegitimate son or the nephew of William Coleson, from whom he received the wardship and marriage of the heir to the manor of Rushall

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<sup>70</sup> In April 1399 he was granted custody of the body and lands of Alice, widow of Thomas Berlegh, to hold on the condition that he maintain her and her family from the issues, and keep the residue for her. [CPR 1396-9 p. 551] and in October 1402 he was one of a group of trustees for the lands and possessions of Walter Coker [CPR 1401-1405 p.161].

<sup>71</sup> *House of Commons* II pp. 146-7; *CCR* 1389-92 p. 278.

<sup>72</sup> See above p. 137.

<sup>73</sup> *House of Commons* III pp.398-401.

<sup>74</sup> *House of Commons* IV pp. 246-8, 255; *Oxford DNB* 48 p.275.

<sup>75</sup> *House of Commons* IV p.335.

(Staffs.), William Grobbere. Walsall appears to have been an able administrator, who flourished through service to the crown, and it was as a royal servant that he appears to have held various local offices.<sup>76</sup> John Wood is another individual whose origins are uncertain. The fact that he eventually came into possession of the Worcestershire properties of Sir John atte Wood (d. 1391) of Wolverley, suggest that he may have been the illegitimate son of the latter. He sat as an MP for both the city and county of Worcestershire and had a successful career as a lawyer and administrator.<sup>77</sup>

### **Guilds**

Membership of most Florentine guilds was not initially affected by illegitimacy, although bastards were excluded from the guild of notaries. Thomas Kuehn points out that this did not necessarily signify that defects of birth did not matter to the guilds; in some cases bastards were not allowed to hold offices within the guild. Allowing them guild membership was a pragmatic matter, enabling them to earn an honest living rather than depend on charity or turn to crime.<sup>78</sup> This approach contrasts with that in Ghent and some German towns, in which bastards were strictly prohibited from most guild membership, and members who begat or married bastards might have their membership revoked.<sup>79</sup> In Frankfurt at the turn of the fourteenth century, attitudes to illegitimacy were generally liberal, and bastards had access to similar opportunities as those of legitimate birth; only children of priests were regarded in a negative light. Under the secular Statutes of 1297 illegitimate children bore the father's surname, and were entitled to inherit the right to citizenship. By the end of the middle ages, however, the city's guilds had become less accommodating towards those of illegitimate birth. In 1455, the weavers' guild tried to expel a member because he had married a woman who was a pre-nuptial bastard. On this occasion the city council intervened on the side of the weaver, who was permitted to remain within the guild. During the course of sixteenth century, a number of guilds, including bakers, tailors, shoemakers, bookbinders, barbers and brewers amended their statutes to exclude those of illegitimate birth. By the end of the century, most of the guilds required both membership applicants and their spouses

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<sup>76</sup> *House of Commons* IV pp. 753-5.

<sup>77</sup> *House of Commons* IV pp. 891-4.

<sup>78</sup> T Kuehn, *Renaissance Florence* p.79.

<sup>79</sup> The Ghent Tanners' Guild was an exception that did not discriminate, David Nicholas, *Domestic Life of a Medieval City: Women, Children and the Family in Fourteenth Century Ghent* (Nebraska, 1985) p. 167.

to be of legitimate birth, and such requirements were supported by the city council. Strict standards of proof of legitimacy were required.<sup>80</sup>

Illegitimacy could prove a problem for townsmen seeking membership of English guilds or admission to municipal freedom. This was not because bastards were regarded as inferior in themselves, but because the principal means of gaining admission was by inheritance as the son or daughter of a member, or in some cases by marriage to the daughter of a member. In 1408 the Borough Court of Nottingham ruled that a bastard was not entitled to sue as a burgess. Interestingly, it was the plaintiff in the case, a prenuptial bastard, who raised this issue, when the defendant objected that he was not bound to answer as he was suing as a non-burgess. The plaintiff won his case.<sup>81</sup> The status of the bastard daughter of Walter Dyer, a cloth trader and freeman of Wells (Somerset), presented a particular difficulty for the authorities. One of the five ways of obtaining freedom of Wells was by marriage with the daughter of a burgess. It seems that the rule was not clear as to whether the daughter had to be legitimate. In 1425, Peter Boghyar, alias Tankard, the husband of Dyer's bastard daughter, was admitted as a freeman following the usual admission process for a 'stranger', which included a fine of ten shillings, but it was recorded that in the event that the muniments proved that the bastard daughter had freedom of the borough, the fine would be refunded. Boghyar was later given an opportunity to prove his case that he was entitled to freedom of the borough through his marriage, but it seems that the matter was not easily resolved, as he was again ordered to appear before the convocation in 1437 to prove if he had freedom of the borough because he married the bastard daughter of Walter Dyer. In this instance, marriage to a bastard was not viewed as an impediment to guild membership, but as a potential aid to membership.<sup>82</sup>

Richard, the illegitimate son of John, Duke of Bedford (d.1435), third son of Henry IV, may have received relatively little provision from his father, save a life interest in the castle, lands and lordship of 'Harapute' (Haye-du-Puits, Normandy), but in 1436, as 'Richard Bedford, Bastard of Bedford' he was made an honorary member of the Guild of Merchant Taylors of the Fraternity of St John the Baptist in the City of

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<sup>80</sup> Maria R Boes, "'Dishonourable" youth, guilds, and the changed world view of sex, illegitimacy, and women in late-sixteenth-century Germany', *Continuity and Change* 18. 3 (2003): 345-372.

<sup>81</sup> W H Stevenson (ed.) *Records of Nottingham* (London, 1882 -).ii pp. 65-7.

<sup>82</sup> *House of Commons* II pp. 815-6; *Wells City Charters* (Somerset Record Society xlvi) pp. 141, 147.

London.<sup>83</sup> He seems to have acquired an interest in London property through marriage to Isabel, widow of Nicholas Rickhill of Essex.<sup>84</sup>

### **Military Honours**

Many bastard sons of the nobility made their fortunes as soldiers, the wars with France providing ample opportunities. Military service in France in the late 1420s and 1430s seems to have served as a useful outlet for the illegitimate sons of the higher nobility both English and continental: bastard sons of Thomas Montagu, Earl of Salisbury, Richard Beauchamp, Earl of Warwick and John, Duke of Bedford were all actively engaged there, where they encountered the bastard of Orléans, the bastard of St Pol and the bastard de Sauveuses, to name just a few. Sir Hugh Johnnys (c. 1410-1485), an illegitimate member of the Vaughans of Bredwardine (Herefordshire) earned a name for himself in the service of John VIII emperor of Constantinople, having been knighted at the Holy Sepulchre in Jerusalem. He was later knight marshal of France under the Duke of Somerset. In 1468 Edward IV appointed him one of the Poor Knights of Windsor.<sup>85</sup> Later the political upheaval in England provided military opportunities for Thomas Neville, the illegitimate son of William Neville Lord Fauconberg (d. 1463), though the details of his life, other than his appearance in chronicles as ‘Bastard Fauconberg’ are largely undocumented.<sup>86</sup>

Sir James Audley (d. 1369), one of two illegitimate sons of Sir James Audley of Stratton Audley (d. 1334), was a founder member of the Order of the Garter.<sup>87</sup> His illegitimate birth was clearly not an insuperable barrier to membership of an order which required martial renown, gentle birth and an unblemished reputation. Feats of military prowess were sufficient to make up for any deficiencies of birth.<sup>88</sup> The Beauforts were also members of the Order of the Garter, though not until after their legitimation. John Beaufort was elected to the order in September 1396, at the same time as the marriage of his parents was ratified and the couple’s children declared legitimate by Papal authority, but the year before the formal recognition of the Beauforts’ legitimacy in Parliament. His brother Thomas was elected to the Order in

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<sup>83</sup> *Test. Vet.* p. 242; C M Clode (ed.) *Memorials of the Guild of Merchant Taylors: Of the Fraternity of St. John the Baptist in the City of London* (1875) p. 619.

<sup>84</sup> P E Jones (ed.) *London Plea and Memoranda Rolls 1437-57* (Cambridge, 1954) pp. 24-5.

<sup>85</sup> *Oxford DNB* 30 p. 412.

<sup>86</sup> *Oxford DNB* 40 pp. 542-3.

<sup>87</sup> *CP I* p. 348n.; *Oxford DNB* 2, pp. 934-5; George Frederick Beltz, *Memorials of the most noble Order of the Garter : from its foundation to the present time* (London, 1841)p. 83.

<sup>88</sup> Hugh E L Collins, *The Order of the Garter 1348-1461. Chivalry and Politics in Late Medieval England* (Oxford, 2000) p. 20.

1400.<sup>89</sup> A later illegitimate Beaufort, Charles Somerset ('Bastard Somerset') the illegitimate son of Henry Beaufort, 2<sup>nd</sup> Duke of Somerset was elected to the Order by June 1498.<sup>90</sup> A number of bastard-beggetters were also among the companions of the Garter, among them Sir Walter Mauny (elected 1359); Edmund Holand, earl of Kent (elected 1403); William, Lord Roos of Helmsley (elected 1403); John Cornwall, Lord Fanhope (elected 1409); Sir John Dabrichecourt (elected 1413); Thomas Montagu, earl of Salisbury (elected 1414); William de la Pole earl, and later duke of Suffolk (elected 1421);, William, Lord Bonville (elected 1460).

As noted in chapter 4, illegitimate birth did not prevent Sir William Argentine from exercising his role in society. He represented Suffolk as a knight of the shire in 1393, 1395 and 1399. He had already been knighted, possibly for military service overseas, by the time of his first election in 1393. His standing in local society is further demonstrated by his appointment as sheriff of Norfolk and Suffolk at the end of that year.<sup>91</sup> William's illegitimacy was apparently no bar to his service as cup-bearer to Henry IV. On the other hand, it has been suggested that William's lavish expenditure on building a tower for the parish church of his main residence of Halesworth may have been prompted by a desire to make his mark upon the community and counteract any remaining stigma associated with the circumstances of his birth.<sup>92</sup>

### The Church

It was the increasing concern of the church from the eleventh century onwards to regulate marriage that had made illegitimacy an issue, but in practice the attitude of the church towards those of illegitimate birth was less clear cut than it might seem. A career in the church, often involving churches over which the family had rights of advowson, was another way of ensuring the livelihood of family members. It might be thought that this was less of an option for illegitimate sons, since bastards were in theory barred from careers in the church, but in practice illegitimate birth was not an insurmountable obstacle. Provided the necessary dispensations were obtained, the Church provided an outlet in which noble bastards could pursue a similar career to a legitimate younger son, often taking advantage of family connections. In 1391 John Curteys' will left a life interest in certain lands to William Curteys on condition that he became a priest as soon

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<sup>89</sup> Collins, *Order of the Garter* pp. 103.291; *CPL* IV p. 545.

<sup>90</sup> *CP* 12 p. 847.

<sup>91</sup> *House of Commons* II pp. 50-52; *CFR* II pp.95-6.

<sup>92</sup> J Middleton-Stewart, *Inward Purity and Outward Piety. Death and Remembrance in the Deanery of Dunwich, Suffolk, 1340-1547* (Woodbridge, 2001).

as possible ‘*post legitimation suam*’, presumably referring not to legitimation as such but to a dispensation.<sup>93</sup>

With the right dispensations, education and patrons, there was no reason why an illegitimate son should not rise to a high rank within the church. During the fifteenth century both York and Canterbury had an Archbishop of illegitimate birth.<sup>94</sup> This was not merely a late development. Although neither province appears to have had an illegitimate archbishop in during the fourteenth century, three of the Archbishops of York who held office during the thirteenth century were of illegitimate birth, and there was also an election of an illegitimate candidate to Canterbury.<sup>95</sup>

In the 1270s, one Richard de Vescy, an illegitimate kinsman of the Vescy family of Alnwick, was provided for by means of a church career, although subsequent events suggest that perhaps a military role might have been more to his liking.<sup>96</sup> He was presented to the church of North Ferriby by Lady Agnes de Vescy in 1272, having previously been presented to a moiety of the church of St Mary, Castlegate, York, by the prior and convent of Kirkham.<sup>97</sup> A Richard de Vescy, clerk, possibly the same individual, also received a lease of the manor of Griphorp (Yorks) from John de Vescy in 1271.<sup>98</sup> Thus far, he had received assistance from the Vescy family. However, in 1280 there seems to have been some sort of disagreement. Richard de Vescy was presented to the church of Escrick by Roger Lascelles, knight, and received a dispensation for illegitimacy and confirmation of orders on 3 April. Meanwhile, William de Cliff was presented to North Ferriby by Agnes de Vescy, but Vescy was reluctant to relinquish it, and he forcibly resisted Cliff’s entry, assisted by his son Reginald. Either North Ferriby was a more desirable benefice, or Vescy had hoped to hold both.<sup>99</sup> North Ferriby may in fact have slightly more lucrative; in 1291 it was worth £33 6s 8d, whereas Escrick was worth £30.<sup>100</sup> Vescy and his accomplices were

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<sup>93</sup> *Early Lincoln Wills* p.115.

<sup>94</sup> John Stafford, Archbishop of Canterbury, 1443-1452 and Laurence Booth, Archbishop of York 1476-1480.

<sup>95</sup> Geoffrey, illegitimate son of Henry II, Archbishop of York 1191-1212; Sewall de Bovill, Archbishop of York 1256-7; John le Romeyn, Archbishop of York 1286-96; Ralph Nevill, Archbishop-elect of Canterbury, 1231.

<sup>96</sup> It is not clear how this Richard de Vescy was related to the main Vescy line.

<sup>97</sup> William Brown (ed.) *Register of Archbishop Walter Giffard* (Surtees Society cxix 1904) pp. 23, 57.

<sup>98</sup> CPR 1266-72 p.518.

<sup>99</sup> It is probably significant that in 1279, Walter Giffard had been succeeded as Archbishop of York by William Wickwane, who took a much harder line against pluralists. See G M Hallas, ‘Archiepiscopal Relations with the Clergy of the Diocese of York, 1279-99’. *Yorkshire Archaeological Journal* 60 1988 pp 47-63.

<sup>100</sup> *Taxatio ecclesiastica angliae et waliae auctoritate P. Nicholai IV: circa A.D. 1291* (London, 1802) pp. 300 and 303.

subsequently excommunicated and the fruits of Escrick were sequestrated.<sup>101</sup> In December 1280, Richard de Vescy (presumably the same one) made arrangements to go overseas.<sup>102</sup> The following January, William de Monceus was presented to North Ferriby by Lady Agnes, and the church of Escrick was declared vacant. Vescy was readmitted on the presentation of Roger Lascelles only in July 1282.<sup>103</sup>

John de Warenne, sixth Earl of Surrey (d.1304) had two legitimate daughters, Alice and Isabel, and a son, William (d.1286), from his marriage to Alice de Lusignan.<sup>104</sup> Warenne never remarried after Alice's death in 1256, but he went on to father two bastard sons, John and William, both of whom followed similar careers in the church, and were presented to churches controlled by the Warenne family.<sup>105</sup> A B Emden, following A Hamilton Thompson's introduction to the second volume of Archbishop Greenfield's register, states that this William de Warenne was the bastard of the seventh earl and his mistress Maud Nerford, but this is clearly impossible, since John and William were both born before December 1291, when they received dispensations for illegitimacy, while the future seventh earl, who was born in 1286, was still a child. Furthermore, Archbishop Winchelsea wrote a letter on their behalf to Pope Boniface VIII in February 1303, describing them as '*filios naturales nobilis viri Johannis comitis de Warennia*', which clearly places them as children of the then earl, i.e. the sixth earl (d.1304).<sup>106</sup> Thompson's confusion appears to have arisen because of the presentation by the seventh Earl of a 'William de Nayrford', acolyte, to the church of Hatfield (Yorks.) on 11 July 1315. He had licence to study for three years and was not to be compelled to proceed beyond the order of subdeacon in that period.<sup>107</sup> This is clearly not the same individual. William de Warenne had already been ordained priest by 1306 and held Hatfield by that date.<sup>108</sup> It seems that William de Warenne ceased to hold Hatfield at some time between March 1314, when the last reference to him as rector of Hatfield occurs, and July 1315, and was replaced by William de Nayrford.<sup>109</sup>

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<sup>101</sup> *Register of Archbishop William Wickwane* (Surtees Society cxiv, 1907), pp. 56, 98-99, 124

<sup>102</sup> *CPR* 1272-81 p. 417.

<sup>103</sup> *Reg. Wickwane* p. 127.

<sup>104</sup> *Oxford DNB*. 57 pp.395-9.

<sup>105</sup> From the evidence provided in dispensations (see below), it would appear that John and William were probably born in the late 1260s/early 1270s.

<sup>106</sup> *BRUO* p.1987; *Reg.Greenfield*, p. xlii; *Register of John le Romeyn*, Surtees Society 123 (1913) p.128; *Register of Robert Winchelsea II* (Canterbury and York Society, 1956) pp.646-7.

<sup>107</sup> *Reg. Greenfield* p.229.

<sup>108</sup> *CPL* II p. 11.

<sup>109</sup> Despite the confusion over William de Warenne's parentage, *BRUO* accepts that William de Narford is a separate individual, and the Warenne had resigned Hatfield by July 1315.



There is no evidence that the latter was illegitimate, and he could have been a relation of Maud or simply have come from the Norfolk village of Narford.<sup>110</sup>

The first mention of the two illegitimate sons of the sixth earl in connection with their future church careers is found on 23 December 1291, when Richard de Swinefield, Bishop of Hereford, granted a dispensation for illegitimacy for John, ‘*dictus de Warena, de soluto genitus et soluta*’ and another for William ‘*dictus de Warena*’. On 22 February 1303, Archbishop Winchelsea wrote to Pope Boniface VIII on behalf of John and William de Warenne, Masters of Arts, illegitimate sons of Earl John de Warenne. The brothers had already been given a dispensation to take orders and hold benefices with cure of souls. The archbishop asked for further favours on account of their learning and virtuous lives.<sup>111</sup> Despite their illegitimacy, the brothers were able to benefit from the support of friends in high places. John was presented to the church of Dewsbury (Yorkshire) by the prior and convent of Lewes (a Warenne foundation) in 1293. William de Rouleby was to represent him until the next ordination in Lent.<sup>112</sup> He was a canon of York Minster by 1296, when William de Suretoft acknowledged a debt to him of 120 marks, and remained so at least until 1342, when he was one of the canons summoned for occupying the archiepiscopal palace and refusing to allow those appointed by the King to receive the temporalities to enter.<sup>113</sup> By 1306, when he was granted three years’ leave of absence, he had also acquired the churches of Dorking (Surrey) and Fishlake (Yorkshire).<sup>114</sup> He received a further licence for three years’ study leave on 3 October 1309, but his pursuits do not appear to have been entirely scholarly; in 1313 he was fined £20 for fornication with Matilda Malbuche and Alicia Benet – his life was no longer so virtuous.<sup>115</sup> Perhaps in order to remove him from temptation, he was granted a further period of study leave. His frequent absences seem to have become a matter of some concern, as officials attempted to fine him for non-residence.<sup>116</sup> In 1318 he may have been forced to resign Fishlake, which he held as a pluralist without

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<sup>110</sup> It is worth establishing the correct parentage of John and William, so that the seventh Earl, who fathered a number of bastards himself as noted above (pp.147-60), can be seen to be following a family precedent.

<sup>111</sup> *Reg. Winchelsea* pp. 646-7.

<sup>112</sup> *Reg. Romeyn*, p.128.

<sup>113</sup> *CCR* 1288-96 p.514; *CCR* 1341-3 p. 495. The dispute over the temporalities had arisen following the death of the archbishop, William de Melton. Thomas de Metham and William de Lound had been appointed as guardians of the temporalities [*CCR* 1341-3 p. 496].

<sup>114</sup> He was granted 3 years’ leave of absence on 14 April 1306 [*Reg. Greenfield* I p.166]. In the same year he received a dispensation from Clement V for having been ordained priest before his 24<sup>th</sup> year and holding without a dispensation the church of Dewsbury first, and afterwards a canonry and prebend in the church of York and the churches of Dorking and Fishlake. [*Reg. Greenfield* II, p.12]; [*CPL* II p. 11].

<sup>115</sup> *Reg. Greenfield* II, p. 70; *Reg. Greenfield* V, Surtees Society 153 (1938) pp. 103-4.

<sup>116</sup> *Reg. Greenfield* II, pp. 176 and 414 .

dispensation.<sup>117</sup> He appears to have had some financial difficulties during the 1320s. He resigned Dorking by 1322 and Dewsbury by January 1326, when Richard de Mosely replaced him.<sup>118</sup>

William was rector of Nafferton (Yorks.) by 1300, but he resigned on 1 January 1303, when he was presumably studying at Oxford, as his letter of resignation was dated in Oxford and bore the university seal.<sup>119</sup> In 1306 he received a dispensation for having been ordained priest under age, and held the churches of Hatfield (Yorks.) and Northrepps (Norfolk), with a dispensation to retain the same and a licence to accept an additional benefice.<sup>120</sup> The example of these brothers demonstrates the strength of their family connections. Not only were the brothers, who must have been close in age, provided with family churches in the Warenne heartlands of South Yorkshire and Surrey; they appear to have remained close. Dispensations for the brothers were obtained at the same time in 1291 and 1303 and William was granted study leave along with his brother in 1306 and 1314. Yet it is perhaps worth noting that neither of the brothers managed to rise to great heights within the Church hierarchy.

The infamous military commander Sir John Hawkwood had an illegitimate son, John, who was intended for a church career. In 1373 the bishop of London was mandated to ensure that he was a more fit and proper person than his father, before granting a dispensation which would enable him to hold any number and kind of benefices, including elective dignities.<sup>121</sup> Sir John Thornbury, another English mercenary, also obtained papal dispensations in 1373 for his illegitimate sons to enter the church. In 1374 the Bishop of Bologna was issued with a mandate to grant a dispensation to Thornbury's sons Philip and Justan to be ordained and hold up to three benefices. Philip was at the time a student at Bologna. The following year this was extended to allow Philip to hold a major elective dignity.<sup>122</sup> Philip was subsequently appointed by Pope Gregory XI to the Lincoln prebend of Caistor, though it later transpired that the Bishop of Bologna had not acted on the mandate to grant a dispensation and Thornbury was required to resign it.<sup>123</sup> His appointment led to the disappointment of John Wyclif, who had expected to be appointed and had apparently

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<sup>117</sup> *Registers of John de Sandale and Rigaud de Asserio, Bishops of Winchester 1316-1323* (Hampshire Record Society, 1897) pp 94-100, See also *CPL II* p. 264.

<sup>118</sup> *Reg. Sandale and Asserio* p. 480; *Yorks Archaeological Journal XX* (1909) pp. 415-417.

<sup>119</sup> *Register of Thomas Corbridge, Archbishop of York* (Surtees Society, 1925) p.184.

<sup>120</sup> *CPL II* p. 11.

<sup>121</sup> *CPL IV* p. 191.

<sup>122</sup> *CPL IV* pp. 194 and 210.

<sup>123</sup> *CPL IV* p. 227.

already paid £13 6s 8d as the first payment of annates. Thornbury senior was a leader of mercenaries in the papal service, which presumably had helped to smooth the way for the original dispensations and appointment.<sup>124</sup> Thornbury had a legitimate son, also called Philip, who inherited his estates in Hertfordshire.

John Lound, rector of Dacre (Cumberland), was a bachelor of canon and civil law and had received a dispensation to be promoted to holy orders and hold a benefice by 1428, when he received a further dispensation to hold an additional incompatible benefice. He eventually became chancellor to the bishop of Durham. His father was probably the Yorkshire MP, Sir Alexander Lound, whose legitimate son and heir, Alexander, received a papal indult to use a portable altar together with John Lound in November 1428.<sup>125</sup> The career of John Wensley, the son of another MP, Sir Thomas Wensley (d.1403), followed a similar path. He too studied canon law, and eventually became vicar-general to the bishop of Coventry and Lichfield, and archdeacon of Stafford.<sup>126</sup>

Probably the most successful church career by an illegitimate son of a noble or gentle family was that of John Stafford, the bastard son of Sir Humphrey Stafford of Southwick Court, Wiltshire and a local woman called Emma of North Bradley, who rose to the heights of Archbishop of Canterbury and Chancellor of England.<sup>127</sup> His father was a member of a cadet branch of the Stafford family, who had acquired his manor of Southwick through his marriage to the heiress Alice de Greville. He had a legitimate son, Sir Humphrey (d. 1442), with whom John was closely associated. In his will Sir Humphrey left his illegitimate half-brother a pair of silver-gilt flagons, a silver gilt figure of John the Baptist and an Arras tapestry, and also appointed him as executor.<sup>128</sup>

Stafford's career began with papal dispensations for illegitimacy, a lengthy period of study at Oxford and the acquisition of a string of benefices. In the 1420s the focus of his career shifted from church administration to royal administration. He served as Keeper of the Privy Seal from February 1421 until December 1422, when he was

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<sup>124</sup> H S Cronin, 'Wycliffe's Canonry at Lincoln', *EHR* 35 (1920), pp 564-9; M E H Lloyd, 'John Wyclif and the Prebend of Lincoln', *EHR* 61 (1946) pp 388-94; J R L Highfield, review of *Accounts Rendered by Papal Collectors in England, 1317-1378* ed. William E Lunt, in *EHR* 85 (1970) pp 121-2. Cronin points out that at about the time that the prebend at Lincoln became vacant, the pope 'was very much in Sir John Thornbury's debt', although Lloyd suggested that the bishop of Bologna's failure to act on the papal mandate may have reflected concerns about Thornbury's loyalty.

<sup>125</sup> *CPL* VIII p. 66; *BRUO* II pp 1164-5; *House of Commons* III p.630; *CPL* VIII p.35.

<sup>126</sup> *BRUO* III 2013-4.

<sup>127</sup> *BRUO* III 1750-2; *Oxford DNB* 52 pp. 55-7.

<sup>128</sup> *Reg. Chichele* ii pp. 620-4.

appointed as Treasurer. In February 1432 he was appointed as Chancellor, an office he was to fill for an unbroken period of over 17 years. Although he undoubtedly had support from his wider family during the early stages of his career, much was also due to his own evident administrative ability. During his period of royal service he obtained further promotion within the church. He was elected bishop of Bath and Wells in 1424 and was Archbishop Chichele's own choice of successor at Canterbury. His administrative and political skill is demonstrated by the fact that he managed to retain the office of chancellor for so long during the turbulent times of Henry VI's minority and, despite a close association with Suffolk's party which led to his resignation in 1450 at the time of Suffolk's impeachment, he never faced any allegations of wrongdoing. The worst charges that can be laid against him are that his performance as archbishop, whilst administratively competent, was lacklustre. It was also alleged by his contemporary, Dr Thomas Gascoigne, that he had sons and daughters by a nun while he was bishop of Bath and Wells.<sup>129</sup>

The Church did not only provide a livelihood for illegitimate sons. Sir John Golafre's illegitimate daughter Alice was abbess at Burnham. Sir Walter Mauny had two illegitimate daughters, Mailoses and Maplesant, who were both nuns.<sup>130</sup>

The effects of the plague were probably at least partly responsible for a relaxation in attitudes towards illegitimacy. The need to ensure that there were enough ordained priests to administer the sacraments during the plague years certainly led the Church to show more flexibility in its attitude towards those of illegitimate birth. In 1349 there was a marked increase in the number of licences obtained by English bishops to enable them to dispense a fixed number of clerks of illegitimate birth to be ordained priests, although in some cases the distinction between different types of illegitimacy was retained, limiting the numbers of clerical or adulterous parentage who might be included.

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<sup>129</sup> *BRUO* III 1750-2; *CPR* 1416-22 p.406; *CPR* 1422-9 p.80; *CCR* 1419-22 pp 213, 226; *CCR* 1422-9 p.46; T Gascoigne, *Loci e libro veritatum* ed. J E Thorold Rogers (Oxford, 1881) pp. 40, 231.

<sup>130</sup> In his will, Sir Walter left 200 marks and 100 marks respectively to his two bastard daughters who were nuns. *Test. Vet.* p.85; In 1403 Alice Golafre, Augustinian nun of Burnham received a dispensation, as the daughter of an unmarried man and unmarried woman, to hold any dignities, even abbatial or principal, administrations and offices of her order. *CPL* V p. 549; *VCH Bucks* I p.384.

**Table 11: Licences for bulk dispensations, mid fourteenth century<sup>131</sup>**

Year	No of Licences Granted	Total no of individuals to be dispensed	Type of illegitimacy			
			Illegitimate (not specified)	Clerical parentage	Adulterous parentage	Adulterous or clerical parentage
1342	1	10	10			
1345	3	62	36	12	6	8
1346	1	12	8			4
1347	3	87	57			30
1349	7	169	124	20	10	15
1351	1	12	12			
1353	2	26	18		8	
1354	1	6	6			

### Private Attitudes: Family Ties

The view that a male adulterer showed a disrespect for the interests of others (the husband, father or guardian of the woman with whom he misbehaved and the family of his own wife) that could reflect poorly on his trustworthiness to serve the interests of a master or patron is one that would be expected to have particular resonance for the landed classes where more was potentially at stake. This raises the question of attitudes to the products of sexual misdemeanours among the wider family group. It might be expected that those whose interests were affected by the existence of illegitimate offspring would demonstrate hostility, but it was not necessarily the case.

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<sup>131</sup> Data from *CPL III*.

Action taken by other family members in relation to bastards demonstrates the extent to which they were accepted as members of the wider family grouping.

It is worth noting, as Constance Rousseau has pointed out, that the official antagonism of the Church towards illegitimate children did not prevent actual family ties from being recognised. Rousseau notes that none other than Pope Innocent III took the side of Geoffrey, Archbishop of York, against his legitimate half-brother, Richard I in 1199. In writing to Richard, Innocent emphasised the fraternal bond between the two.<sup>132</sup> This was not an isolated incident as Papal letters and dispensations referring to familial ties with illegitimate offspring can be found in the later period, showing both that family members made representations on behalf of illegitimate kin, and that the papal authorities recognised these family bonds in practice. In 1347 Sir John de Willoughby and his wife successfully petitioned for a dispensation for their illegitimate kinsman, Thomas de Strubby, to enable him to hold one benefice with cure of souls, and one without and in 1364 Sir John Beauchamp, a kinsman of the earl of Warwick, was successful in obtaining a dispensation for his illegitimate kinsman, another John Beauchamp, to be ordained and hold a benefice and dignities short of the episcopal.<sup>133</sup> In 1350 Edward III petitioned Clement VI on behalf of his kinsman, John de Lancaster, an illegitimate son of Thomas of Lancaster, for the grant of a canonry and prebend.<sup>134</sup> The career of Robert Flemming, the humanist scholar, and probable illegitimate son of Robert Fleming (d. 1459) esquire of Wath (Yorks.) owed much to family connections. With the Bishop of Lincoln for an uncle and an aunt whose husband, Robert Waterton, was closely associated with Henry IV, he was, in addition to Dean of Lincoln, a chaplain to Henry VI and royal proctor at the papal curia.<sup>135</sup>

Such acceptance by the wider family was important for bastards, as they had more need than those of legitimate birth to rely on the goodwill of relatives. The two bastard sons of the sixth earl Warenne retained links with the wider family. On 15 April 1311 John de Warenne, 7<sup>th</sup> earl of Surrey, obtained licence to alienate a messuage and 4½ acres of land in North Repps to his illegitimate uncle William.<sup>136</sup> Thomas of Lancaster's two bastard sons also received support from their legitimate relations. Both Edward III and Henry of Lancaster petitioned the Pope on behalf of John of Lancaster

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<sup>132</sup> Rousseau, Constance M, 'Kinship Ties, Behavioural Norms, and Family Counseling in the Pontificate of Innocent III' in Rousseau, Constance M and Rosenthal, Joel T, *Women Marriage and Family in Medieval Christendom. Essays in Memory of Michael M Sheehan, CSB* (Kalamazoo, 1998) pp. 337-338.

<sup>133</sup> *CPP* pp.126; 498.

<sup>134</sup> *Ibid.* p. 193; *CPL* III pp. 346, 357.

<sup>135</sup> *Oxford DNB* 20 pp. 80-82.

<sup>136</sup> *CPR* 1307-13 p.343.

regarding provision of a canonry and prebend at Lincoln.<sup>137</sup> Thomas, the other bastard son, was in the service of Edward III as one of his chamberlains.<sup>138</sup>

The career of Prior William de Warenne, one of the illegitimate sons of the last Earl Warenne, demonstrates that patronage was needed not only to achieve a position in life, but to retain it. William was destined for the monastic life and was duly enrolled in the Cluniac Priory of Lewes, a Warenne family foundation. By August 1337 he was Prior of the daughter house of Monks Horton in Kent, and was granted a respite for the payment of 27 marks 6s 8d to the Treasury for custody, following the intervention of his father the earl. The relationship between the earl and prior was explicitly stated. A further respite was granted in May 1338, again at the request of Earl Warenne.<sup>139</sup> Meanwhile, William was endeavouring to prove that his house should not be subject to the penalties applied to alien priories.<sup>140</sup> By February 1339 an inquisition had found in his favour, accepting that the prior of Horton was an Englishman, the son of the earl of Surrey, born at Conisburgh Castle, and all the monks were Englishmen, and that neither he nor his predecessors had made any apportion, tax or service to a religious house overseas. Despite this, in July 1340 Prior William was still having some difficulties in this respect and the earl once again intervened on his behalf. A respite on the annual farm of 40 marks, required of the Prior William as an alien, was granted 'in consideration of John de Warena, earl of Surrey, the prior's father, and at the earl's request.'<sup>141</sup> Despite his illegitimate birth, his relationship with the Earl was clearly important.

Prior William's career continued to flourish, and by October 1342 he had been promoted to the larger house of Castle Acre in Norfolk, when he acknowledged a debt of £300 on behalf of the convent.<sup>142</sup> However, there was a hitch, since William's dispensation for illegitimacy granted by Pope John XXII, and renewed by order of Benedict XII, applied only to a non-conventual priory, such as Monks Horton, and not to a conventual house. The earl therefore sought a further papal dispensation to enable him to take on the role of prior of Castle Acre, a conventual house.<sup>143</sup> The dispensation,

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<sup>137</sup> *CPL* III p.346; *CPP* p.271.

<sup>138</sup> *CPP* p. 262.

<sup>139</sup> *CCR* 1337-1339 pp. 253 and 411.

<sup>140</sup> *CCR* 1339-41 pp. 18 and 82.

<sup>141</sup> *CCR* 1339-31 p. 496.

<sup>142</sup> *CCR* 1341-3 p.657.

<sup>143</sup> *CPP* p.38.

along with a mandate to make provision of Castle Acre was granted by Clement VI on 16 January 1344.<sup>144</sup>

However, Prior William's fortunes took a turn for the worse shortly after his father's death in 1347. Richard Earl of Arundel, who as heir to this part of the Warenne inheritance was now the patron of the priory, was not, it seems a supporter of his illegitimate cousin. On October 25 1348 Walter Picot, named as prior, obtained a writ of *de apostate capiendo* for the apprehension of William de Warenne and one Robert de Neketon, who had absented themselves from the house.<sup>145</sup> A further writ was issued on 8 February 1351.<sup>146</sup> Despite the wording, writs of *de apostate capiendo* did not necessarily mean that the individual in question had literally fled and taken up life as a vagabond. In this case it seems likely that some form of dispute had occurred over the office of Prior.<sup>147</sup> Demands by the papal collectors for a large sum as first fruits arising from the provision of Warenne provide a clue to the reasons for his downfall. In 1348 Richard, Earl of Arundel, had petitioned the crown to command Raymond Pileryn, the papal proctor, to cease his excessive demands for first fruits.<sup>148</sup> This did not resolve the matter, for in 1363 Urban V was seeking payment of the sum of 480 *l* 19s 7d. as the fruits of one year's voidance of the priory reserved to the papal camera from 'William de Varena, prior of Castleacre, appointed thereto by Clement VI.'<sup>149</sup> Reports from the papal collectors Hugh Pelegrini, John de Cabrespino and Arnold Garnieri of their failed attempts to recover this sum reveal some of the story. Warenne had evidently been dismissed soon after his father's death. John de Cabrespino reported in 1370 that '*antiqua est proviso et nunquam aliquid potuit habere quia de patronatu est laicali, et statim fuit exclusus quia bastardus erat et dissipator prioratus.*'<sup>150</sup> The monks, in their efforts to rid themselves of a profligate and unpopular prior, had evidently decided to include William's defect of birth in the grounds for dismissal, despite his papal dispensations. As for the validity of the other charges, even leaving aside the question of the first fruits, William certainly seems to have lived in some style. The luxuriously

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<sup>144</sup> *CPL* III pp. 124 and 139.

<sup>145</sup> *CPR* 1348-50 p.244. Walter Picot had been ordained acolyte on the same date as Warenne in March 1325. [*Reg. Stratford*].

<sup>146</sup> *CPR* 1350-54 p.78.

<sup>147</sup> F Donald Logan, *Runaway Religious in Medieval England* (Cambridge, 1996) p. 118.

<sup>148</sup> TNA: PRO SC8/247/12337.

<sup>149</sup> *CPL* IV p. 6. To place the demand in context, the annual value of the priory's temporalities given in the taxation of 1291 was £215 14s 4½ [*Taxatio Ecclesiastica*].

<sup>150</sup> *Accounts Rendered by Papal Collectors in England, 1317-1378* ed. William E Lunt and Edgar B Graves (Philadelphia, 1968) pp. 125-6, 148, 195, 232, 272, 368, 497. William E Lunt, *Financial Relations of the Papacy with England 1327-1534* (1962) p. 410.



appointed prior's lodging at Castle Acre is still standing today, and the Warenne arms on the fourteenth century additions suggest where the priory income may have been spent. Meanwhile, the dispute over the first fruits dragged on until the papal collectors eventually lost patience and excommunicated the monks and sequestered the fruits of the priory, whereupon in 1385 the next earl of Arundel petitioned the Crown, this time with rather more success, for the papal collector was ordered to cease his demands. On this occasion the petition stated that William had never lawfully been in possession as a result of the provision. The version of events contained in the petition was that William had resigned the priory to the Prior of Lewes, who then appointed another prior, who remained in peaceable possession for the duration of his life, but William made another resignation of the priory into the pope's hands, omitting to mention his first resignation and obtained a papal provision, binding the prior for payment of the sum of 484l 9s 9d as annates.<sup>151</sup> William's position as prior had evidently owed much to the patronage of his father.

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<sup>151</sup> TNA:PRO SC 8/88/3488; CCR 1385-9 p.87; Gwilym Dodd and Alison K McHardy (eds) *Petitions to the Crown from English Religious Houses c. 1272-c.1485* (Woodbridge, 2010).

Figure 4



Detail of Prior's Chapel at Castle Acre, showing Warene arms

Prior William's brother and namesake, Sir William de Warene, had a similar experience with enemies who would not have dared to take action against him during his father's lifetime. In August 1338, ostensibly acting by authority of a commission issued to his father, he had arrested Sir John Waleys and imprisoned him for eight weeks at Lewes. Some nine years later, after the earl's death, Sir John brought an action of trespass. Although the action included other Warene retainers such as Sir John Bigod and Sir John de St Pier, Warene's was the only case which went to a jury; Sir John Bigod obtained a royal pardon and was released and Sir John de St Pier was also eventually pardoned. Warene was found guilty and fined £40.<sup>152</sup> It seems fairly clear that Waleys would not have dared bring this action during the earl's lifetime. The experience of the Warene brothers demonstrates how dependent bastards could be on the patronage of parents or other relatives. In their case, the death of their father left

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<sup>152</sup> Saul, *Scenes from Provincial Life* pp. 73-4

them without a powerful patron; their cousin, Richard FitzAlan, was not prepared to step into the breach.

Family loyalty was perhaps not Richard FitzAlan's strong suit. His lack of support for illegitimate children was not restricted to his nephew the prior, but reached closer to home. Whereas in the fifteenth century, Sir William Plumpton allowed a legitimate son to be thought a bastard, Richard effectively made his legitimate son into a bastard. He had succeeded, as his father had not, in surviving the vicissitudes of fourteenth century politics and dying an extremely wealthy man. He had profited from the lack of legitimate heirs of his uncle, John, Earl of Warenne, acquiring a major part of the Warenne inheritance on his uncle's death, having frustrated the latter's final scheme for the resettlement of his estates in order to retain the family name.<sup>153</sup> FitzAlan had no need to resort to complex settlements in order to continue his own family name – he had three sons to continue it: Richard, John and Thomas. But these sons were legitimate only because in 1344 FitzAlan had sought and obtained the annulment of his first marriage, leaving him free to marry his mistress, Eleanor Beaumont. In so doing, he had rendered his first-born son Edmund, the child of that marriage, a bastard.<sup>154</sup> Edmund was by this time married to Sibyl, a daughter of William Montagu, Earl of Salisbury. The timing of the annulment shortly after Montagu's death in January 1344 is probably not a coincidence. FitzAlan's will did not include any bequest to Edmund or his children.<sup>155</sup>

The Arundel case clearly led to bad feeling between Edmund and his half-siblings, which continued into the next generation. Edmund and Sibyl had three daughters: Elizabeth, Philippa and Katherine. Elizabeth married Sir John Meryett of Somerset, whilst Philippa married the Cornish knight Richard Cergeaux. In May 1382 both couples, together with Robert d'Eyncourt, Katherine's son, brought an assize of novel disseisin against Richard, earl of Arundel (the son of Richard FitzAlan senior and Eleanor Beaumont) concerning a tenement in Singleton (Sussex).<sup>156</sup> The earl's attorney argued that the earl was the legitimate son and heir, and that since Edmund, through whom the plaintiffs made their claim, was a bastard, it was entirely lawful for the earl to have ejected them from the property concerned. A jury then swore that Edmund was indeed a bastard. The plaintiffs did not give up, however, and alleged that the members

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<sup>153</sup> *CPR* 1345-8 p.480

<sup>154</sup> See above pp. 45, 79-80..

<sup>155</sup> *Test. Vet.* I pp. 94-6.

<sup>156</sup> *YB 6 Ric. II* pp. 66-69. Although Robert d'Eyncourt was a party to the initial writ, he did not pursue the case.

of the jury had lied on oath. A second jury of twenty-four knights agreed with the first that Edmund had been a bastard. It was accordingly ruled that not only should the plaintiffs take nothing, but that they should be arrested for bringing a false prosecution. Whilst the jurors were technically correct, the case suggests continued bad feeling between the two branches of the family. Needless to say, the earl did not remember his half-nieces in his will. There was however some evidence of family links. One of Sir Richard Cergaux's executors was his wife's half-uncle, Thomas Arundel, Archbishop of York.<sup>157</sup>

On the continent, the provisions of civil law were to a certain extent modified by the effects of local legislation and custom. Local statutes often recognised that bastards were linked to families and thus had associated rights and duties, for example in relation to participation in vendettas. In the particular circumstances following the plague of 1348, Florentine statutes permitted bastards born of unmarried parents to inherit from their parents in the absence of other heirs.<sup>158</sup> English custom also recognised the family links of bastards.

In considering provision for bastards by other family members a distinction should be drawn between those whose interests were directly affected by the existence of the illegitimate children, and those whose were not. The former category would include heirs general who might lose out if property they expected to inherit was instead settled on an illegitimate child. The latter category would include individuals such as the parents of the bastard-beggetter and other relatives who had no real expectations of inheritance. It is in this latter category that attitudes to illegitimacy can be most clearly discerned, without the complication of personal interest. Margaret Paston left ten marks in her will (1482) to her granddaughter Constance, the illegitimate daughter of John Paston II. She describes her in the will as 'Custance, bastard daughter of John Paston, knight'. To place this in context, William and Elizabeth, her legitimate grandchildren by her eldest surviving son, John Paston III, received monetary bequests of 100 marks each. Margaret also left a total of £20 to her grandsons from her daughter Margery's controversial marriage to the family servant Richard Calle. There was also a bequest of £10 to Margaret's daughter, Anne.<sup>159</sup>

In his will of 1360, Robert de Burton, rector of Preston (Lincs.), left a bequest to his illegitimate niece, Alice, daughter of his brother William de Burton, at the

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<sup>157</sup> *House of Commons*, II p. 506.

<sup>158</sup> Kuehn, *Renaissance Florence* pp. 70-74.

<sup>159</sup> *Paston Letters* I, pp. 382-389.

disposition of his mother and brother Thomas, as well as bequests to William's wife and legitimate children.<sup>160</sup> In this case, provision for the bastard daughter was clearly a family matter. The brother William may be an example of a bastard-begetter who was untrustworthy in other areas since the will also stipulates that William is to be compelled to account for the emoluments of Robert's church he had received.<sup>161</sup> In 1372, the widow of Adam de Carlisle, a London draper, together with her new husband, John Maryns, obtained guardianship of his young bastard son Henry along with her own children by Carlisle.<sup>162</sup>

A further example of provision by the older generation is that of Henry V's Chief Justice, Sir William Hankford, whose will included provision for the education of John and Richard, the bastard offspring of his son Richard by Elizabeth Were. Richard (the son) had died four years earlier, in 1419, and so Sir William's action was necessary in order to secure their future.<sup>163</sup> Jane Stapleton of Wighill (Yorks.) also remembered an illegitimate grandchild in her will, specifying that her son, John Warde, should give the 10 marks he owed her for corn and cattle to his bastard son, Roger.<sup>164</sup> Richard Cheddar of Somerset died in 1437, leaving a legitimate daughter, Jane, and an illegitimate son, John. Jane inherited the estates he had held by right of his wife, Elizabeth, daughter and heiress of Robert Cantelo, whilst the Cheddar inheritance passed to Cheddar's brother Thomas. In settling his own affairs, Thomas divided the property between his illegitimate nephew, John and a kinsman, William Seward.<sup>165</sup> William Case (d. 1494) of South Petherton and Norton under Hamdon, Somerset not only mentioned his own two bastard sons in his will, but also left 40s for the marriage of 'Thomas bastard of Richard Case', presumably the illegitimate son of another family member.<sup>166</sup> William Girlington, a citizen and draper of York, in his will of 1444 left four pounds to be divided between Robert and William, the bastard sons of his uncle, John Girlington.<sup>167</sup>

Wills provide examples of bastards being accepted as part of the family by members of the same generation. As noted above, Sir Robert Swillington (d.1391) had left only a small legacy of £20 to his bastard son Thomas Hopton in his will, though Thomas was apparently treated as part of the family. It was Sir Robert's son, Sir Roger,

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<sup>160</sup> *Early Lincoln Wills* p.23.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Cal Letter Books of the City of London G* pp. 296-306.

<sup>163</sup> *Reg. Chichele* II p.293.

<sup>164</sup> *Test. Ebor.* IV pp. 273-4.

<sup>165</sup> *House of Commons* II pp 537-8.

<sup>166</sup> TNA:PRO PROB11/10.

<sup>167</sup> *Test. Ebor.* II p.94.

who granted his illegitimate half-brother a life interest in a small property in Ufton (Derbyshire) and, in making a careful settlement of his estates, included a reversionary interest to Thomas Hopton and his sons, after his own two legitimate sons, their sons, their daughters and his own daughter.<sup>168</sup> Whilst it would have seemed most unlikely at the time that the reversions would fall in to the benefit of Thomas's son John, the inclusion of Thomas in the settlement demonstrates that the family link was accepted. This is also demonstrated by the fact that Thomas was left the sum of 10 marks in Sir Roger's will, in which he was also named as an executor.<sup>169</sup>

Inclusion of an illegitimate sibling in the will of a legitimate half-brother was not particularly unusual, though the generosity of provision varied. This contrasted with the situation in Florence, where Thomas Kuehn was unable to find any examples of brothers and sisters leaving property to illegitimate siblings.<sup>170</sup> John Leventhorpe (d.1435) of Hertfordshire, the loyal servant of the House of Lancaster, left a relatively small sum to his illegitimate brother, William. William was to receive only 6s 3d in comparison with 20 shillings for various members of Leventhorpe's legitimate kin.<sup>171</sup> Thomas Bataill (d.c.1396) of Otes and Matching in Essex, who represented Essex in the parliaments of 1390 and 1394, had a bastard son and daughter as well as legitimate offspring.<sup>172</sup> The will of his legitimate son and heir, John, dated 21 February 1397/8 included bequests of 10 marks to Thomas, his father's bastard son, and 40 shillings to Maud, Thomas' sister. To place these sums in context, John Crabbe, a servant, was to receive 40 shillings, as was the vicar of Matching. John's sister, and eventual coheir, Margaret, was to receive £20 on her marriage.<sup>173</sup>

Integration of bastards into the family worked both ways. William de Vescy of Kildare, the illegitimate son who inherited William de Vescy's Yorkshire and Lincolnshire property appears to have been on good terms with his father's widow, Isabella de Periton, and to have felt some responsibility for her welfare. Before he set out on campaign in 1314, he obtained a grant on behalf of Isabella that nothing should be taken for the king's use from her manor of Tughall against the wishes of Isabella, William or their bailiffs.<sup>174</sup> John Lovel of Snorscombe was closely associated with his legitimate half-brother. In 1287 he accompanied the younger Sir John Lovel into Wales

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<sup>168</sup> Richmond, *John Hopton* (Cambridge, 1981) pp. 1-6; *CFR 1422-30* p. 316.

<sup>169</sup> *Test. Vet.* I p. 190.

<sup>170</sup> Kuehn, *Renaissance Florence* p. 194.

<sup>171</sup> *Reg. Chichele* II pp. 526-30.

<sup>172</sup> *House of Commons* II pp144-5.

<sup>173</sup> Essex Record Office D/DBa T2/1.

<sup>174</sup> *CPR* 1313-17 p. 96.

on the King's service and both had letters of protection on going abroad in July 1287 and June 1288.<sup>175</sup> As noted above, William, the illegitimate son of Otto Bodrugan assisted his legitimate nephew in his attempts to reclaim the family lands.<sup>176</sup>

## Summary

It seems that in general, sexual misconduct was regarded as a private matter in medieval England, and did not tend to affect the public reputation of individuals.<sup>177</sup> Likewise, illegitimacy was not viewed as a social disability in medieval England. It was certainly a complication which prevented automatic rights of inheritance. There were ways around the legal difficulties, however, and illegitimacy as such did not result in an impediment to normal life. There is some evidence that attitudes to sexual misdemeanours were hardening in the fifteenth century, but even so, this was aimed at the guilty parents rather than the innocent, if illegitimate, children.

The lack of a stigma attaching to the word 'bastard' is also demonstrated by the use of the word as a surname. Whilst the use of the name originally would have denoted someone of illegitimate origin, it appears to have been adopted in some cases as a surname and passed on to legitimate children. For example, William Bastard (1400-56), alderman and town clerk of Shrewsbury, the son of Peter Bastard, a burgess of Shrewsbury in 1397.<sup>178</sup> One of the individuals involved in the Armbrugh case mentioned above was referred to, apparently by name, as 'Bastard.'<sup>179</sup> In 1348 a 'Master John Bastard, Chaplain' inherited 13 acres in Winslow from John Bastard, and there was also an Essex family of that name.<sup>180</sup>

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<sup>175</sup> *CPR* 1281-92 pp. 272, 295, 296.

<sup>176</sup> See above p. 119.

<sup>177</sup> Colin Richmond came to this conclusion about fifteenth century East Anglia [Richmond, 'Medieval East Anglia' pp.190-1.]

<sup>178</sup> *House of Commons* p.49.

<sup>179</sup> Carpenter, *Armbrugh Papers* pp. 30-31; 176. Carpenter's tentative identification of this individual with Richard, Bastard of Bedford seems unlikely.

<sup>180</sup> Noy, 'Leyrwite, Marriage and Illegitimacy' p. 139. *Essex Feet of Fines* II p.77, III p.3.

## Chapter 8: Conclusion

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*I am I, how'er I was begot<sup>1</sup>*

The introduction posed a number of questions about illegitimacy in later medieval England. These related to the quantitative issue of how common the procreation of illegitimate children was; how illegitimacy impinged on the lives and livelihoods of the landed classes, and how illegitimate children were provided for and regarded both within the family and society as a whole.

### **How common were bastard offspring of members of landed society?**

Colin Richmond, in reviewing Susan Wright's work on the Derbyshire gentry in the fifteenth century, jokingly enquired whether his 'impression that virtually every Derbyshire gentleman had a mistress and bastards' could be substantiated.<sup>2</sup> Despite Nigel Saul's wry aside that the Sussex evidence might support this conclusion, the reality is of course rather less spectacular.<sup>3</sup> Whilst the nature of the evidence makes it difficult to draw meaningful quantitative conclusions, where any form of quantitative analysis of a sample is possible, known examples of illegitimacy tended to occur at a rate of between 0.5 and 1.5%. As demonstrated in chapter 2, analysis of the sample of the 3,140 individuals who were returned as MPs between 1386 and 1421 suggests that bastards were fathered by a minimum of around 1%. Similarly, around 1.5% of printed wills mention bastard offspring or relatives of the testator. Even allowing for significant under-reporting in the surviving records, illegitimate births can hardly be assumed to have been widespread amongst the gentry and nobility in general.

However, the examples discussed in earlier chapters might give the impression that illegitimate children were particularly common in certain families, such as the Rouses of Imber, the Warennes, the Bodrugans, the Staffords and the Stanleys.<sup>4</sup> Tempting as this notion of a bastardy-prone elite to mirror the bastardy-prone sub-society put forward by Laslett and Oosterveen may be, the over-representation of

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<sup>1</sup> Shakespeare, *King John* Act I, Scene 1 174-5.

<sup>2</sup> *Medieval Prosopography*, 6 (1985) p. 21, reviewing S M Wright, *The Derbyshire Gentry in the Fifteenth Century*.

<sup>3</sup> Saul, *Scenes from Provincial Life*, p. 13n.

<sup>4</sup> See above pp. 107,150-1, 118-20, 203, 148, 112.



certain families is more likely to reflect the survival of the evidence.<sup>5</sup> It is possible to identify three separate members of the Paston family who fathered bastards, but despite the quantity of surviving documents relating to this particular family and all the scholarship that has been carried out upon them, there are few traces of illegitimate children. Sir John Paston's illegitimate daughter Constance is mentioned only in Margaret Paston's will, and the illegitimate children of John Paston III and Edmund are referred to only obliquely.<sup>6</sup> The details of the Rous family of Imber and Great Chalfield survive mainly through the chance survival of a cartulary compiled with great care by their kinsman Thomas Tropenell in the second half of the fifteenth century to prove his own property rights. Since Tropenell's purpose was to defend his own claim, it was in his interests to ensure that illegitimate children were clearly identified as such. He therefore made it clear that John Rous, senior, had many bastards but only two legitimate children, William, from whom Tropenell later acquired the manor of Great Chalfield, and John. William, like his father, had many bastard children, but had no surviving legitimate offspring, and John the younger had only a bastard son.<sup>7</sup> Families that survived into the sixteenth century, when attitudes were changing, may well have concealed or destroyed evidence of illegitimacy in the pedigree. The landowning classes of Tudor England took a great interest in heraldry and genealogy. Well-established families used genealogy to demonstrate that they were superior to upwardly mobile social climbers, whilst families of more recent gentility used it to disguise their comparatively lowly origins. A living could be made by fake heralds, such as the glazier William Daykins, who posed as Norroy King of Arms, swindling ninety hopeful gentlemen in the process. Whilst not everyone went to the lengths of the Wellesbournes of Hughenden (Bucks), who not only tinkered with their pedigree, but forged monuments in their parish church to support it, it is clear that pedigrees were edited by later generations.<sup>8</sup> Some of this falsification of the records may well have concealed illegitimacy. For example, Watson, in attempting to prove the claim of the Warren family of Poynton to the earldom of Surrey, made the case that Sir Edward Warren, the founder of the family, was legitimately descended from the second earl, rather than being a bastard of the last earl. Watson's theory relies on the less than credible assumption of a coincidence of there being two different ladies named Maud Nerford

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<sup>5</sup> Laslett and Oosterveen, 'Long-term trends in Bastardy in England' pp. 255-286; Laslett *et al*, *Bastardy and Its Comparative History* pp. x-xiv

<sup>6</sup> See above p.46

<sup>7</sup> *Tropenell Cartulary I* pp. 281-3, 287.

<sup>8</sup> Keen, *Origins of the English Gentleman* pp. 18-19.

alive at the same time, one of whom was the concubine of the last earl, and one of whom was the wife of a 'Sir Edward Warren' who was legitimately descended from the second earl. In making this case he appears to have relied on the evidence of a pedigree which purported to have been prepared by the sixteenth century heralds and early genealogists Sir Robert Glover and his father-in-law William Flower, but which was of as doubtful provenance as the Warren family themselves. In this particular case, the absence of any contemporary evidence for Sir John Warren, father of Sir Edward Warren, and his father Sir John Warren is compounded by the mention of a son called Edward, clearly illegitimate, in the will of the last earl, which was contained in a register of Archbishop Zouch that was 'unfortunately lost' when Watson was compiling his work, although it subsequently made a reappearance.<sup>9</sup> The Hopton family manufactured a pedigree to disguise their origins.<sup>10</sup> The deed by which Sir John Pelham conveyed property to his illegitimate son may have been subject to later amendment to substitute 'unico' for 'bastardo' after the words 'filio meo'.<sup>11</sup> Other pedigree redactions may be more difficult to identify.

### **How were bastards regarded generally?**

Illegitimacy in later medieval England was an obstacle to inheritance, rather than a social disability. It removed automatic rights of inheritance so that a bastard could not inherit his father's property, and property held by a bastard could not be inherited by anyone other than his legitimate descendants. This was a significant issue for the landed classes. As a legal issue, it is interesting as an area in which the jurisdiction of the Church and secular courts overlapped, with the Church courts determining matters relating to marriage and legitimacy of offspring and the secular courts dealing with the transmission of property. The differing views of the canon law and common law as to the validity of legitimation by subsequent marriage, and the efforts of the courts to negotiate this grey area, provided an interesting challenge for the emerging legal profession, as it was necessary to understand the nuances of the laws of illegitimacy and the form in which issues of bastardy, and special bastardy in particular, needed to be

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<sup>9</sup> Joseph Hunter in *Retrospective Review* (Second Series, 1828, ii, p 527), cited by J G Nichols in 'Watson's Earls of Warren and Surrey', *Herald and Genealogist* 7 pp. 193-219 London 1873; Watson, *Earls of Warren and Surrey* II pp. 50, 75-97. In the apparent absence of Zouch's register, Watson relied on the abstract contained in Dugdale's *Baronage*.

<sup>10</sup> Richmond, *John Hopton* p.6.

<sup>11</sup> *Sussex Archaeological Collections* 69 (1928) pp. 64-5.

raised, in order to ensure that cases involving individuals who were not legitimate according to common law were not referred to the bishop.

It was also an area in which English practice was very different from that in continental Europe. The barons' response at Merton in 1236, which served to perpetuate the discrepancy between the two codes as to the legitimacy of children born before wedlock, can arguably be seen as a deliberate attempt to assert the primacy of English over 'Roman' practice. What it achieved in practice was to ensure that the only distinction of any significance between bastards in England was whether their parents had subsequently married or not, and even this was significant only in the context of legal disputes in which bastardy was alleged. The hierarchy of bastards based on the circumstances of their birth, from *naturales* through *spurii* to those *ex damnato coitu* which affected legal rights on the continent, had no place in English law. As far as the English common law was concerned, a bastard was a bastard. The only difficulty arose in determining who was in fact a bastard in the first place.

A gradual shift in attitudes towards bastards appears to have begun during the fifteenth century as the landed classes became more concerned with pedigree and coats of arms as a symbol of status. In the sixteenth century, attitudes towards bastard children in general were much harsher, partly as a result of the Elizabethan Poor Law. Whilst there was little danger of illegitimate children from the landed classes becoming a charge on the parish, the 'contemporary mania about bastard children'<sup>12</sup> may have encouraged such families to edit their pedigrees to remove any suggestion of illegitimate ancestry.

### **Were bastards integrated into the family or kept apart?**

The nature of the available evidence, in the form of wills and property settlements, has a natural bias towards illegitimate children who were to a certain extent cared for and regarded as part of the family. Bastards who were completely alienated from the family are naturally harder to track down. There is the notable case of Edmund, the putative bastard son of Sir Henry Pierrepont, but as Sir Henry denied paternity, it is unclear whether this is a case of the shirking of parental responsibility or of attempted fraud on the part of Edmund.<sup>13</sup> There is also the case of a certain 'Edward, an evil disposed person being a bastard and a Fleming born at Bruges in Flanders' who

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<sup>12</sup> Helmholz, 'Harboring Sexual Offenders' p. 265

<sup>13</sup> *Test. Ebor.* IV pp. 43-45. See above p. 36

claimed to be the bastard son of John Pykering, a London mercer, who claimed a debt against the estate after Pykering died intestate.<sup>14</sup> The cases where other family members, particularly half-siblings, remembered illegitimate relatives, as Roger Swillington and John Bataill did, do however show that in many cases bastards were part of the wider family group.<sup>15</sup>

Thomas Hopton was also appointed as an executor of his legitimate half-brother's will. Other examples of bastards acting as executors include Robert Pilkington.<sup>16</sup> This seems to have worked satisfactorily in many cases, showing that these bastards, at least, were part of the family. Sir Humphrey Stafford of Hook appointed his illegitimate brother John, at that time Bishop of Bath and Wells, as one of his executors, and left him a bequest of plate.<sup>17</sup> During the minority of Roger Mortimer, fourth earl of March (1374-1398), the extensive family estates were run by a council headed by his illegitimate uncle, Sir Thomas Mortimer, a position to which he was appointed by the group of magnates, comprising the earls of Warwick, Arundel and Northumberland, and Lord Neville, who held the wardship of the young earl. Mortimer had been a close companion of his legitimate half-brother, Edmund, the third earl (d. 1381) and seems, in his exercise of family responsibilities to have behaved remarkably unlike the villainous bastard of literature.<sup>18</sup>

### **What provision was made for their livelihood?**

Legal problems required legal solutions. Legal developments which took place from the late thirteenth century onwards meant that it was easier for landowners to make post mortem arrangements for the disposition of their property in accordance with their wishes, including making provision for bastard children, and in so doing, to ensure that property used in this way was not permanently alienated from the family. However as time went on, the prior existence of entails and uses began to limit their utility, as the mother of Sir William Gresley's bastard sons discovered in 1524.<sup>19</sup>

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<sup>14</sup> TNA:PRO C1/229/19

<sup>15</sup> See above, p. 214.

<sup>16</sup> *Test.Ebor.* III p.240. John Brunston, bastard son of Thomas Brunston however refused to act as his father's executor. *Reg. Chichele* II pp. 310-11.

<sup>17</sup> *Reg. Chichele* pp.620-4

<sup>18</sup> *Oxford DNB* 39 pp. 403-4

<sup>19</sup> See above p.169; Wright, *Derbyshire Gentry* p. 38

By the fourteenth century, parents had the legal tools to make provision for the livelihood of their bastard offspring through a landed settlement, and many did so, though it was usual for this provision to be moderately less generous than that for legitimate siblings, where they existed. In some cases provision was in the form of a life interest rather than outright settlement. Illegitimate children might also be included in the reversion of property settled on the legitimate offspring. Monetary bequests, particularly for education or marriage, were common. Cases of equal or minimal provision tended to reflect particular individual circumstances relating to the relationship of the father with the mother. Provision might be generous where the father and mother were in effect living as husband and wife, though not in legal matrimony, but cursory where the mother was a woman of low status and dubious reputation.

### **Who were the mothers, and did the status of the mother affect the status of the bastard?**

It is not always possible to identify the mother of bastard children of the landed classes. This marks a key difference from studies of bastardy at lower levels of society, which focus on the mother, since they are based on evidence derived from action taken against women for fornication or illegitimate births. From those cases where the identity of the mother is known, there is reason to suppose that the status of the mother was relevant. This can be seen from the cases where the illegitimate child was used as a substitute heir. The mother of William Vesey of Kildare was the daughter of an Irish prince; Nicholas Meinill had his illegitimate son by Lucy, daughter of Robert de Thweng of Kilton and an heiress in her own right; Antony St Amand was the son of Mary Wroughton. Katherine Finderne, the mother of one of Lord Grey of Codnor's illegitimate sons, was probably a member of the Derbyshire gentry family of Finderne and related to Richard Finderne, to whom Grey left £3 6s. 8d.<sup>20</sup> Joan Hopton, the mother of Sir Robert Swillington's bastard son Thomas, was probably from a neighbouring gentry family, the Hoptons of Armley, Mirfield and Ackworth.<sup>21</sup> In contrast, illegitimate children who received minimal provision were generally the offspring of low status mothers, as in the case of Sir John Dabrichecourt's illegitimate sons.<sup>22</sup>

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<sup>20</sup> *CP* p.132n.

<sup>21</sup> Richmond, *John Hopton* p. 6

<sup>22</sup> See above p.106.

Well-born mothers who had illegitimate children as a result of their own adultery are particularly hard to find, particularly because of the reluctance to regard any child born to a married woman as a bastard. The relatively few exceptions where a married woman of noble or gentle birth is known to have had a child as a result of an adulterous relationship show this clearly. The career of Lucy Thweng is a case in point. She had a child with Nicholas Meinill whilst she was married to Sir William Latimer. The child was clearly recognised as a bastard, rather than the legitimate son of Latimer, but at the time Lucy was not only estranged from her husband, but going through divorce proceedings. The actual birth date of Lucy's son Nicholas is not recorded, though he was under age in 1322.<sup>23</sup> Lucy had petitioned for divorce in 1305, and was not cited for adultery with Nicholas Meinill until 1307.<sup>24</sup> Lucy's earlier child, William Latimer, born c.1301, was however regarded as the legitimate child of Sir William, despite apparent doubts about her conduct, even then. He succeeded to Sir William's estates in 1327, and although there may have been some rumours, resulting in an inquiry in 1328, he was found to be the son and heir of Sir William by Lucy Thweng. A century and a half later, Johanna, wife of Sir William Beaumont, had an affair with Sir Henry Bodrugan, whilst estranged and separated from her husband. Although there was no doubt that Bodrugan was the father, the fact that John Beaumont had been born to a married woman meant that he eventually gained a share of the Beaumont inheritance, because of the reluctance to bastardize a child born within wedlock.<sup>25</sup> Edmond Paston's child with 'Mistress Dixon' was regarded as the legitimate child of her husband.

### **Were bastard sons treated differently in the absence of legitimate heirs?**

Where there were no legitimate male heirs it was possible in certain circumstances for bastard sons to fill the gap, but the use of bastards as de facto substitute heirs could only work in a favourable political climate and apparently up to the level of baron. No English earls of the fourteenth or fifteenth centuries without heirs male of their body managed to transfer their estate to a bastard son, though several might potentially have tried. The last Earl Warenne, as has been demonstrated, did attempt to settle his estates on bastard children at one point, but only when he fully

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<sup>23</sup> *Fasti Ebor.* p.417.

<sup>24</sup> TNA SC8/324/E460-1; *Reg. Greenfield* III no. 1161 p.15.

<sup>25</sup> Nicolas, *Adulterine Bastardy* pp.57-9.

expected to be able to annul his first marriage and marry their mother. When this plan failed, he resettled his estates in favour of his right heirs. His later attempt at resettlement was again in the context of a planned annulment and remarriage. Although he supported his other illegitimate children and one of them, at least, was a member of his retinue, there was no attempt to make him a successor.<sup>26</sup> Neither of Warenne's contemporaries, Aymer de Valence and Thomas of Lancaster, who were in a similar situation with no legitimate son, appear to have attempted to transfer their estates to their bastard sons.<sup>27</sup> The success of any such attempt depended both on the goodwill of the King and on the number and strength of the right heirs who stood to be disinherited. A century later, Thomas Montagu, Earl of Salisbury, left his illegitimate son John only a sum of money; the bulk of the estates and the earldom passing to his son-in-law, Richard Neville, and John Duke of Bedford left a life interest only in a French estate to his bastard son. John Holand, Duke of Exeter (d. 1444) left a £40 annuity to his bastard sons, William and Thomas.<sup>28</sup> However, earls and dukes were a special case. They were the senior rank of the English nobility, at least until 1337, few in number and generally with close ties to the crown. This seems to be a marked difference from the situation on parts of the continent, where noble bastards could achieve the highest ranks.

Attempts to disinherit heirs general in favour of a bastard son need to be viewed in the context of the frequency of any attempts to favour a male (including a legitimate collateral) in preference to heirs general. Simon Payling has shown by analysis of *The Complete Peerage* that the desire to favour the male line at all costs was not a vital concern for the majority of families, commenting that it is 'surprisingly difficult' to identify cases where the heir general was disinherited in order to settle the estates on a (legitimate) male collateral.<sup>29</sup> Though an actual son, even an illegitimate one, might have been more appealing as an heir than a male collateral. It may be that in some cases the father chose not to make an illegitimate child into a substitute heir because the mother was of relatively low status.

Even when an illegitimate son was treated as a de facto heir, the main family seat could be excluded from the arrangement. This could be the price of arranging an illegitimate succession. William Vescy of Kildare did not succeed to the family seat of Alnwick, which appears to have been Antony Bek's reward for his part in the

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<sup>26</sup> See above pp. 151-63.

<sup>27</sup> See above pp. 163-5.

<sup>28</sup> *Test. Vet.* pp.255-6.

<sup>29</sup> S Payling 'Social Mobility in Late Medieval England'. *ECHR* 45.

arrangement; nor did he succeed to his father's Scottish or Welsh estates, which were surrendered to the Crown.<sup>30</sup> Sir William Dronsfield's principal seat of West Bretton was excluded from the settlement of the rest of his estates on his illegitimate son Richard Kesseburgh.<sup>31</sup> Sir John Basynges intended his bastard son to have a life interest only in the family seat of Empingham, which was to revert to his right heirs.<sup>32</sup>

Bastards who succeeded to all, or even most, of the family property in the absence of a legitimate heir seldom succeeded in continuing the family name. Few were succeeded by a direct male heir. William Vescey of Kildare died apparently childless; his heir was Gilbert de Aton. Nicholas Meinhill's only child, and heiress, was a daughter, Elizabeth.<sup>33</sup> Sir William Argentine's son predeceased him, leaving Sir William's granddaughters as heiresses to the Argentine estates, which thus passed into the hands of the Allington family on their marriage.<sup>34</sup> John Basynges was murdered before he could have a male heir. Anthony St Amand had only a daughter.<sup>35</sup> One who did continue the family line was John Pelham, although the family was newly successful as a result of his father's career.<sup>36</sup> However some bastards started new family lines of their own. John de Montfort was the founder of the Mountford family of Coleshill.<sup>37</sup> Sir Edward Warenne founded the Warren family of Poynton.<sup>38</sup> Thomas Dacre and Sir John Stanley were respectively the founders of the Dacres of Lanercost and the Stanleys of Hanford, Cheshire.<sup>39</sup> The son of Richard Herbert of Ewyas (d.1510), an illegitimate son of William Herbert first earl of Pembroke (d.1469) became earl of Pembroke in his own right, through a new creation in 1551.<sup>40</sup>

Differences between the way bastards were viewed in England and continental Europe were not entirely related to the differences in legal situation. Different approaches to the nature of nobility also played a role. In parts of the continent, nobility was determined by bloodline, rather than the resources to support the status. It followed that illegitimate children could be seen as tainting the noble blood, not necessarily by virtue of the illegitimacy itself so much as the status of a parent of lower rank and

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<sup>30</sup> See above pp. 129-137.

<sup>31</sup> See above p. 142.

<sup>32</sup> See above p. 147.

<sup>33</sup> See above p.139.

<sup>34</sup> See above pp. 115-7.

<sup>35</sup> See above pp. 147-8.

<sup>36</sup> See above p. 143.

<sup>37</sup> See above p. 103

<sup>38</sup> See above pp. 161, 217-8.

<sup>39</sup> See above pp. 112-4.

<sup>40</sup> *CP X* 405-7. Richard Herbert of Ewyas himself did not rise above the rank of gentleman.



status. This can be seen in the not entirely successful attempts of the Venetian authorities to legislate against bastards.

Bastards seldom entered the ranks of the English higher nobility during this period. The only real exceptions to this were the Beauforts, who were grandchildren of Edward III and had, exceptionally, been legitimated by act of parliament. Even bastards sons of kings did not achieve such heights during this period. Henry II's illegitimate son, William Longsword, Earl of Salisbury, was the last royal bastard to be raised to the peerage for three centuries. William Vesey of Kildare received an individual summons to parliament, but whilst this is indicative of his status the notion that an individual summons created a peerage dignity was a later invention of peerage lawyers.

### **Were there differences in the way different kinds of bastards were treated?**

The only distinction of any relevance in late medieval England was between pre-nuptial bastards and others, which was significant in legal cases because of the implications of the difference between canon and common law. There is no real evidence to suggest that there was in practical terms any hierarchy of bastards based on the circumstances of the birth, such as that which pertained to canon law, with *naturales* at the top and *spurii* at the bottom. Whilst such distinctions seem to have operated on the continent, the factors which might affect the treatment of a bastard in England were more likely to have been linked to the family circumstances and to the rank of the father. Bastards could, but would not necessarily, be used as substitutes for a legitimate heir in the absence of legitimate sons, if the mother was of relatively high status, and the father was below the rank of earl.

### **Were there examples of bastards being fathered with the intention of being a substitute heir?**

The cases where bastards were used as substitute heirs do not lend much support to this theory. Although the birth date of William Vesey of Kildare is uncertain, it seems fairly clear that he would have been born before the death of William Vesey senior's legitimate son, John. If he was of age when he performed homage for Caythorpe in 1298 he need not have been that much younger than John. Nicholas Meinill was unmarried when he fathered a son with Lucy Thweng, and it appears that he

never married, so seems to have been unconcerned about the need for an heir.<sup>41</sup> It is however possible that John de Argentine fathered William in a deliberate attempt to produce a male heir after his wife produced only three daughters but in the absence of definite information on the birth dates of his children it can be no more than a remote possibility.

### **How did attitudes change over time?**

The most striking examples of provision for bastards, and in particular of bastards becoming de facto heirs in the absence of legitimate offspring, those of Vescy, Meinhill, Sackville, Kerdiston and Argentine, occurred in the fourteenth century and the turn of the fifteenth century. As the fifteenth century progressed, it seems to have become more difficult to make significant provision for a bastard. In part this was a consequence of the very legal devices that had enabled provision for bastards in the first place. As estates became increasingly tied up in complex settlements and entails, the freedom of landowners, such as Sir John Basynges and William Gresley, to make provision was restricted.

The fourteenth century provided new opportunities for the settlement of estates by will that were later again restricted as they became encumbered by pre-existing settlements and entails. It also provided other opportunities for illegitimate offspring. The effects of the Black Death in the middle of the century led to an increase in the number of dispensations granted to clerics of illegitimate birth, in order to fill vacancies. The wars in France also provided a potentially lucrative outlet. The ability of landowners to settle estates according to their own inclinations rather than strict rules of primogeniture was of equal benefit to legitimate younger sons, as was the opportunity to acquire a livelihood from military endeavour.

The fifteenth century may perhaps have been the golden age of noble bastards as Burckhardt believed, but in England there was no corresponding age of opportunity for bastards at the highest levels of landed society, the illegitimate offspring of earls, marquises and dukes. For those slightly lower down the social ladder, if there ever was such a golden age, it was in the fourteenth century, when legal developments made it possible to provide for bastards without permanent alienation of property from the family, the wars in France provided opportunities for illegitimate sons and the effects of

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<sup>41</sup> *CP VIII* p.631n.

the Black Death led to an increase in dispensations for illegitimate sons to enter the church.

### **What can the study of illegitimacy tell us about late medieval English landed society in general?**

Real life is complicated and does not follow rules and procedures to the letter. There is a gap between the written formula of laws, procedures and policies and what people actually do. The record of what should have happened in any given situation does not prove that it did. Even the wishes of testators are not followed to the letter, as the shade of Sir John Fastolf would no doubt agree.<sup>42</sup> We cannot be sure that a beneficiary in a will received the £10 towards their marriage, or the messuage in the town or silver plate they were promised, although legal records may sometimes provide evidence when they did not. The history of illegitimacy in later medieval England provides ample evidence of the divergence between theory and practice. There were ways and means of circumventing the laws preventing inheritance by illegitimate offspring. By the same token, the laws and conventions were themselves not consistently applied and understood, a state of affairs that provided loopholes by which individuals who were not legitimate according to the common law definition could nevertheless be proved legitimate in court. Conversely, arrangements in favour of illegitimate offspring could fail because of unforeseen circumstances such as the murderous intentions of the Basynges heirs or the premature death of Richard Chenduyt.

### **How far did the experience of illegitimate children in medieval England differ from that on the continent?**

The English common law may have been less forgiving towards illegitimate offspring than canon law or the *ius commune* of the continent, in terms of legitimation. But the English approach to nobility meant that if legal disabilities surrounding the inheritance of property could be circumvented, bastards could acquire their father's status as well as their wealth, though the number of cases in which this happened is relatively small.

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<sup>42</sup> Fastolf's intention to found a college at Caister ended up, after many years of dispute, being diverted to Magdalen College Oxford.

## **Conclusion**

There are two popular narratives of late medieval bastardy: that of the villainous bastard of later literature and that of the ‘golden age’ of bastards. The evidence shows a far more nuanced picture. Whilst bastards did not have the same rights as legitimate children, they were generally recognised and accepted as part of the family. Whilst few achieved quite the same place in society that they would have enjoyed had they been legitimate, a combination of developments in property law and the demographic effects of the Black Death meant that there were more opportunities for advancement in the fourteenth century than later. The absence of a formal definition of nobility in England meant that bastards did not have to worry unduly about tainted blood affecting their status. The story of illegitimate offspring of English landed society in the late middle ages is one of English exceptionalism and of a particular window of opportunity in the fourteenth century – perhaps a different meaning of ‘bastard feudalism.’

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## Appendix A: Bequests in Wills

Examples where the word 'natural' is used are shaded.

Source	Volume	Page	Testator	Will Date	Males	Female	No of Males	No of Females	Total
<i>Test. Ebor.</i>	I	43	John de Warenne, Earl of Surrey	1347	Sir William de Warenne; Edward de Warenne; William de Warenne	Katherine, Isabel, Joan	3	3	6
<i>Test. Ebor.</i>	I	340	Gerard Usflete	1405	Leon Usflete; John Usflete		2		2
<i>Test. Ebor.</i>	II	242-3	Sir William Dronsfield	1406	Richard Dronsfield		1		1
<i>Test. Ebor.</i>	I	416	John Pigot	1428		Matilda		1	1
<i>Test. Ebor.</i>	II	64	John Conyers	1438	Thomas Conyers		1		1
<i>Test. Ebor.</i>	II	93-95	John Girlington	1444	Robert Girlington; William Girlington		2		2
<i>Test. Ebor.</i>	III	178-181	John Ferriby	1471	Unnamed		1		1
<i>Test Ebor</i>	III	240	John Pilkington	1479	Robert Pilkington		1		1
<i>Test. Ebor.</i>	IV	43-45	Sir Henry Pierrepont	1489	Edmund?		1		1
<i>Test. Ebor.</i>	IV	135-6	Richard York	1498	?		2		2
<i>Test. Ebor.</i>	IV	186-9	Jane Strangways	1500	Laurence Dutton				
<i>Test. Ebor.</i>	IV	256-7	John Stockdale	1506/7	John Stockdale	?	1	1	2
<i>Husting</i>	I	21	Richard Bonaventure	1275		Julia		1	1
<i>Husting</i>	I	489	Thomas Worstede	1345		Alice		1	1
<i>Husting</i>	I	495	Simon Turnham	1346		Margaret		1	1
<i>Husting</i>	II	5	John Adami de Montchesney	1358		Alice		1	1
<i>Husting</i>	II	208	William Spark	1361	Robert [son of Matilda Flete]		1		1

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Source	Volume	Page	Testator	Will Date	Males	Female	No of Males	No of Females	Total
<i>Husting</i>	II	133	Geoffrey Bonere	1368		Katherine		1	1
<i>Husting</i>	II	148	Adam de Carlell	1370	Adam de Carlell		1		1
<i>Husting</i>	II	185	Roger Longe	1375	John Longe		1		1
<i>Husting</i>	II	413	Thomas Gippyng	1413		Beatrice; Juliana		2	2
<i>Husting</i>	II	427	William Middleton	1419	John Middleton		1		1
<i>Husting</i>	II	443	John Lane	1427	Thomas		1		1
<i>Husting</i>	II	564-5	John Godyn	1469	Thomas Godyn		1		1
<i>Early Lincoln Wills</i>		15-16	Hugh de Cressy of Risgat	1346		Margaret		1	1
<i>Early Lincoln Wills</i>		23	Robert de Burton	1360		Alice		1	1
<i>Early Lincoln Wills</i>		37-8	Sir William de Burton	1373	Thomelyn de Burton		1		1
<i>Early Lincoln Wills</i>		115	John Curteys	1391	William Curteys		1		1
<i>Early Lincoln Wills</i>		102-3	Robert Surflet	1400	Peter		1		1
<i>Early Lincoln Wills</i>		137	William de Roos	1412		Joan		1	1
<i>Early Lincoln Wills</i>		77	Sir Robert de Swillington	1413	Thomas Hopton		1		1
<i>Early Lincoln Wills</i>		167	John Holand, Duke of Exeter	1447	William, Thomas		2		2
<i>Test. Vet.</i>	I	62	Sir Otto de Grandison	1358	William		1		1
<i>Test. Vet.</i>	I	85	Sir Walter Mauny	1371		Mailosel; Malplesant		2	2
<i>Test. Vet.</i>	I	128	Sir Robert de Swillington	1391	Thomas Hopton		1		1
<i>Test. Vet.</i>	I	129	Sir John Worth	1391	John Worth		1		1
<i>Test. Vet.</i>	I	207	Edmund Brudenell	1425	John				



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Source	Volume	Page	Testator	Will Date	Males	Female	No of Males	No of Females	Total
<i>Test. Vet.</i>	II	215-7	Thomas Montagu, Earl of Salisbury	Dugdale's extract of will gives no date. Montagu died 1428	John		1		1
<i>Test. Vet.</i>	I	241-3	John Duke of Bedford	1435	Richard		1		1
<i>Test. Vet.</i>	I	246	John, Lord Fanhope	1443	John, Thomas		2		2
<i>Test. Vet.</i>	I	249-255	Cardinal Beaufort	1446	John, Bastard of Somerset'	Joanna	1	1	2
<i>Test. Vet.</i>	I	255	John Holand, Duke of Exeter	1447	William, Thomas		2		2
<i>Test. Vet.</i>	I	276	Sir Henry Plessington	1452	John Plessington		1		1
<i>Test. Vet.</i>	I	323-4	Sir Thomas Cobham	1471	Reynold Cobham		1		1
<i>Test. Vet.</i>	I	327	Thomas Horne	1471	Thomas		1		1
<i>Test. Vet.</i>	II	449	Sir Thomas Bryan	1495		Jane		1	1
<i>Test. Vet.</i>	II	411	Henry Lord Grey of Codnor	1496	Henry I, Henry II, Richard		3		3
<i>Test. Vet.</i>	II	533-4	Sir Edward Howard	1513			2		2
<i>Test. Vet.</i>	II	588	Elizabeth, Lady Scrope	1518?		Mary		1	1
<i>Test. Vet.</i>	II	562-3	Robert Lord Willoughby de Broke	1521	William; George		2		2
<i>Somerset Med. Wills</i>		107	John Smart	1421		Florence			
<i>Somerset Med. Wills</i>		304-6	Sir Humprey Stafford		John Stafford		1		1
<i>Somerset Med. Wills</i>		317-8	William Case	1494	Two sons of William Case; John Case and Thomas Case (bastards of Richard Case)		4		4
<i>Somerset Med. Wills</i>		20	Robert Chippeleigh	1406	William Chippeleigh		1		1
<i>Derbyshire Wills</i>		56-7	John Leeke	1522		3 bastard daughters		3	3

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Source	Volume	Page	Testator	Will Date	Males	Female	No of Males	No of Females	Total
<i>Chichele</i>	II	310-11	Thomas Brunston	1425	John Brunston		1		1
<i>Chichele</i>	II	51-4; 108-10	Sir John Dabrichecourt	1415	Two bastard sons		2		2
<i>Chichele</i>	II	469-70	Walter FitzWalter	1431		Maria; Gabriell'		2	2
<i>Chichele</i>	II	293	Sir William Hankford	1423	John Hankford; Richard Hankford		2		2
<i>Chichele</i>	II	390-400	Thomas Montagu, Earl of Salisbury		John		1		1
<i>Chichele</i>	II	408-9	Sir John Pelham	1415	John Pelham		1		1
<i>Chichele</i>	II	24	William de Roos	1412		Joan		1	1
<i>Chichele</i>	II	620-4	Sir Humprey Stafford		John Stafford		1		1
<i>Chichele</i>	II	635	Edward Tyrell		John		1		1
<i>Chichele</i>	II	525-30	John Leventhorp	1435	William Leventhorp		1		1
<i>Bedfordshire</i>		115-6	Sir George Harvy	1521	Gerard, son of Margaret Smart		1		1