

“Not by Law a British Subject”: Illegitimacy and Nationality in Imperial Britain, 1860-1930

Presenter: Ginger Frost, Professor of History, Samford University, Birmingham

Until 1926, the English bastardy law was the harshest in Europe. A child born out of wedlock was permanently illegitimate; even the subsequent marriage of the parents could not change his/her status. The Legitimacy Act of 1926 removed some of these disabilities and brought the English statutes in line with Scotland and much of the Empire. All the same, the law was highly limited, excluding many children, especially products of adultery.

Most crucially for children of the empire, the Legitimacy Bill purposely excluded grants of nationality to illegitimates born abroad of British fathers and foreign mothers. Thus, these children received legitimation, but not nationality, when their parents married. The law authorities justified the distinction by pointing out that nationality came at birth, while legitimation came later. Thus, in the wake of the act, the fathers of these children were British by birth, the mothers were British by marriage, but the children were “aliens.”

This paper analyzes cases of illegitimate children petition for passports and for their registration of their births both before and after the Legitimacy Act. Based on a mid-nineteenth century case, *Shedden v. Patrick*, the Home and Foreign Offices consistently refused nationality to all such children, even those born in the Empire. They did this even if the mother, not the father, were the British parent; the rules only became stricter as more colonies became dominions or independent. Much like as in the case of married women, the British state was inconsistent in its definition of nationality, arguing for nationality by birth in some cases but not others, and including and excluding imperial children as convenient. These cases highlight the tenuous nature of nationality, even at the time the British most wanted to have consistent laws throughout the empire.

The Road to Legalisation in England: Scientific Discourse and Marriage to a Deceased Wife's Sister in the Context of Empire

Presenter: Charlotte Frew, Research Associate, Family Law Court History Project, Australian Catholic University, and PhD candidate, Macquarie Law School, Macquarie University, Sydney, Australia

Marriage to a sister-in-law after a wife's death was common in both England and the Australian colonies in the nineteenth century because women often died when their children were young and unmarried aunts were often called upon to look after the children left behind. However marriage to a sister-in-law after a wife's death was illegal in Britain from 1835 because the relationship of affinity between in-laws brought the marriage within the prohibited degrees. There was a protracted parliamentary and public debate in Britain for over seven decades during which proponents of reform argued that the union should be legalised and conservative and religious camps maintained vehement opposition. A much shorter debate occurred in the Australian colonies but the union was legalised there over three decades before it was made legal in England in 1907. The earlier debate, particularly in England, was dominated by religious discourse, disagreement over biblical interpretation and the assertion that the union was against the law of God and the law of the Church. Though there are many dimensions to the debates, including religious, economic and political dimensions; in this paper I examine the social aspects of the marriage debate. I argue that the English debate was shaped by the moral role of marriage in Victorian society within the specific context of the moralising mission of Empire. The paper examines the influence of scientific discourse on the racialisation of the 'other' and, its role in changing the meaning of 'incest' which had previously been defined by the Church. Finally the paper briefly touches on the power of widespread colonial change in forcing legalisation of sister-in-law marriage in England.

Customary Marriage and Claims to Citizenship in the 19th century Cape Colony

Presenter: Elizabeth Thornberry, Assistant Professor of History, Hobart and William Smith Colleges, Geneva NY

Indigenous societies in colonial Southern Africa offered a radical challenge to British norms of regulating sex and marriage. In the first half of the 19th century, colonization of the eastern Cape Colony was justified as a means of bringing civilization to the area's African inhabitants. The most prominent markers of Africans' lack of civilization were practices related to sex and marriage—particularly polygyny and bridewealth payments. In the early days of colonization, British administrators insisted that these heathen practices should be replaced by monogamous marriages, registered with the colonial state. This ambition failed, as the majority of Africans refused to register their marriages or restrict themselves to monogamy. Over time, customary marriage forms gained increasing recognition from the state, as courts adjudicated disputes over bridewealth, divorce, and intestate estates. The validity of these marriages was determined by "native custom," which varied from district to district. Determining what constituted a valid customary marriage was more of an ethnographic endeavor than a juristic one.

In this paper, I argue that this relinquishing of the authority to regulate the validity of customary marriages was a primary means through which the colonial state constructed the legal category of "native custom," and, as a result, the legal status of "native," with its accompanying legal disabilities. By contrast, Christian marriage had a broad range of legal consequences and conferred on Africans who married in this way the same legal status as European settlers in matters of inheritance and property. Well into the twentieth century, African residents of the Eastern Cape based their claims to full legal rights on their choice to marry according to Christian rites. It was through submitting to the regulatory authority of the state over marriage that these men (and, occasionally, women) justified their petitions for the right to own land freehold, to vote, and to claim the broader protections of colonial law.