Natural children, Natural Rights and Family Order in the Eighteenth-century

Nancy Locklin, Maryville College

In Diderot’s La Religieuse, parents force a daughter named Suzanne into religious vows and much of the action in the novel concerns the wide range of dysfunction the young woman encounters in a number of convents. The reason given for Suzanne’s fate, however, is striking in its injustice—she was the result of her mother’s past infidelity and therefore an unwelcome member of the household even though they had raised her up to that point as one of their own. Suzanne’s mother even says to her that she must go because “The little that I can do for you is stolen from your sisters . . .whatever I may do, your sisters have the legal right to a name that you only have because of a crime.”1 Suzanne, through no fault of her own, has no right to expect support that only “belongs” to children born to a legitimate marriage.

There are several levels of family conflict connected to the issue of natural children; the conflict between legitimate and illegitimate heirs may well be the most pronounced. Leading up to that conflict there is the one between parents and the adult children over their choice of spouse or romantic partner. Once a natural child arrives there is conflict between the child, or at least the needs of the child, and the parent responsible for the child’s presence. At each of these levels, people have recourse to the courts of law to settle disputes and each decision may set a precedent that will influence future behavior and have an impact on social stability. For that reason, family members might also find themselves in conflict with state authorities at one point or another or at the mercy of the state as they sort out their conflicts with one another.

This last level of conflict—that between individuals and the state—is at the heart of the Eighteenth-century shift in rates of illegitimacy and public attitudes towards natural children. Jurists had to try and bring order to familial chaos while

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at the same time respect individual rights and communal mores, enforce civil and
criminal law, and uphold religious standards. I will argue, however, that the
representatives of the state served a more complex role than we have heretofore
imagined. The work of legal professionals has most often been viewed as the
conscious and unified effort to reshape the family in a way that served the interests
of the state. That view comes, of course, from the foundational work of Sarah
Hanley who coined the term, “Family State Pact”, to describe the work of elites who
shaped French law so that parents of a certain rank had the power to prevent or
even dissolve what they deemed unsuitable marriages by their children.\(^2\) They did
this at the expense of the personal wishes of their children and in direct defiance
of Church, tradition and communal mores. Examples of the Family State Pact
include the Ordinance of Blois in 1578 and the Marly Declaration of 1730. The
Ordinance of Blois made marriages a civil affair that required multiple witnesses
and proof of parental consent; it further defined any marriage performed without
these elements as a variety of rape, which sometimes carried the death penalty. But,
of course, the Ordinance of Blois predated the peak of illegitimacy by nearly two
centuries so it is difficult to believe there is an immediate causal connection.

The eighteenth century brought legal changes that would contribute to the
rise in illegitimacy. The Marly Declaration of 1730 confirmed the earlier ordinance
but prohibited using marriage as an alternative to death in cases of *rapt* especially
when the evidence of rape or seduction was simply the word of the injured woman.\(^3\)
The Marly declaration notes that “the weaker sex is often the most dangerous” and
that a distinction must be made between true rape and illicit commerce. Rape must
be a capital crime, debauchery may carry some other penalty, but under no
circumstance should a marriage be performed that lacked the reading of bans and
the consent of parents. The Marly Declaration may have been a contributing factor
to the rise in illegitimate births in part due to the shift in view of women from
‘innocents deserving protection’ to ‘seductresses creating disorder’. Marriages were
off the table and the women involved were dismissed as dishonorable. In the
aftermath of the Marly Declaration, jurists at some courts may have still had
sympathy for seduced and abandoned women but the legal recourse for their
support had been limited.

Marilyn J. Boxer and Jean H. Quataert, *Connecting Spheres: Women in the Western
World, 1500 to the Present* (New York: 1987).

\(^3\) *Déclaration du roi, concernant le rapt de Séduction*. Delivered at Marly, 22 November
1730. Printed in Michel Sauvageau’s *Coutume de Bretagne: Nouvelle édition, augmentée
considerablement* (Rennes, 1742).
My own work in the past several years has explored inheritance rights, especially in the province of Brittany.\(^4\) Naturally, my curiosity over the circumstances of Diderot’s character Suzanne extended to the overall problem of illegitimate children and their place in the lives of their natural parents and extended family. How did real people survive in this landscape? What were their rights and how did they support themselves? The explosion of illegitimacy in the later decades of the Eighteenth-century is well documented and there is much great scholarship on that phenomenon, its causes and its impact. I am thinking here of Suzanne Desan’s work in *The Family on Trial in Revolutionary France* and Matthew Gerber’s book, *Bastards*.\(^5\) Many of the debates those scholars have outlined are evident by the dawn of the 18th c and manifested themselves in social changes involving a fairly broad cross section of society.

My printed sources include the law codes, legal dictionaries and juridical encyclopedias spanning the 17th and early 18th c for all of France. In this regard, I am certainly retracing some of Gerber’s steps as his book outlines the shift in legal discourse about children born outside of wedlock. But, as he cautions, these official sources, along with the collections of commentary on precedent-setting court decisions, skew towards an elite population. My archival sources, by contrast, include everything from the reports of street police to declarations and contracts filed with royal notaries. Notarial minutes are among my favorite sources because I believe they give us a window into the lives of non-elites. In a legalistic culture such as early modern France, even the humblest people might leave a will or make a statement; their written acts are often surprisingly detailed and intimate. Through this wide range of sources, I show that the tension between individual liberty and family order existed in one form or another long before the Revolutionary era and that this trend would, perhaps, lay the foundation for the later rise in rates of illegitimacy as courts had to balance the rights of individuals against the demands of social order.

The first level of conflict I have outlined—the potential struggle between parents and adult children over the choice of a spouse—must be connected to rates of illegitimacy. There is no doubt that parents historically have had a great deal of influence over the marriages of their children, whether informally or to the point of actually arranging a match. One question worth exploring, then, is whether the


influence of parents tends to lead to more or less illegitimacy. Scholars pursuing this topic often start from the same basic premise: there were “traditional” pressures to marry, especially in smaller communities, as soon as a couple became intimate. That is to say that sexual intimacy was a fairly typical part of courtship for most of 17th and 18th-century society outside of elite families or families hoping to become elite. The Catholic Church’s definition of marriage was surprisingly accommodating to this view in that marriage was a sacred union between two people and that their mutual consent to eventually be married was enough to make the marriage a reality.

So what is the impact of parental authority and how does it lead to the later rise in illegitimacy? Here is where key scholars start to part ways. Margaret Darrow found that traditional mores survived well into the 18th c in spite of new ideas about romance but that economic factors, such as large-scale migration to cities, were a more likely explanation for rise in illegitimacy by the century’s end. In this scenario, couples come together far removed from the communities that would have pushed them to marry. Jeremy Hayhoe suggests, at least for Burgundy, that bastardy was actually linked to the strength of parental authority in that parents stepped in to prevent marriages that tradition, church and community supported as the logical next step after sex and a baby. In this explanation, couples were willing to marry but their parents stepped in to prevent it. Benoît Garnot suggests that the increase in bastardy was due to decrease of church and parental authority alongside greater latitude for personal romance. He sees parents and the church as having been united in pressuring young people to marry but that their combined influence disappears over the course of the 18th c. Here, couples had a new interest in romance but rejected pressure to marry.

Garnot further claims that state ordinances such as the Marly Declaration of 1730 were just another way for parents to try to prevent unsuitable marriages—out of desperation, perhaps, as their influence was waning—but that no one ever really imposed the death sentence for seduction. If parents were unable to prevent a clandestine marriage from happening they were much more likely to resort to disinheritance rather than call for an execution. Disinheritance in itself was a considerable threat and is symbolic of how seriously elite families took the marriages of their children. Famous French jurist Robert Joseph Pothier outlined

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the circumstances under which one was permitted to disinherit one's own children, and every one of them involved a mortal danger to the parents. Examples included inflicting injury through poison or by a weapon, refusing to pay their ransom, denouncing them for a crime, etc. However, the list concludes with the right to disinherit a daughter who chooses debauchery over marriage or a child of either sex who marries without consent. These, too, were construed as “endangering” the parents and worthy of punishment.

I covered one case of a parent's interference in my book on women and work identity. There, I traced the story of the widowed merchant Guillemette Deslandes-Desages and her vain attempts to save the family fortunes in 1708. Among her concerns was that her eldest son was courting the daughter of the carpenter at their country estate. By all accounts it was a sweet and innocent romance and Jean Desages had publically announced his intention to marry the young woman. His mother, however, found that the intended bride had just turned 25 while her son was still 24, making it possible for her to sue her for rape of a minor. Andrée Rabin was sentenced to a long imprisonment in a convent. Jean never married and the Desages family declined all the same.

Another document in my research represents the polar opposite in parental approaches. In 1749, the widow Marguerite Leglélé signed an open consent for her daughter, Janne Forget, who was bound for “the Isles”, to marry “whoever seemed good to her.” Of course, much separates the Desages widow from the Forget widow, not the least of which was 40 year’s time. Desages was trying to preserve and elevate a high-level shipping family; Leglélé was secure enough, as the widow of a master tanner, but was far less likely to see her daughter’s marriage as making or breaking the family’s future. And, of course, Leglélé was watching her daughter board a ship, perhaps never to return to France. Practical concerns alone meant she had to be willing to let go.

One case in my sample splits the difference. In 1728, Sieur Jacques Toudy of Vannes accompanied notaries to his elderly mother’s home in order to ask her permission to marry the young woman who was taking care of her. The document cites his intention to follow the law but also makes reference to “the submission a son owes to his mother.” Clearly, for people in certain circumstances, the formal consent of their parents was still essential.

Apart from these examples, parents are rarely mentioned in my sample. Because of my interest in property concerns, most of what I encounter has to do

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12 Declaration of Marguerite Leglélé, 6 May 1749, Minutes of Notaries, 4 E 2/524, Archives départementales de la Loire-Atlantique, Nantes.
13 Consent of Suzanne Glenard, 30 March 1728, Minutes of Notaries, 6 E 4366, Archives départementales de Morbihan, Vannes.
with elderly parents who count on their adult children for support. In light of that, I can certainly appreciate why a clandestine marriage might pose a real threat to a parent. Occasionally, however, I run into cases in which the adult child is begging the indulgence and support of his or her parents. An example is in a declaration notarized by Françoise Legall, a twenty-year-old servant in Morlaix, in 1727.¹⁴ Legall’s mother, stepfather, and two uncles had accompanied her to the notary’s office to accept her declaration as well as to listen to a request. She was pregnant and the father was a sailor in the king’s service, at that time somewhere in Spain; she refused to name him until he returned because she held out hope that he would marry her and did not want to disgrace his name. She also feared her family would pursue others and charge an innocent with responsibility for the baby. Finally, Legall hoped they would extend their “usual charity” and support her until the baby came. There is certainly a potential for conflict in this scenario, but we have no way of knowing what came before this declaration. Whatever it was, Legall’s relatives all gave their consent to abide by her wishes.

In Legall’s case, the marriage proposed by the young woman was presumably a suitable one for the family. Her parents had no need to resort to the death penalty or disinheritance; rather, they were more likely to pursue a suspected father for child support. As Françoise indicates in her statement, such an action would dishonor the name of her lover and scare him off. Thus all involved probably agreed that a discrete path towards marriage was better than immediate action. Another servant, Marie Bouard was less fortunate in many ways.¹⁵ She filed her declaration in Nantes but had no family to support her as she charged her employer with “abusing her weakness” while she was a minor in his household. He agreed to pay all her expenses during the pregnancy and for the raising of the child as long as she pursued no further charges against him. Both Legall and Bouard appealed to the honor of the men who had fathered their children, but one hoped to marry while the other hoped just to survive.

While the examples cited above show a wide range of levels of influence from the parents of adult children, the Legall and Bouard cases also illustrate the next level of family conflict in my study—that between the ‘natural parent’ and the child born out of wedlock. If all worked out well for Legall, her sailor returned home to marry her and meet their child and the circumstances surrounding the child’s birth ultimately wouldn’t have mattered. Bouard’s child had no such happy ending on the horizon—Bouard’s employer paid her expenses in exchange for silence and expected to be left alone from that point on. The law called for him to support his child in some minimal way and that is exactly what he did.

¹⁴ Declaration of Françoise Legall, 11 January 1727, Minutes of Notaries, 4 E 133/148, Archives départementales du Finistère, Quimper.
¹⁵ Transaction upon pregnancy for Marie Bouard, 6 June 1730, Minutes of Notaries, 4 E 2/510, Archives départementales de la Loire-Atlantique, Nantes.
The laws regarding children born out of wedlock are complex and emerged out of a wide range of state- and church-level concerns. The *Déclarations de grossesse*, or pregnancy declarations, were instituted by royal decree in 1556 in order to outlaw hiding a pregnancy and abandoning or killing the infant. There were the concerns of the family-state pact, to be sure, but there was also the mortal danger to the baby and religious distress that such children went unbaptized. Furthermore, there was a practical cost to the church and community in supporting foundlings and determining their place in society.

The support owed to a natural child was pretty minimal. Pierre Olivier, a valet shoemaker, paid 100 livres in 1730 for the admission of Gillette David’s baby to the hospital in Rennes.\(^\text{16}\) Thus ended his obligation in the eyes of many. Yves Cadoret of Vannes went a bit further but also protected himself. His gift of 120 livres to his natural daughter Suzanne would be paid to her in a lump sum upon his death provided Suzanne had attained the age of 25 or was established in some way (either in a trade or marriage); if she died before she turned 25 or was established—and before he died—then he owed nothing.\(^\text{17}\)

French royal law, along with customary codes across the kingdom, required that parents support *all* their children but, in the name of “social order,” made a distinction between legitimate and illegitimate offspring and gave the clear advantage to children born into a legitimate marriage. Even when jurists acknowledged that a natural child has no part in the crime that produced him or her, they maintained that it wouldn’t be fair to legitimate heirs if the two sorts of children were regarded as equal.\(^\text{18}\) Inheritance laws therefore limited what people could give their natural children, especially if there were other heirs to be considered. Legal codes and dictionaries made a further distinction between “simple bastards” and “criminal bastards”, that is, children born to people who could, in theory, get married and those born to people who could not. (Think, premarital sex vs. incest or adultery.) Simple bastards could receive certain bequests and gifts that adulterine bastards could not.

A number of competing issues complicate this apparently neat distinction, however, the most striking being the concept of “good faith” and the existence of foundlings. As early as 1597, children born to parents “in good faith”, such as those who remarried in false belief that long absent spouse was dead, were considered

\(^\text{16}\) Payment of Pierre Olivier, 4 October 1730, Hospital admissions, 415/1, Archives Municipales de Rennes.

\(^\text{17}\) Donation of Yves Cadoret, 24 August 1737, Minutes of Notaries, 6 E 696, Archives départementales de Morbihan, Vannes.

legitimate even if the marriage of their parents was nullified. Some jurists and church authorities extended the concept of good faith to include couples who had engaged in premarital sex fully intending to later marry. If the marriage did ultimately take place, any children born were normally considered legitimized retroactively.

The “good faith” concept certainly paved the way for the later Enlightenment-era defense of all natural children as being free of moral stain due to their own personal innocence of any wrongdoing. At the same time, it called for some legalistic acrobatics on the part of jurists, as they had to pinpoint the moment at which a child became legitimate or illegitimate in the eyes of the law. For example, a child born after the end of a marriage, even to the same person with whom a man had committed adultery before his wife’s death, is not considered “adulterine” and can inherit if there are no other heirs (1630). Similarly, a natural child born during a marriage that was then annulled due to impotence is not adulterine (1651). However, a child born in an adulterous union cannot be legitimized even by eventual marriage of his parents (1661). The status of the parents at the moment of birth, not conception, is what made the difference. It should be noted, as well, that the distinction made in these cases was connected simply to the letter of the law and not to any regard for social stigma.

The existence of foundlings and homes for “found children” also undermines the second-class status of children born out of wedlock. Foundlings were taken in by the church or raised by charitable foster parents. They were trained in a trade or otherwise educated and their status did not necessarily follow them through life. Since the birth status of a foundling is unknown, they do not carry the stigma of bastardy even if they do not retain the full benefits of children raised by legitimate, biological families. This begs the question of a possible incentive to abandon babies where they might be found (the church steps are an obvious spot) rather than comply with the law requiring a pregnancy declaration. In theory, it makes a lot of sense that one might hide illegitimate children whenever possible, but how could we possibly know how common this was? The nun in Diderot’s novel was quietly raised within a family but her parents ultimately decided to maintain her second-class status with regard to her legitimate sisters. How would we know if someone had ever done such a thing except that it serves a juicy plot for a piece of fiction? We do know that Voltaire claims to have been the natural child of his mother but raised by her husband as a legitimate child. Beyond that, it is left to speculation. Garnot claims that cases of adultery are often treated privately in order to avoid scandal and that even an offended husband would rather quietly pressure his wife to retire to a convent rather than publically admit he had

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been cuckolded.\textsuperscript{21} One of my documents certainly suggests that someone might try to arrange such a solution, though in this case the wife of an adulterous man sought to quietly install her husband’s concubine in a convent. Rose Rouxel, the Dame de Pontbuée, wanted Jeanne Quoscodon arrested and confined discreetly, offering to pay all the younger woman’s expenses, if it would bring an end to public scandal.\textsuperscript{22}

There is no denying the status of a child, of course, if the mother remains unmarried and she keeps the child. Every baby is baptized and baptismal certificates would have been necessary for almost anything in life. Another document in my sample is the declaration by Juliette Janne in 1728 that she remembered serving as godmother to Jan Villebron when he was baptized thirty years earlier.\textsuperscript{23} He and his mother were still well-known to Juliette Janne but they apparently could not find a baptismal certificate. She affirmed his status so a new document could be issued.

Thus, the state’s position with regard to the parents of natural children, dating back to the Seventeenth century or earlier, was that they were obliged to provide something towards the child’s future. The primary challenge there was identifying the parents in some official way. The second challenge was dealing with the rest of the family. The final area of conflict and arguably the most important one in the lives of natural children was their conflict with other heirs. Inheritance disputes were nasty, no matter who the players are. Mutual donations between spouses existed because, without that extra level of protection, a widow or widower might be stripped of everything by the claims of other heirs, including claims made by their own legitimate adult children. Legitimate heirs were not necessarily hell-bent on disowning bastards. Rather, heirs were generally quick to disown anyone for any reason. Conflict between heirs could quickly become malicious—like the person who challenged the rights of an “adulterine” older sibling though they shared both parents.\textsuperscript{24} A man had made a donation of property to a child born to his servant while his wife was still alive; his wife later died and the man married his servant and they had a second child together. In 1692, after the man’s death, the younger son challenged the gift made to his older sibling and won.

Phillipe la Loüe, for another example, gave a donation to his concubine, Jeanne Lateron, when they had a daughter. He entailed the gift to her, their daughter Antoinette and any direct descendants of either Jeanne or Antoinette. Jeanne Lateron later married another man and had more children who would try

\textsuperscript{21} Garnot, \textit{On n’est point pendu pour être amoureux}, 83.
\textsuperscript{22} Minutes of the affair of Rose Rouxel, September 1729, Police Matters, 415/1, Archives Municipales de Rennes.
\textsuperscript{23} Declaration of Juliette Jannes, 15 November 1728, Minutes of Notaries, 6 E 694, Archives départementales de Morbihan, Vannes.
\textsuperscript{24} Brillon, “Batards, donataires”, \textit{Dictionnaire des arrest}, 1: 531.
to claim all the property away from Antoinette and her children, claiming she was adulterine and therefore could not inherit even though the gift was from her natural father and no relation to them. They lost. 25

Those last two cases came from Pierre Jacques Brillon’s legal dictionary of 1727, which includes dozens of cases in which legitimate heirs challenged a gift or bequest to someone else. It is clear that jurists up to that point in time used these precedents to further refine the exact definition of legitimacy. However, the cases cited also indicate that some people openly supported their natural children into adulthood—sometimes paying for education up to and including acceptance as a master craftsman—and that the courts consistently upheld reasonable claims in spite of the challenges. Savvy parents knew how to care for their natural children in ways that the law had no choice but to recognize. In 1657, a man left a donation to the husband of his natural daughter “for services rendered” on a number of voyages; his other children tried to challenge the gift but donations may always be given in recognition of services and were fairly ironclad as long as there is no evidence of a desire to disinherit or cheat legitimate heirs. Another man outlined what would go to each of his four natural children in case he died with no direct legitimate heirs—the law made that very situation an appropriate way to recognize natural children. Several collateral heirs tried to block the bequests, to no avail.

Robert Joseph Pothier, writing in the 1760s, stated that children who are considered bastards, and especially those with criminal origins, can only be awarded the most basic support no matter the wishes of the natural parent unless a specific law permitted the gift. Many jurists and writers of the day supported this view, such as Rousseaud de la Combe, who called adultery “a crime against God, the spouse, and legitimate heirs”. 26 Pothier, for his part, admitted that he was torn: “The spirit of French law is that goods reside in families and pass to heirs,” and yet, “naturally” no one should be deprived of the liberty to dispose of his goods as he pleases. 27 Balancing rights with tradition is a difficult exercise, he laments. Indeed.

The law is a living thing. There may indeed have been a Family-State Pact; lawmakers can and do have agendas of their own. At the same time, though, the jurists of eighteenth-century France were committed to the law, its limits and its possibilities. Reasonable claims made within the letter of the law won their day in court. Sometimes legitimate heirs succeeded in challenging gifts made to natural children but sometimes they did not. What had changed in the landscape of the eighteenth century was the growing value placed on individual liberty. Other factors certainly would have contributed to the rise in illegitimacy at the end of the old regime, such as the migration to cities or the growing popularity of romance.

27 Oeuvres posthumes de M. Pothier, 2 (Paris: Bure, 1778), 463.
But it was the elevation of liberty over obligation that increasingly left natural children without support. The liberty that allows one to leave a gift to a natural child is the same right that allows one to completely ignore natural children as well as to disinherit uncooperative adult children. The liberty to choose a spouse in defiance of family pressure is the same one that makes it possible to refuse to marry someone simply because there had been a dalliance and a child. Without the obligation to marry or to support natural children, the proliferation of dishonored women and rootless children in society inevitably reached crisis levels. The family laws passed after the Revolution may have been, in part, a response to the crisis of illegitimacy, but it was also the natural culmination of a process that had begun much earlier.