

Birth Records of Illegitimates and of Adopted Children*

Part I

SHELDON L. HOWARD

Illinois State Registrar of Vital Statistics

Part II

HENRY B. HEMENWAY, M. D., F. A. P. H. A.†

*Medical Assistant Registrar, Vital Statistics Division,
Illinois Department of Public Health, Springfield, Ill.*

SEEMINGLY no better conception of the existing conditions surrounding illegitimacy in this country, and of the more or less progressive legal steps taken by our various states in connection therewith, can be obtained for consideration, than in Dr. Marietta Stevenson's "Analysis and Tabular Summary of State Laws Relating to Illegitimacy in the United States, in effect January 1, 1928, and the Text of Selected Laws," as set forth in 1929 in "Chart Number 16" of the Children's Bureau of the U. S. Department of Labor.

The pithy first paragraph of this article summarizes most effectively the present status of unlawfully born children:

Birth statistics are incomplete and no one knows exactly how many children are born out of wedlock in the United States each year. It was reported, however, that 55,134 children were born out of wedlock in the states included in the registration area in 1927 (exclusive of California and Massachusetts, for which illegitimacy statistics were not available). The population of the registration area exclusive of these states comprised more than two-thirds of the population of the United States. It is known that the percentage of illegitimate births is much higher in some states than in others, higher in the city than in the country, and higher for the negro than for the white race. Many of the mothers are pathetically young and are handicapped oftentimes in other ways. It is estimated that about half the mothers are under 20 years of age, and a large proportion of the remainder under 25. The fathers also are quite often mere boys. Considering the problem of illegitimacy from the standpoint of the child, his mother, his father, and society, the need for humane, comprehensive, and constructive laws for safeguarding the rights and insuring the fulfillment of the obligations of the four parties interested becomes clear.

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† Deceased.

Dr. Stevenson's treatise is a noteworthy accomplishment. It succinctly lays before us the *legal gains* which have already been made by the states in behalf of this unfortunate class along the lines of rights and obligations of parents, action necessary to establish paternity and legitimation, and child's rights of maintenance and inheritance or succession. It contains, as well, some very timely and inspiring comments which should generate within all the determination to do our utmost to insist on equally rational treatment of the inhumane features of the problem, which, under present custom, continue to exist as hindrances to the well-being of each illegitimate child long after all statistical requirements are satisfied and all legal redress secured.

Doubtless many of us directly concerned with the work of registration of births, under statutes patterned closely in accordance with the so-called "Model Law," experienced a hopeful thrill as we came in contact with Dr. Stevenson's analysis and read these words:

The old unscientific point of view, evidently inspired by moral indignation, expressed itself in legislation meant to punish and stigmatize the unfortunate child and his mother. *The modern aim is instead to protect and care for the child.* Much of the legislation is in an experimental stage, but certain tendencies are discernible, *the result of a growing feeling that the child born out of wedlock unavoidably suffers enough disadvantages without emphasizing these by legislative discrimination.*

In that paragraph, it seems, is the keynote—the guidon which we should follow, until the sorely needed modern legislative measures suited to the "growing feeling" are enacted, and are accorded liberalized administration.

Registrars, as birth record keepers, from a statistical standpoint, know that the factor of illegitimate births has no inconsiderable bearing on the distortion of their returns with respect to bona fide area of inception. A high percentage of such births are recorded at places other than the "usual abode" of the mother. The very character of these births has a marked tendency to inhibit their being reported at all. Would not legal provision for the recording of foundlings under a plan, similar to that mentioned further on, improve the "Degree of Completeness of Birth Registration"?

So much for the statistical aspects—but what of such cases in relation to their individual rights as members of society?

Turning again to the Stevenson analysis, we read that at a regional conference of the Children's Bureau, in 1920, "The duty of the State to protect the interests of children born out of wedlock was recognized and affirmed," and "the numerous laws defining the relationship of the

illegitimate child to his parents and placing a duty of support upon the father, especially laws passed in the last 15 years, are indications of a changing social attitude." So far, so good—the legal rights of these unfortunate children, as they became apparent to the public mind, have been fairly well established. But what of their social rights?

Unquestionably, the establishment of the illegitimate child's rights was, and still is, the first consideration—it must so be for the protection both of the child and the State, especially in cases where one or both parents are known. Naturally and logically then, the adjustment of the legal phases of such cases has occupied the major portion of the time and effort of child welfare bureaus, as is reflected by the character of the enacted laws. Under the old order of things such legal adjustment was sufficient, and accordingly helpful legislation was not developed further.

The old order has given way to the new, and although formerly the statements of the child or its parents as to name, age, and relationship were accepted; now the presentation of a duly authenticated birth certificate has become an almost universal prerequisite for admittance to school or employment, or for foreign travel. Small barrier, this, to the legitimate child or his parents who have merely to apply for a certified copy or a transcript of the birth record—but what of the illegitimates, adopted children, and foundlings?

These and their foster parents or guardians are apt to find themselves in a predicament, for if they are successful at all in securing a record of the birth, that very act may carry with it most distressing revelations likely to permanently impair otherwise peaceful mental conditions and happy lives. Where can we find the remedy?

Again we are encouraged by the hopeful rays which appear to light the pathway of our search when we note from the "Analysis" a tendency on the part of some states, such as Iowa and North Dakota, to minimize the broadcasting of distressing trial details by statutory exclusion of the public, or vest the power of such exclusion, as in New York and Minnesota, in the trial judges.

We are further heartened by finding among the Statutes of Colorado (Laws of 1925, ch. 133—Maternity Hospitals) that the divulgence or disclosure of the contents of any records relating to illegitimate children is prohibited.

We are convinced that our attitude is right when we read in Section 7 of this Colorado Act:

That this chapter shall be liberally construed *with a view to effecting its purpose which is primarily to safeguard the interests of illegitimate children, and those*

of undetermined legitimacy born in maternity hospitals as herein defined, and secure for them the nearest possible approximation to the care, support and education that they would be entitled to receive if born of lawful marriage, which purpose is hereby acknowledged and declared to be the duty of the State.

In the words "secure for them the nearest possible approximation to the care, support and education that they would be entitled to receive if" lies the sought for antidote. True, it is there only in embryo as it were, not specifically expressed by the addition perhaps of the words "and rights of citizenship," following the "care"—"support"—"education" benefits now provided. Nevertheless it is inconceivable that the Colorado Legislature could have had other intent than that these unfortunates should be equally vested with the "inalienable constitutional rights" of "life, liberty and the pursuit of happiness," as are children legitimately born. Now, in the light of dawning consciousness of the social factors mentioned, and in the discernibly favorable crystallization of public opinion indicating that the time is ripe for action, how can this be accomplished so thoroughly, humanely and sensibly that it will practically insure for these children immunity from unnecessary embarrassment, pain, or disgrace, from the time of the launching of their individual careers—their advent into school or employment?

Clearly it is most desirable to secure such legislation as will authorize and enable bureaus of vital statistics or other custodians of birth records to include among their functions, subsequent to the taking of required statistical data, the suppression of such original records or statements of facts as may have become nullified, readjusted or supplanted through legal procedure accomplished after the time of registration.

As members of this Association primarily concerned in the record keeping which is a counterpart of birth registration, both in our respective states and at the U. S. Bureau of the Census—we seem to be, logically, the missionaries who should bring about the rectification of the existing evils. If we are registrars of vital statistics, ours is a dual rôle—on the one hand, as statistical craftsmen we must insist on the accuracy of the basic data, but on the other, in serving the public we must do all possible to furnish only such copies of birth records as will best promote the welfare of the persons concerned.

Due to our unique positions, we are best qualified to act. It is signally fitting, therefore, that we should take the lead in this matter, and accordingly the following plan of my associate and collaborator is respectfully submitted for consideration:

Legitimation, Adoption and Foundlings

Registrars of vital statistics are guardians and trustees of the interests of the people. This is peculiarly true in relation to records of birth.

In drafting the "Model Law" for the registration of births, stillbirths and deaths, three very important classes of cases were apparently entirely overlooked, namely cases of legitimation of birth, those of adoption, and those of foundlings. In consequence many children are often unjustly stigmatized as bastards, and the birth records of adopted children frequently cannot show their legal names by adoption. In many cases of adoption there is also the stigma of bastardy. A foundling has no birth record.

When a child begins to attend school in many states he is required to present evidence that his birth has been recorded. A certificate for "John Jones" is not satisfactory in the case of a boy legally known as "John Miller." It must be accompanied with other evidence showing illegitimate birth, or legal adoption, or both. This not only is a direct injury to the child, and a cause of embarrassment for parents, but seriously interferes with the placing of children in desirable homes.

The statutes of the states relative to these subjects vary. Minnesota, for example, provides for reporting cases of legitimation to the vital statistics office; but in a certified copy of birth record, it does not prohibit the certification of illegitimate birth.

The statutes of Illinois may be considered typical for the country at large, and are therefore taken as the basis for this presentation, in order that specific sections may be cited. With slight changes in wording the recommendations would apply for many other states.

A common law marriage is not recognized in Illinois. It is illegal, and births from such unions are therefore illegitimate. Chapter 89, Smith-Hurd Statutes of Illinois, Section 17(a), however, provides that although the marriage may have been contrary to law, if the parents "have attempted to contract and be joined in marriage, and some form of marriage ceremony recognized by law has been performed in apparent compliance with the law in relation to marriage," the issue of such union "is hereby made legitimate and may take the name of the father, though such attempted marriage is declared void or might be declared void for any reason."

Chapter 39, Smith-Hurd Statutes (relative to descent of property), in Section 3 says:

An illegitimate child, whose parents have intermarried and whose father has acknowledged him or her as his child, shall be considered legitimate.

Chapter 17 (relative to Bastardy) in Section 15 provides:

If the mother of any bastard child, and the reputed father shall at any time after the birth intermarry, the said child shall, in all respects, be deemed and held legitimate and the bond aforesaid be void.

There is no provision in the statutes for reporting such acts of legitimation to the vital statistics office, and the Attorney General has held that the Registrar has no authority to accept such documents when offered, nor to permit a change in the record of illegitimacy.

The Illinois Vital Statistics Act, Chapter 111½, Section 48, prohibits that a certificate of birth for an illegitimate child shall

. . . contain the name or other identifying fact relating to the father or reputed father or to the mother thereof, without the consent of said father or reputed father to the use of his name, nor the use of the name of the mother without her consent to the use of her name.

Under present statutes the birth registration of illegitimates is therefore frequently very defective from a statistical standpoint.

It is therefore suggested that vital statistics acts be amended by providing that in case an affidavit is presented to the State Registrar, signed by the father, acknowledging the paternity of the child, and the fact of place and date of his legal marriage to the mother of the child, a new certificate of birth may be filed which shall be considered as the record of birth; and it should further provide that the original certificate of illegitimacy and the aforesaid affidavit shall be placed in a sealed package, only to be opened under orders from a court of record. It should also be provided that in case of marriage of the parents of an illegitimate child before a certificate of birth has been filed, such child shall be considered as legitimate at birth.

Chapter 4 (relative to Adoption) provides in Section 3 that on the filing, hearing and granting of a petition for adoption in the proper Court

. . . a decree shall be made, setting forth the facts and ordering that from the date of the decree the child shall, to all legal intents and purposes, be the child of the petitioner or petitioners, and may decree that the name of the child be changed according to the prayer of the petition.

This section should be so amended as to require that when the name of the child is changed, the clerk of the court shall send an attested copy of the decree to the State Registrar of Vital Statistics. Then on receipt of such copy the State Registrar shall cause to be made a new record of the birth in the new name, and with the name or names of the adopting parent or parents. He shall then cause to be

sealed and filed the original certificate of birth with the decree of the court, and such sealed package shall only be opened upon the demand of said child, or his natural or adopting parents, or by the order of a court of record.

The state has a peculiar responsibility relative to foundlings. The state has not fulfilled its obligation when it provides for their care, food, and clothing. It must also provide for proof of citizenship and age. At present there is no statute in Illinois which requires or even authorizes a legal registration of foundlings. Birth certificates are impossible. When such a child should enter school, attempt to work, try to register as a voter, or require the protection of the government as a citizen, how is he to establish his rights? This question is of greater importance since the registration of all births has been required by law. It seems, therefore, that a statute should be enacted which will require that the *finding* of an unknown child shall be immediately reported to the local registrar of vital statistics; such report to show the sex and color of the child, the date and place of finding the child, and the name of the person or institution with whom it is placed. The city, village, township, or road district in which the child is found should be known as the place of legal birth. Inasmuch as the date of birth is unknown, the report should state such date as nearly as can be determined, and the date so given should be known as the legal date of birth.

The person or institution with whom the child is placed for care should be required to give it a name, and report the same to the local registrar. The "Certificate of Finding" should then be sent to the state registrar, and there filed. If the child should later be identified, and a certificate of birth be found or obtained, such fact should be reported to the state registrar, and indorsed upon the "Certificate of Finding," with citation to the certificate of birth.

RESOLUTION ADOPTED BY THE VITAL STATISTICS SECTION

RESOLVED that in the opinion of this Section, methods should be devised and made legally effective for the correction of birth records of children legitimized, and of adopted children, and also for the registration of foundlings; and be it further

RESOLVED that a committee of five be appointed by the chair to consider and report, at the next Annual Meeting of this Section, the advisability of a uniform or "standard" system for:

1. Acts correcting birth records of illegitimate children subsequently legitimized
2. Acts regulating birth records of children legally adopted
3. Acts for the making of birth records of foundlings