

BASTARDY AND THE NEW

POOR LAW: 1832-1844

CENTRE FOR NEWFOUNDLAND STUDIES

**TOTAL OF 10 PAGES ONLY
MAY BE XEROXED**

(Without Author's Permission)

ADRIAN RODGERS

BASTARDY AND THE NEW POOR LAW:

-1832 - 1844

BY

© Adrian Rodgers, B.A.

A thesis submitted to the School of Graduate
Studies in partial fulfillment of the
requirements for the degree of
Master of Arts

Department of History
Memorial University of Newfoundland
March 1986

St. John's

Newfoundland

Permission has been granted to the National Library of Canada to microfilm this thesis and to lend or sell copies of the film.

The author (copyright owner) has reserved other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without his/her written permission.

L'autorisation a été accordée à la Bibliothèque nationale du Canada de microfilmer cette thèse et de prêter ou de vendre des exemplaires du film.

L'auteur (titulaire du droit d'auteur) se réserve les autres droits de publication; ni la thèse ni de longs extraits de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation écrite.

ISBN 0-315-31027-8

ABSTRACT

In 1832 the English government commissioned an Inquiry to examine the troublesome administration of a group of social welfare laws, known as the Poor Laws. The omnibus of Poor Laws governed relief to many groups of indigent people. This thesis, however, is one of a few twentieth century analyses to limit its concerns to only one of the laws which provided assistance for the mothers of illegitimate children. By limiting the question to 'bastardy', as it was frequently known, this thesis examines the faulty reasoning of the government in relation to social questions. Although the government carefully researched every reform, in twelve years it made four substantial alterations in the way it hoped to regulate illegitimate children. By analysing government documents and other sources, this thesis blames the limited spirit of inquiry that characterised bureaucratic reports for the fickleness of the nation's laws.

When the Poor Law's Commissioners of Inquiry published their recommendations in 1834, they made the startling suggestion that the mother of a bastard child should no longer be permitted to sue the father of the child for a support payment. Instead, the Commissioners wanted local parishes, which administered the national scheme of relief for the poor, to provide the mother with assistance. If the parishes would incarcerate the mothers and their children in a 'workhouse', where they would be governed by strict rules,

the Commissioners hypothesized that the rate of illegitimate births would decline. In their effort to escape this unpleasant treatment, the Commissioners reckoned that all women would take every safeguard to ensure they remained chaste until marriage. In placing the onus of chastity exclusively upon the woman, the Commissioners completely ignored accepted social traditions, which placed the liability for maintaining an illegitimate child on the father. Instead, the Commissioners accepted the Utilitarian and Malthusian ideology, predicated by Jeremy Bentham and Thomas Malthus.

The government, which also propounded their own forms of Malthusian and Benthamite doctrine, attempted to enact their Commissioners' proposals. In 1834, the government succeeded in abolishing the mother's right to sue the father of her illegitimate child. Yet, because of the pressure exerted by individuals who opposed the reform, they were forced to compromise their ideals. The government's new law allowed the parish this ability to sue the father for the maintenance it provided to the child. Despite this 'compromise', the government felt the philosophy of 'enticing' the woman to remain chaste, which lay behind their Commissioners' proposals, remained intact.

Although the new law was opposed by public and political factions, the government successfully side-stepped these criticisms. By 1838, however, a pool of bureaucratic reports had accumulated, which recommended that the govern-

ment reconsider the law it had passed only four years before. The government obliged by making a token amendment, but the law remained substantially unchanged. In 1844, the Rebecca Riots in Wales catalysed the government reaction, and a new law which reinstated the woman's right to sue the father of her bastard, was enacted. Although this law was far from ideal, it was a step in redressing a social injustice.

ACKNOWLEDGEMENTS

I appreciate the efforts of Dr. James Hiller, the entire History Department, the staff of interlibrary loans of the University library, and the School of Graduate Studies, who gave able academic, administrative and financial assistance. I owe a special debt to Dr.'s Stuart Pierson, Linda Kealey, and Hoh Cheung Mui for their able assistance.

I am especially indebted to Dr. Greg Kealey whose dedication to students is surpassed by few, and to my supervisor, Mr. Tom Evans. Perhaps I should also add additional thanks to my fellow graduate students, especially Linda Little and Lyn Martin, and to my family and my very best friend, Emily Thorne. Without their support I could not have completed this assignment.

TABLE OF CONTENTS

ABSTRACT	ii
ACKNOWLEDGEMENTS	v
TABLE OF CONTENTS	vi
CHAPTER I: CONCEPTION AND PRECONCEPTION: THE POOR LAW INQUIRY 1832-1834	1
I: Introduction	2
II: The process of 'affiliating' a bastard to its father	6
III: The views of various socio-economic classes towards bastardy and the Old Poor Law	13
IV: The philosophic impetus to reform ..	27
V: The appointment of a Whiggish Poor Law Commission	34
VI: A biased Commission goes to work ...	39
VII: The Commission produces preliminary findings	43
VIII: The Commission produces a final report	47
IX: Conclusion: The Commissioners' proposal	64
Chapter II: THE BIRTH OF AN ACT: THE RECOMMENDATIONS OF THE POOR LAW COMMISSION ARE ENACTED BY PARLIAMENT	67
I: Introduction	68
II: A Bill is drafted	70
III: The first debate in the Commons and the themes upon which debate would develop	74
IV: The Bill leaves the Commons when a 'compromise' is struck	83
V: The debate in the House of Lords: Part I	89
VI: The debate in the House of Lords: Part II	100
VII: The government attempts to placate disconcerted supporters	104
VIII: Denouement	112

Chapter III: THE LIFE OF THE POOR LAW AMENDMENT ACT: THE PUBLIC AND POLITICAL OPPOSITION TO THE GOVERNMENT'S POSITION: 1834-1842	115
I: Introduction	116
II: The initial attack on the new bastardy clauses after 1834, and the government's response	120
III: The 1837 select committee	134
IV: The 1838 select committee	142
V: The attack on the bastardy clauses after 1839, and the government's response	156
Chapter IV: THE DEATH OF THE BASTARDY CLAUSES OF THE POOR LAW AMENDMENT ACT: THE REBECCA MOVEMENT	166
I: The origins of Rebecca	167
II: The Rebecca Riots and government reaction	170
III: A new Bill in the House of Commons	180
IV: A New Bill in the House of Lords	186
V: The provisions and effect of a new law	191
VI: Conclusion	195
BIBLIOGRAPHY	200
APPENDIX A	211
APPENDIX B	217

CHAPTER I.

CONCEPTION AND PRECONCEPTION:
THE POOR LAW INQUIRY 1832 - 1834.

I: Introduction

Early nineteenth century England was experiencing an age of rapid change. Legislative and government change, such as the 1832 Reform Act and the move to expedite the administrative processes of the state's bureaucracy, represented a new spirit in the thoughts of the ruling class. Other reforms such as the health movement and Chartism, represented a shift in the philosophy of all facets of nineteenth century society. Likewise, in 1834, the English government had grave concerns about the treatment of its poor. Two years before, it had appointed a Poor Law Commission to examine the complete spectrum of relief that its Poor Laws provided for the people. The New Poor Law would accomplish an administrative reform and would also mark the new spirit pervading England at this time. The Poor Laws governed 'relief' to the able-bodied poor, widows, the sick, the elderly and any group that might require state assistance. Although the Poor Law Commission made a complete study of the range of this relief, this thesis is only concerned with changes that related to the relief of bastard children.¹

Before the Commission was appointed, the father of

¹The term is used, not in a prejudicial sense, but rather because it is the correct, legal nomenclature.

the bastard was responsible for making child maintenance payments to the mother through the local parish.² Because this supposedly led to the abuse of the Poor Law system which managed these payments, the Poor Law Commission sought to abolish them. The government was unable to achieve such a reform in its subsequent amendment to the Poor Laws. Their bastardy reform, which was only one of the legislative changes that marked the transition from the 'Old Poor Law' to a redesigned 'New Poor Law' in 1834, merely made it less likely that the father would have to make child maintenance payments. Thus, with considerable inquiry, in two years there were two changes in approaching the way relief to bastardy should be managed, although only one was enacted with the passage of the New Poor Law.

Yet a third change was considered and adopted in 1839. This amendment more or less restored provisions regarding bastardy that were in place before 1834. Again, in 1844 a fourth change was considered and then adopted, which led to the complete removal of child maintenance payments from the jurisdiction of Poor Law officials. Thus, in only a dozen years, and despite the consideration of many knowledgable men, bastard relief was nearly abolished, made

²An early Act of Elizabeth declared that justices of the peace could punish "the mother and reputed father of such bastard child" and could charge "such mother or reputed father, with the payment of money weekly or other sustentation for the relief of such child...." 18 Elizabeth, c. 3, ss. 2-3.

more difficult to obtain, made easier to obtain (as it always had been), and finally removed from the arena of Poor Law administration. Why this consideration of four changes, three of which were enacted, occurred in only a dozen years, is the central question of this work. Since each change was only accomplished after a great deal of inquiry and soul-searching, a natural theme is the nature of this sometimes defective inquiry.

Initially, scholarly analysis of the New Poor Law discussed the effect of the entire Act's provisions on the whole country. More recently, in an attempt to till fresh ground, scholars have discussed the entire effect of the new law on local areas such as a parish or county. Yet, these studies are of limited value to disciplines other than History and require travel to the area concerned in the study. This thesis attempts a newer approach, with detailed study of one subject under the omnibus of Poor Law reforms and its effect on all of England and Wales during and after 1834. While the work contains new findings that result from limiting its concerns to bastardy, this limitation does not discourage interest from other disciplines in the social sciences. It is hoped that the subject matter of this thesis will be useful to many readers, despite the restriction of sources to microformed editions and interlibrary loan acquisitions.

In this chapter, the background of the Poor Law

Commission that first hypothesized changing the principles of the Old Poor Law's administration are examined. The attitudes of the upper and lower classes were important in considering such a change. Although the upper class had not fully established a party system in Parliament, this thesis subdivides the class into Whigs, who controlled Parliament, and a group of Tories who opposed them. Even though many Tories sided with the Whigs regarding various aspects of Poor Law reform, the labels of 'Whig' and 'Tory' are still used to denote opposing forces.

Since the Whigs appointed the members on their Poor Law Commission, it is not surprising that the Commission's 1834 Report expressed Whig values. At the same time, the values of the 1834 Report were accepted to the extent that Whig beliefs which were held before 1834, and which were no longer compatible with the new suggestions, declined in importance. The effect of the 1834 Report on the Whigs was equal to the Whig's effect on the 1834 Report's findings. Because the Commissioners did not attend to evidence concerning bastard relief that was contrary to their opinions, it is likely that their whole Report only utilized evidence that would confirm their already, preconceived, Whiggish notions. This chapter attempts to place the Poor Law Commissioner's Report, produced from their government's

predisposed specification, into perspective.³

II - The process of 'affiliating' a bastard to its father

The plight of a single woman who found herself pregnant was a difficult one in the early nineteenth century. With negligible savings, the financial burdens of leaving work to give birth, and of feeding, clothing and raising a child, were overwhelming. There were no cheap, legal provisions for the woman to obtain support payments from the father of her child. Since the poor were unable to initiate the expensive court proceedings that middle and upper class women who had bastards could, only a few avenues of support remained open. The impoverished mother-to-be could turn to her parents for some relief, but often, they were not in a position to support her. The 'charity' offered by a governmental administrative unit known as the parish, was usually the final option.

The parish was assisted by a number of Parliamentary Statutes. Rates were levied on 'substantial' parishioners like any tax, and this income provided the parish with the means to furnish relief to the poor. The parish

³Years later, in 1841, the first lord of the admiralty wrote to Peel saying "A Commission is most useful to pave the way for a measure which is preconcerted; take for example the Poor Law enquiry." See Anthony Brundage, The Making of the New Poor Law (New Jersey: Rutgers, 1978), p. 17.

was represented by one, or several, usually unpaid officers known as overseers.⁴ Frequently, an unmarried pregnant woman solicited the overseer in hope that the parish would provide some of the relief she so desperately needed. At the same time, the overseer also confronted unmarried women in the parish who had not approached him but nevertheless appeared to be pregnant. The overseer attempted to get all unmarried, pregnant women to make a court appearance.⁵ If he succeeded in getting the woman to 'swear the father' under oath and before a Magistrate, he hoped he was well on his way to regaining some of the money the parish would lose when the woman and her bastard finally ended up on his parish's relief rolls.

There were times when the woman refused to 'swear the father'. The overseer could then retaliate by invoking a rarely used law which permitted the imprisonment of women who had bastard children.⁶ In some cases women immediately submitted to a court examination, while in other cases they

⁴While many parishes were too small to pay their overseers, there were some exceptions. See "The New Poor Law Act", Eclectic Review, n.d., vol. LX, p. 413. The existence of such an unpaid corps does indicate the lack of administrative standards that were characteristic of the Old Poor Law.

⁵Copy of the Report made in 1834 by the Commissioners for Inquiry into the Administration and Practical Operation of the Poor Laws (London: Eyre & Spottiswoode, 1905), p. 350. This is hereinafter referred to as the 1834 Report.

⁶See Great Britain, Parliament, Sessional Papers, Readex Microprint Edition, ed. Edgar Erickson, 1834, vol. XXIX, p. 12. This is hereinafter referred to as SP.

continued their refusal to be examined. Despite this refusal, it is unlikely that many women were actually condemned to goal for bastard-bearing during the early nineteenth century. Indeed, the woman could actually retaliate against the overseer for his threat of imprisonment. Because the woman's word did not have to be corroborated by other evidence,⁷ the woman could threaten to swear that even the overseer himself was the father.⁸ Despite this kind of potential for abuse, such retaliation was also rare.

In most cases then, the pregnant woman swore before a Magistrate who the father of her unborn child was. Once this occurred, the overseer could force the man to appear before a Magistrate. The overseer's purpose in all this legal wrangling was the acquisition of an affiliation order. This was an order by the court which empowered the overseer to collect whatever sum was specified from the putative father of the bastard child concerned. Only in

⁷The law enacted "that if any Single Woman shall declare herself to be with Child, and that such Child is likely to be born a Bastard and be chargeable to any Parish, ...and shall, in an Examination to be taken in Writing upon Oath before any Justice of the Peace, ... charge any person with having gotten her with Child, it shall be made lawful to and for such Justice, upon application made to him by the Overseer of the Poor ... or by any substantial Householder ..., to issue out his Warrant for the immediate apprehending of such person so charged as above said,...." See 49 George III, c. 68, s. 2. There was much concern about this 'slender oath'. It was feared "any strumpet" could fix on any man she pleased. See SP, 1834, vol. XXIX, pp. 12 and 454.

⁸SP, 1834, vol. XXVIII, p. 734 and vol. XXIX, p. 92.

this way could the parish hope to gain back some of the money that it would spend on poor relief for bastard children, from the fathers.

Since an affiliation order could only be granted after the child was born, the man's appearance before a magistrate was only to post a security of £2 or £3. This security was intended to ensure that the man would not run away, or 'abscond', before the birth of 'his' bastard child. The security was also referred to as 'month money' and was apparently awarded to the parish to reimburse it for maintaining the woman during the ninth month of her pregnancy, which was considered to be a "lying-in period." If the man was unable to post this security, a bondsman might do it for him. If he failed to comply with any demand for security, he could be held in gaol until after the birth of the child. Only then could the Petty Sessions court meet and hold an affiliation hearing.⁹

Thus, after the child's birth, the affiliation procedure could begin. Like the initial 'swearing of the father', the mother's testimony did not require corrobor-

⁹For all of the above, see SP., 1834, vol. XXVIII, pp. 746, 751, 762, 812, 813 and 843. The origins of difficulty with collecting sums in arrears first appeared in 13 & 14 Car. II, c. 11, s. 19 which allowed the seizing of the bastard father's or mother's goods. Under 6 Geo. II, c. 31 and 49 Geo. III, c. 68 parts of the old law were repealed and a new law enacted. Under this new law, if a warrant was taken out against a man and he failed to post security, he could be held in gaol until the next quarter sessions. See 1834 Report, p. 166.

ative evidence for the court to establish paternity. The father, then, was basically left without a defence from the mother's allegations, although there were some circumstances he could try to substantiate that would suggest the mother was lying. Certainly, however, it was not sufficient to merely counter the mother's claim by declaring 'The child is not mine'.

One defence the man could use, was that he was incapable of having intercourse with the woman at the time of the child's conception, perhaps because he was in gaol or out of the country. Another defence would be to claim the woman had tried to extort money from him by threatening to swear that he was the father when he was not. The man would in this case require a number of witnesses to substantiate his claim. Yet, in most cases the court usually declared that the man in question was the father of the child as a fait accompli and made out an affiliation order against him.

This court order usually provided that the man had to make weekly payments to the parish, ranging between 1s. 3d. and 3s. a week, depending on his wealth, until the child matured. The parish then automatically handed this sum over to the mother and generally supplemented it if the man failed to meet the amount expressed in the order. While the mother herself was also expected to make a weekly payment of 6d. to 1s. to the parish, this was usually dis-

charged by her nursing the child.¹⁰

Although it appeared that the overseer had assured the parish it would be indemnified for the bastard it might have to relieve, there was one further difficulty. At times, the man was not fully prepared to give up his hard-earned money to the parish to provide for his bastard. If the man failed to meet his weekly payments, a verbal warning was issued, which threatened the man with arrest unless he paid his debts. For a man who would not or could not pay, this warning only acted as a notice to leave town before he was arrested.¹¹ After all of the overseer's trouble to obtain an affiliation order, young men were all too willing to skip town. Even though no money would then be received from the man by the parish to relieve his bastard child and

¹⁰See SP., 1834 vol. XXVIII, pp. 10, 23-4, 270, 314, 443 and 542; vol. XXIX, p. 298. There was an unusual instance of a parish in London reporting 9s. a week as the maximum maintenance. Beadles who managed the accounts in the same area were suspected of bribery. See SP., 1834, vol. XXIX, p. 454. Other parishes in London also had maximum rates of 7s. - 9s. and a case is recorded where a woman happily married to a well-off man still received 8s. a week for a bastard born before the marriage. Sums such as these are no doubt limited to a very few cases. See SP., 1834, vol. XXVIII, pp. 119-20. There are also unusual cases where mothers were charged the same amount as the father for weekly maintenance, albeit with the 'standard' proposal that the amount chargeable could be discharged if the mother nursed the child. See SP., 1831, vol. VIII, p. 624. All evidence from the Sessional Papers, volume VIII for 1831 was taken from testimony given to a select House of Lords Committee on the Poor Law.

¹¹49 George III, c. 68, s. 3 required that before a man or woman could be arrested for having arrears on his or her bastardy account, "a Demand of such payment ... and a Refusal to pay the same" must have taken place.

its mother, the parish still had to maintain them at its own expense.

The reader may have detected many areas for abuse within this complicated affiliation procedure. Certainly, many frauds were perpetrated. Because corroborative evidence was not required for affiliation, the mother of a bastard might lie about the identity of the father. She might merely wish to conceal her lover's identity, or she might be attempting to extort money from a wealthy man by promising she would see that he was affiliated and had to pay a weekly maintenance for her child unless he gave her 'hush' money. At the same time the innocent man who was affiliated, suffered a heavy financial burden, or even a penal punishment.

The woman was not the only one to abuse the Old Poor Laws. The man also found it easy to escape the financial obligations of paternity that the Old Poor Law attempted to impose. While there was undoubtedly abuse of the law, it is unimportant how extensive this abuse was. Much more important was the way the upper, middle and lower classes interpreted these events, and the way their attitudes subsequently affected their political feelings about the reform attempted in 1834.

III - The views of various socio-economic classes towards bastardy and the Old Poor Law

Before discussing exactly what various classes intended to do about the abused affiliation process, perhaps the attitudes of each important group in the ensuing conflict should be studied. The body that initiated the entire change by appointing the Poor Law Commission, was of course, the Whig government. Like all nineteenth-century 'gentlemen', they were offended by premarital sex, and its all too frequent consequence of bastardy, among the poor. Although they never actually referred to religious sentiments to substantiate their beliefs, there is little debate that sexual activity outside marriage was neither tolerated by the Church, nor by their codes of 'gentleman's behaviour'.¹²

¹²As one might suspect, late eighteenth and early nineteenth-century theological literature fails to specifically discuss the 'immorality' of sexual activity. Neither the works by the prolific evangelical Hannah More, nor those of Blomfield, the Bishop of London who chaired the Poor Law's Commission of Inquiry, discuss sexuality or traditional customs of courting. Indeed, Blomfield's only warnings regarding 'questionable' activities refer to card and dinner parties. It was obvious to both religious and upper class factions, that the immorality of premarital sex precluded its discussion. See George Edward Biber, Bishop Blomfield and His Times, An historical sketch by the Rev. George Edward Biber L.L.D. perpetual curate of Roehampton (London: London, with Selections from His Correspondance, ed. Alfred Blomfield, vol. I (London: John Murray, 1863); The Works of Hannah More, A New Edition with Additions and Corrections in Eleven Volumes (London: T. Cadell, 1830); and Hannah More, Moral Sketches of prevailing opinions and manners Foreign and Domestic: With reflections on prayer (London: T. Cadell and W. Davies, 1819). Despite

Another important feature of upper class Whig beliefs was that they were willing to re-think their political position on issues to accomodate new ideas that they felt would promote better government. Thus, the Whigs not only disliked bastardy, but were also willing to use new ideas to confront the problem. Indeed, when the Whig government took office in November of 1830, it "was determined to seek a substantial alteration of poor law administration."¹³ Many Tories also sided with the Whig government concerning bastardy, and, although they were not entirely disposed to make reforms, they felt some change was better than no change.

Middle-class technocratic officials also shared the beliefs of the Whig government. While middle class views may have varied with each individual's disposition, those who served on local parish vestries would likely be very desirous of any reform that would benefit their administration. The middle class held a perjorative view of the lower class. They believed that one could hardly expect anything from the lower class except vice and bastardy. In cases of bastardy, the "offenders" were of a class that did not, "in committing the offence," think of the conse-

their religious and class beliefs, various members of the upper class were of course noted for their illicit liasons.

¹³See Peter Dunkley, "Whigs and Paupers: the Reform of the English Poor Law, 1830-1834," Journal of British Studies, vol. XX, 2 (1981), pp. 124-49.

quences.¹⁴ Poet George Crabbe emphasized the moralistic view that lower-class youth were shortsighted in describing this typical scene:

Next at the altar stood a luckless pair,
Brought by strong passions and a warrant there;...
Then to her father's hut the pair withdrew,
and bade to love and comfort long adieu!
Ah! fly temptation, youth refrain! refrain!
I preach for ever; but I preach in vain!¹⁵

Bastardy was attributed to various social phenomenon peculiar to the lower class. An increase in "small houses", the custom of hiring live-in farm servants, and youthful assemblies both in the street and at religious meetings, were all trotted out as explanations for pregnancy in single women.¹⁶ Indeed, John Brown, a shoe-maker interested in mission work, commented with some disgust on the factory hands who paraded about the street long after

¹⁴sp., 1834, vol. XXVIII, p. 754. Meanwhile, upper class and well-to-do middle class individuals hid the 'consequences' of their 'offences'. "By living abroad social faux-pas could be smoothed over and even illegitimate babies could be born and left behind." See Lenore Davidoff, The Best Circles: Women and Society in Victorian England (Totowa, New Jersey: Rowman and Littlefield, 1973), p. 84. My emphasis.

¹⁵See George Crabbe, "The Parish Register, Part II," lines 105-30 in Poems, vol. 1 (Cambridge: Cambridge University Press, 1905). Crabbe is not alone in his assertion that lower class youth had little control over their lives. Parson Woodforde also writes about a man who evidently wanted little part of his marriage ceremony: At "the Altar [he] behaved very unbecoming." James Woodforde, The Diary of a Country Parson 1758-1802 by James Woodforde, ed. John H. Beresford (London: Oxford University press, 1963), p. 295.

¹⁶sp., 1834, vol. XXVIII, 120, 327 and 760.

the country-folk were in bed.¹⁷ To combat such immorality, one middle class official believed more effective punitive measures "either on the father or the mother" should be contemplated.¹⁸ That portion of the middle class who were involved in Poor Law administration then, were obviously likely to be sympathetic to the reform of the bastardy clauses.

There was an important upper class force in opposition to the attitudes of upper-class Whigs and their middle-class flunkys. A small force of Tories, representing "the powerful evangelical school, then at the height of its influence,"¹⁹ shared the belief that premarital sex was unacceptable. Yet, they did not believe that extensive changes to the bastardy clauses should be entertained. Almost by definition they rejected outside influences that tended to use new ideas to reform the law, and instead preferred revitalizing the bastardy clauses of the Old Poor Law to reduce alleged abuses. There were also a very few Radicals who held a conservative outlook, and like the

¹⁷John Brown, The Autobiography of John Brown. The Cordwainer; with his sayings and doings in Town and Country: Shewing what part he took in the spread of Church principles among the working classes, ed. by A Clerical Friend (London: J. Masters; Simpkin & Co., 1867), p. 64.

¹⁸Sp., 1834, vol. XXVIII, p. 544.

¹⁹S. & B. Webb, English Local Government: English Poor Law History: Part II: The Last Hundred Years, vol. I (n.p., Private Subscription Edition printed by the Authors for their Friends and Supporters, March, 1929), p. 15.

Faction of Tories, opposed the Whig proposals.

Some of the Tories conceived that the female was largely innocent, and that in cases of bastardy she had been the victim of a sinister male seducer. To obviate such a wrong, Tories typically suggested it was "natural and just that the man should share the burden of maintaining his offspring."²⁰ They felt the law should not fall "wholly and unjustly" upon the innocent woman,²¹ and some even fought to reaffirm paternity by suggesting the law should confirm the father's obligation to his child by strengthening the "rights and duties in the possession, control and education of his child, and the placing it out as an apprentice."²² Thus, this conservative ideology largely held that the innocent female should be protected by strengthening the legal powers of the parish over a seducer. Meanwhile, more worldly females would receive a less paternalistic treatment from these Tory hands for the 'offense' of bastardy. Regardless of the female involved, while the Tories disliked bastardy, they were unwilling to use new ideas to reform the bastardy clauses and preferred to strengthen the sanctions of existing law.²³

²⁰sp., 1834, vol. XXVIII, p. 929.

²¹sp., 1834, vol. XXVIII, p. 734.

²²sp., 1834, vol. XXVIII, p. 735.

²³Many historians investigating the New Poor Law which was enacted in 1834, attempt to minimize the importance of the Benthamite origins of the reform, which are largely

There was one final group which was important, yet remained unconsulted by their 'superiors'. The lower class at the village level also had opinions about the bastardy clauses. Like the other social classes, some segments of the lower class felt very strongly that premarital sex was immoral. At the same time, there were other segments of the lower class who had little regard for 'moral feelings' at all. Samuel Bamford managed to find himself in a very difficult position where these two veins clashed, after he had 'casual' sex in "the company of a Yorkshire lass as thoughtless as myself...." When she became pregnant,

my old uncle and aunt, with whom I again lived, read me some very grave lessons For my part, I was covered with confusion, and torn by remorse, for I had early discovered that, had there been no other female in the way, I never could have made up my mind to become the husband of the one I had thus injured. I was somewhat relieved, however, by learning that she took the affair less to heart than many would have done, and that the obtainment of a handsome weekly allowance was with her as much a subject of consideration as any other.²⁴

Although there were undoubtedly numerous bastards

peculiar to the Whig's concerns about bastardy. Instead, these historians suggest the New Poor Law, was an "attempt to restore local institutions tending to support hierarchy and traditional social ideals." While this may be true in terms of the entire Poor Law reform, certainly the changes that the government demanded were far from this conservative ideal. See Dunkley, "Whigs and Paupers," p. 125.

²⁴ See Samuel Bamford, The Autobiography of Samuel Bamford; Volume One; Early Days together with the arrest and c. (London: Frank Cass, 1967), pp. 229-30.

born as a result of these kinds of acquaintances, it is difficult to assess how the lower class felt about them. One can speculate that, unlike middle and upper class groups who considered the moral condition of society, the lower class were more likely to consider what effect a premarital pregnancy would have on individuals in their own family groups. To ensure that their 'abused' daughter got the optimal settlement, lower class families were most likely to prefer the paternalistic system that forced the father to give support to the mother.

In addition to casual sex, rape could also be a reason for some bastard births. Nineteenth-century novels were especially fond of depicting a metaphoric rape of the lower class by the upper class, where worldly men artfully seduced naive girls. In Mordaunt Hall, an evil male goes to the point of staging a wedding ceremony, so that the heroine, Miriam Ridley, will submit to his sexual advances. Only after she is pregnant does Miriam discover that her marriage was not legally valid. When the father disowns their child, Miriam kills herself in despair.²⁵

In another fictional work, a more realistic account sees an upper class boy, rape a young servant girl. The egocentric paternalism in the rape of one class by another is an evident theme:

²⁵See Anne Marsh-Caldwell, Mordaunt Hall; or, a September Night (London: Henry Colburn, 1849).

How long I was quiet I don't know; probably but a short time; for a first pleasure does not tranquilize at that age; I became conscious that she was pushing me off her, and rose up, she with me, to a half-sitting posture; she began to laugh, then to cry, and fell back in hysterics, as I had seen her before.

I had seen my mother attend to her in those fits, but little did I then know that sexual excitement causes them in women and that probably in her I had been the cause. I got brandy and water and made her drink a lot, helping myself at the same time, for I was frightened....²⁶

In considering nineteenth-century fiction then, the widely-used metaphor in which the upper class manipulated the lower class for sexual purposes would suggest that the only way to ensure justice was to provide young women with an easy method to obtain maintenance payments from the father. In this case, the lower class would undoubtedly favour the law they had always known.

Rape often meant more than the psychological intimidation implicit in the master-servant relationship discussed above. Yet, literature does not speak of the savage and brutal act of sexual assault. In this case, it is unlikely that a woman would affiliate a bastard child to her attacker because of fear. Nevertheless, even in this kind of rape, lower class villagers would probably prefer a paternalistic law which sought to 'protect' an innocent

²⁶Anonymous, My Secret Life abridged but unexpurgated, 1888, rpt. (New York: Grove Press, 1966), p. 123.

victim.

While paternalistic laws which strengthened affiliation rights might have been looked upon favourably by the lower class in the cases of casual sex and rape, these two instances undoubtedly comprised a smaller proportion of premarital pregnancies than a third scenario. Between courting couples, premarital sex was at least condoned by the lower class. Indeed, the custom of "keeping company", where premarital sex was considered a part of the courtship ritual, was even accepted in some rural communities.²⁷

Even where this custom of "keeping company" did not exist by name, premarital intercourse was still considered as part of the courtship process. This process typically began with a marriage promise, sometimes formalized to the extent it was put in writing. In 1840, for example, one working man wrote:

Dear Jane Watson

I solemnly promise to marry you
my dear girl.

18 December 1840

Yours affec.
Alex Hay²⁸

An engagement followed this vow, when a woman might have sex, not "with a view to be[ing] married, but [with the]...

²⁷SP., 1834, vol. XXVIII, p. 455. This tradition of "keeping company" also went by other names. See SP., 1834, vol. XXIX, p. 184.

²⁸See John Gillis, "Servants, Sexual Relations and the Rise of Illegitimacy in London, 1801-1900," Feminist Studies, V (1979), p. 155.

expectation of marriage...."²⁹ It was with this expectation that couples deeply in love might have intercourse. The novelist H.G. Jebb illustrates his understanding of these emotions in Out of the Depths. The novel's principal character is the lower class girl, Mary, who describes her feelings toward premarital sex with her finance, a middle class theology student at Oxford:

The idea that there was anything premature, anything unmaidenly, anything wrong, occurred to me no more, and after the first surprise and emotion of this sudden declaration of our mutual love, I surrendered myself to the feeling of delicious joy caused by the knowledge that there was someone who cared for me above all others.³⁰

For whatever reason, premarital sex occurred in many courting relationships. Perhaps half of all brides in England at this time were pregnant.³¹ Yet, they might only have experienced intercourse a few times with their lover.

²⁹ Sp., 1834, vol. XXVIII, p. 818.

³⁰ See Henry Gladwyn Jebb, Out of the Depths: The Story of a Woman's Life (New York: W.A. Townsend and Co., 1860), pp. 47-8.

³¹ Hair found almost half the brides in his sample were pregnant when married. Laslett reckoned between four and six percent of children born in England were illegitimate. See Carol Pearce, "Some Aspects of Fertility in a Mid-Victorian Community," Local Population Studies Magazine and Newsletter X (1973), p. 25 and P.E.H. Hair, "Bridal Pregnancy in Rural England in Earliest Centuries," Population Studies XX, 2 (1966), p. 236. Laslett has done considerable work in estimating the illegitimacy ratio of England based on ecclesiastical records dating from the middle of the sixteenth century. See Peter Laslett, Karla Oosterveen and Richard M. Smith (eds.), Bastardy and its Comparative History (London: Edward Arnold, 1980), pp. 14-5.

before marriage.³² Certainly, premarital pregnancy was so entrenched into village life it caused one minister to comment, "I had to marry a couple at half-past eight; the bride was as round as a barrel, and according to custom I suppose there will be a christening in the course of the honeymoon."³³ Regardless of how other classes might have looked at premarital sex, to the lower class it was largely an "accepted part of the marriage process itself, a process which took several days or even weeks to complete, and in which what happened in Church (service and registration) was the public celebration and confirmation" of the formation of a new family unit.³⁴

It seems that premarital sex was merely a part of the process of getting married. While some middle class observers suggested marriage was used as a last resort to keep a child from being born illegitimate, it was merely the traditional climax of courting behaviour.³⁵ When there were difficulties with this process, however, the likelihood of a marriage occurring could be thrown in doubt. If a woman was already pregnant and her relationship with her lover

³²Gillis, "Servants", p. 156.

³³John Skinner, Journal of A Somerset Rector John Skinner, A.M., Antiquary 1772-1839 (London: John Murray, 1930), p. 248. My emphasis.

³⁴See Peter Laslett, Family Life and Illicit Love in Earlier Generations (London: Cambridge University Press, 1977), pp. 128-9.

³⁵sp., 1834, vol. XXVIII, p. 543.

disintegrated, then a bastard birth was the inevitable result.³⁶

Lovers' quarrels have many different reasons that are not unique to any age or place, but nineteenth-century England did impose certain values on its citizens which should be noted. There were some lower class men who aspired to be "respectable" skilled workers. Ironically, it was this aspiration which required them to "postpone immediate gratification for future reward, ... accompanied by the necessity of delaying marriage to the point that illegitimate birth was sometimes the regrettable result."³⁷

Pregnant females who hoped to get married were also in a delicate predicament. In an effort to avoid social scandals, employers were always wary that their female employees remained chaste. Indeed, this concern was so extreme, that Parson Woodforde voiced concerns about one servant who was apparently getting a little plump:

I told my Maid Betty this morning that the other Maid Nanny looked so big about

³⁶Alan MacFarlane has suggested four possible categories of events 'causing' bastardy: sexual frustration due to a late age of marriage; change influencing the female's ability to support children; communal living; and failure of social control by kin. See Alan MacFarlane, "Illegitimacy and Illegitimates in English History," in Bastardy and its Comparative History, p. 84. Although all of these factors might be claimed as the cause of a particular bastardy occurrence, the hypothesis that bastardy results from a difficulty encountered during the marriage process, is a structuralist view that is both new and also makes sense of the dynamics involved in courting behaviours.

³⁷Gillis, "Servants", p. 163.

the waist and I was afraid she was with Child, but Betty told me she thought not, but would soon inform me if it was so.³⁸

Obviously, if an employer found one of his servants pregnant, the consequences could be drastic, and might easily impede on the normal course of a courtship. When Parson Woodforde found out that another of his servants was pregnant, he declared his intention "to part with her as soon as possible". This kind of sudden unemployment could easily destroy the bond between a couple who were trying to save what money they could to get married and start a family. In the Woodforde case, however, the servant was obliged to quit because her advanced stage of pregnancy left her too weak to carry out her duties: her employment was "too much for her present situation".³⁹ As an alternative to dismissal, the master might forbid his servant to see her lover. "Once any kind of separation was imposed, contact was very difficult to re-establish."⁴⁰

Thus, if premarital sex was acceptable within a courting relationship, and, because of some problem during the process that led to formal marriage a couple split up, villagers were likely to believe that the innocent pregnant female should receive some kind of support from the man. It

³⁸Woodforde, Diary, p. 149.

³⁹See Woodforde, Diary, p. 473.

⁴⁰Gillis, "Servants", p. 164.

seemed 'just' to the village mind, that since the female had acted under the assumption that she would be married, the father should have to help support the bastard as if he were really married to its mother. In essence, the lower class felt that even though the marriage 'contract' had not been completed, the woman should still be awarded compensatory damages.

This belief was complicated by the stigmatizing character of bastardy. When Samuel Bamford saw his illegitimate daughter Ann for the first time, he commented on the injustice of branding a label on an innocent child:

[She was] a sweet infant, just of age to begin noticing things. It fixed its good-tempered look upon me, smiled, and stretched forth its hands. 'Bless thee', I said in my heart - taking it in my arms, and pressing it to my bosom - 'Bless thee, my dear babe, though my coming has been late, and after long looking for, I will be a kind father to thee. Yes, though a proud and supercilious world many view with contempt the misfortune of thy birth, the more it disparage thee, the greater shall be my love.⁴¹

In the case of a broken courtship, where the emotions of love and maternity had run so high, the support payments in some way helped to palliate the wrong that the lower class perceived had been inflicted on an 'innocent' female.⁴² In

⁴¹Bamford, Early Days, p. 294.

⁴²The Eclectic Review suggested that women had come to consider marriage not as a security, but as a reparation in the form of child maintenance payments, arising out of a permarital pregnancy. The Review went on to suggest that

communities where kinship was so important, it is unlikely that any new proposal for laws which might interfere with the way things had always been would be tolerated. The village believed so strongly in this that it was immune from any group that tried to influence its opinions to the contrary. Inevitably, any upper class legislation would be a hegemonic imposition on the lower class.

IV - The philosophic impetus to reform

Certainly the most important ideas regarding social reform that abounded during the late eighteenth and early nineteenth century were those of Jeremy Bentham and Thomas Robert Malthus. Bentham had addressed himself to making changes in bureaucratic structures which would promote efficiency,⁴³ while Malthus' teachings were a part of the dominant Ricardian economic and social controls.⁴⁴

women who considered marriage in this way had broken a divine law. See Eclectic Review, vol. LX, pp. 421-2.

⁴³A good example of Bentham's 'master plan' is contained in his Constitutional Code. See Jeremy Bentham, John Bowring (ed.), vol. IX, The Works of Jeremy Bentham, (New York: Russell, 1962).

⁴⁴S.G. & E.O.A. Checkland, The Poor Law Report of 1834 (Harmondsworth: Penguin, 1974), p. 22. Malthus is best remembered for his Essay on Population, in which he suggests that the 'geometric' or exponential growth in population would surpass the growth of agricultural production, yielding disastrous consequences. Yet, Malthusianism was not strictly a 'demographic doctrine'. Rather, "its fundamental importance was as a new moral economy." Angus McLaren, Birth Control in Nineteenth-Century England (New

The Whigs were sometimes predisposed to consider any new ideas that would help them in better social administration:

Brougham had long been interested in the poor laws, and no one in the cabinet had more decided views on the handling of the crisis. Unfortunately, ... those views had been forged in the immediate post-war period, the heyday of Malthusian abolitionist sentiment.⁴⁵

It is not surprising, then, that the government was deeply influenced by these two great social theorists.

Other groups, however, did not experience this effect. The small group of Tories, who later opposed bastardy reforms, had always been predisposed to shun outside ideas. With their preference for updating old laws, they ignored Bentham's and Malthus' new ideas. Bentham's and Malthus' new ideas were also irrelevant to the lower class who did not care about the newly founded science of political economy. The effects of Bentham's and Malthus' ideas which are described next, were therefore completely restricted to the group of Whigs who propounded reform and were lost on the Tories and lower class.

Bentham's most important influence on nineteenth-century thinkers was his determination to improve facets of social administration through the process of logical education. His works on bureaucratic reform were so detailed that they possessed both an air of authority and

York: Holmes and Meier, 1978), p. 43. My emphasis.

⁴⁵Dunkley, "Whigs and Paupers," p. 130.

practicability. Indeed, his reform of prison establishments, entitled the Panopticon, seemed so well constructed, that its central idea was adapted by the Whig-appointed Poor Law Commissioner to control the poor relief maintenance of able-bodied paupers.⁴⁶ Bentham's most important contribution to those who possessed a desire for reforming the abused bastardy clauses was the "rationalistic temper that encouraged a break with the past."⁴⁷ While Whigs may naturally have desired some alteration in the abused bastardy clauses because they were willing to accept change, Bentham incited within them the firm resolve to make extensive amendments that might otherwise never have been considered.

If Bentham intensified the response a Whig

⁴⁶Gaols designed on the Panopticon system were planned but few were built. Despite this lack of interest by prison reformers in Bentham's ideas, Poor Law reformers were very interested. The principle of Bentham's reform was that the "condition of a convict doomed to a punishment which few or none but individuals of the poorest class are apt to incur, ought not to be made more eligible than that of the poorest class of subjects in a state of innocence and liberty...." Poor Law reformers eventually adopted the same ideas in their suggestions concerning relief of the able-bodied poor. They wrote that the pauper's "situation on the whole shall not be made really or apparently so eligible as the situation of the independent labourer of the lowest class." See Jeremy Bentham, "Panopticon; or the Inspection House ...", vol. IV, Works, pp. 122-3; 1834 Report, p. 228 and, for a line-by-line comparison of the two sources, S.E. Finer, The Life and Times of Edwin Chadwick (London: Methuen, 1952), p. 75.

⁴⁷Gertrude Himmelfarb, The Idea of Poverty: England in the Early Industrial Age (New York: Alfred A. Knopf, 1984), p. 85.

government would have had to the abused bastardy clauses, Malthus dictated the path this response would follow. Essentially, Malthus believed that population was increasing faster than food production, and without some kind of change, massive starvation was an inevitable result. Like Bentham's suggestions, Malthus' ideas seemed essentially sound to nineteenth-century thinkers, and he was widely read. In addition to popular acceptance, the analytical appeal of Bentham's catalogue of logical deductions was also an element in Malthus' writings: "The power of the Malthusian doctrine lay in its claims to be an objective, scientifically-proven analysis of reality."⁴⁸

Malthus deviated from his subject which concerned population growth, however, and also addressed the question of bastardy. Nineteenth-century thinkers paid as close attention to these hypothetical arguments as they had to the statistically-documented population question. Malthus considered a contract between a man and a woman signified by their marriage. Intercourse and pregnancy outside this contract led to a social inconvenience that was chiefly ~~by~~ ^{on} the woman because she usually had no employment by which she might support her child. Because the maternity of the pregnant female was a certainty, she was in essence caught 'red-handed', and should, therefore, be punished. The man, however, whose identity and paternity could only be

⁴⁸ McLaren, Birth Control, p. 44.

fixed with less certainty, should go free.

In a later essay, Malthus went even further by stating that the goal of Bentham's reforms which he himself valued - namely, "the general happiness and virtue of the society" - would be compromised by moral corruption. Though he conceded that moral evil had not become wide-spread at the time of writing his Essay, he still felt it was a significant problem:

... experience teaches us that much evil flows from the irregular gratification of it [the passion between the sexes] and though the evil be of little weight in the scale ... yet its absolute quantity cannot be inconsiderable, on account of the strength and universality of the passion.⁴⁹

Thus, the method of reducing the abuse of the bastardy clauses was clear to the minds of the Poor Law reformers. Their mentor, Malthus, had not only declared that illicit sex was important enough to be a concern, but that women should be punished while men were freed from paternalistic obligations. This, many Poor Law reformers

⁴⁹For all of the above see, Thomas Robert Malthus, First Essay on Population, 1926, rpt (London: Macmillan, 1966), pp. 202-3 and a subsequent edition of Malthus, An Essay on the Principle of Population or a view of its past and present effects on Human Happiness with an Inquiry into our prospects respecting the future removal or migration of the evils which it occasions, reprinted from the last edition revised by the author (London: Ward, Lock & Co., n.d.), pp. 9 and 445. Also see Ursula Ruth Quixote Henriques, "Bastardy and the New Poor Law", Past and Present XXXVII (1967), p. 109 for her arguments on Malthus' social contract.

decided, was an obvious and effectual route for bastardy clause reform.

Although these reformers had apparently reached their conclusions based on the cogent arguments of Bentham and Malthus, they were not completely faithful to their mentors. Neither Malthus nor Bentham were perfectly committed to a system of social control that was prejudicial to the woman. Bentham, himself, had worked out a system of Poor Law reform. In his suggestions, he had included the power "for apprehending insolvent fathers of chargeable bastards [having to rely on the parish for sustenance] and detaining them until they had worked out their composition money also mothers of ditto for a certain time". Malthus also felt that any system which provided unequal treatment for the fathers and mothers of bastards was "undoubtedly a breach of natural justice."⁵⁰ The second-generation Benthamites and Malthusians of 1834 ignored these claims, and, instead, pursued a system that would supposedly 'improve' the bastardy clauses, but which was predicated on assumptions prejudicial to the woman:

Working class women were ... frequently caricatured as luxuriating in poverty The New Poor Law with its stringent administration based on the policy of 'less eligibility' was a victory of sorts for Malthus' disciples Misery was the 'positive check'

⁵⁰ See Malthus, Essay, 1966, p. 202-3 and Bentham, "Outline of a Work entitled Pauper Management Improved", Works, vol. IV, p. 370.

which held population at a reasonable level....⁵¹

Reformers in 1834 were not the first thinkers to ignore Bentham's and Malthus' suggestion for equal treatment between the father and mother of a bastard. Various tracts written between the appearance of Malthus' Essay and the passage of the New Poor Law advocated the abolition of bastard relief. In 1805, author George Rose felt that the unfortunate number of improvident marriages, which resulted from village pressure on men to marry the women they had impregnated, would justify the gradual abolition of all relief that was given to the mothers of bastard children. One author suggested that nothing "would be half so effectual as a knowledge generally circulated, that children were in future to depend solely for support upon their parents, and would perhaps starve if they were deserted."⁵² Fortunately, none of these suggestions received further

⁵¹ McLaren, Birth Control, p. 45.

⁵² See George Rose, Observations on the Poor Laws, and on the Management of the Poor, in Great Britain, arising from a consideration of the Returns, now before Parliament (London: J. Hatchard, 1805), pp. 7-9; James Willis, On the Poor Laws of England (London: J. Ridgeway, 1808), pp. 35-6; and Anonymous, An Essay on the Practicability of Modifying the Present System of the Poor Laws (Andover: R. Maud, 1819), pp. 30-1. Not all writers adopted Malthus' belief that providence was interfered with by the Poor law. One author suggested that "improvident marriages" were actually God's will, and represented an effort to maintain the family system. See Samuel Roberts, A Defence of the Poor Laws with a Plan for the Suppression of Mendicity and for the Establishment of Universal Parochial Benefit Societies, by Samuel Roberts (Sheffield: James Montgomery, 1819), pp. 16-7.

examination. Thus, the reformers of 1834 followed the same lead that previous social reformers had followed. Without any consideration of equal treatment for the father and mother of a bastard, the English government prepared to make the reforms to the bastardy clauses that appeared to be all too obvious.

V - The appointment of a whiggish Poor Law Commission

While the government had decided on the necessity of reform, a faction of the upper class Tories and the lower class villagers really took no position. This is not to say that they were opposed to reform. Certainly, the Tories at least, were willing to consider amendment to the bastardy clauses if the proposed changes were not too drastic. Naturally enough, then, the government had to frame its suggestions for reform before the opposing factions could respond to them. The remainder of this chapter, will detail how the government's suggestions for reform were designed, while subsequent chapters will discuss the opposition that bastardy clause reform met.

Even before the government inquired into Poor Law reform, the basic form that amendments were likely to take had already been established by the early nineteenth century's predominant ideologies. Bentham and Malthus were all widely read at this time, and scholars preferred to

argue about how much good their reforms would achieve for society, rather than if they would do any good at all. Yet, while these two men were the predominant ideologists of the time and their spirit was undoubtedly important to the government, their effect on the commission which actually investigated the abused Old Poor Laws on the government's behalf, must be further investigated. To accomplish this, each individual on the government-appointed Poor Laws Commission must be examined.

The Lord Chancellor announced the formation of the Commission at the beginning of February, 1832, and the initial suggestions for candidates were received by the Secretary to the Home Department, Lord Howick. By the end of February, the Lord Chancellor announced that the Commissioners had been appointed and only the posts of the Assistant Commissioners, who would later make local inquiries throughout the country, remained empty.⁵³ The Commission which was then appointed largely had an extensive Benthamite and Malthusian background.

Nassau Senior was certainly one of the most important members of the Commission. He possessed considerable weight

⁵³For all the above, see S. & B. Webb in Brundage, New Poor Law, p. 19 and Great Britain, Parliament, Hansard, Readex Microprint Edition, ed. Edgar Erickson, 1834, vol. IX, 1146 and vol. X, 723. This is hereinafter referred to as Hansard. The suggestions for Commissioners were later taken under additional advisement by Brougham, a cabinet member with some interest in the Poor Law. See Brundage, New Poor Law, p. 20.

with the government, since he had felt free to personally suggest two individuals who would also be deserving of a Poor Law Commissionership. No doubt the reason for his power was rooted in his reputation as a renowned Oxford Professor of 'political economy', the science that was so closely linked to both Bentham and Malthus.⁵⁴ In 1831, he sent a memo to the Whig Lord Melbourne, claiming that the three great social evils facing England were a partial redundancy in population, the maladministration of the Poor Laws, and an inadequate educational system. One major abuse of the Poor Law, Senior maintained, was the catalyst the bastardy clauses gave to improvident marriages and population increase.⁵⁵

Dr. J.B. Sumner, the Bishop of Chester and later the Archbishop of Canterbury, also received a position as a Commissioner. Besides having been Senior's tutor at Eton some years before, Sumner was also a Malthusian. In an early tract, he had defended both Reverend Malthus and his theories on population from critics. Sumner, like Malthus, believed there was a divine intervention involved in population growth. He shared the Malthusian vision of a "benevolent God who had used the law of population for His

⁵⁴Brundage, New Poor Law, pp. 19-20.

⁵⁵Memo by N.W. Senior, 31 January, 1831, as quoted in Peter Dunkley, The Crisis of the Old Poor Law in England, 1795-1834: An Interpretive Essay (New York: Garland Publishing, 1982), p. 96.

own providential purposes....⁵⁶

Bishop Blomfield of London was the Chairman of the Commission, and, like Sumner, he was a Malthusian. This ideological position dated from 1826 when he had propounded subsidizing emigration to help relieve England of its poor. Malthus also had believed in emigration to reduce the populace.⁵⁷ No doubt because of Blomfield's religious background, he too would believe the populace should be ruled by God and his acts of 'providence' or 'natural order'. This idea would become very important after the Commission reached its conclusion to abolish the putative father's liability believing it to be God's will. In the 'natural state', the Commissioners would later maintain, God provided no such relief, and neither should the English government.

Walter Coulson was another one of the Commissioners, this time from the Benthamite school. He had served as Bentham's secretary and obtained a position with the Morning Chronicle through Bentham's influence. The Chronicle

⁵⁶Himmelfarb, Poverty, p. 156 and Thomas MacKay, A History of the English Poor Law: Volume III: From 1834 to the Present Time, 1900, rpt (London: Frank Cass, 1967), p. 31.

⁵⁷See Owen Chadwick, The Victorian Church, Part I (London: Adam and Charles Black, 1966), p. 95 and Himmelfarb, Poverty, p. 156. Senior wrote to Blomfield's son, saying that the Bishop had been present at all of the Commissioner's meetings and, with Bishop Sumner's help, was instrumental in allowing the presentation of the 1834 Report. See Alfred Blomfield, Memoir of Charles James Blomfield, vol. I, pp. 203-4.

was one of the few secular papers which, along with the evangelical Christian Observer and the Unitarian Repository, gave support to the Bill which resulted from the Poor Law Commissioners' eventual Report.⁵⁸

Edwin Chadwick was also a Benthamite. Although he was not initially appointed as a Poor Law Commissioner, he and James Traill joined this body in 1833. Chadwick lived in Bentham's house during the last year of his mentor's life, and "there can be little doubt that the principles which Mr. Chadwick applied with so much originality and zeal were derived from the teaching of Bentham." Although he greatly assisted the Commission in its inquiry, and is a perfect example of a man with an inborn desire to reform all old laws, Chadwick played only a small part in bastardy clause reform and is therefore rarely discussed in the remainder of this thesis.⁵⁹

Three others were also appointed as Poor Law Commissioners. William Sturges-Bourne, who had been involved with a previous poor law inquiry, Rev. Henry Bishop, who had previous practical experience in dealing with local Poor Law practice while living in Oxford, and Henry Grawler, were the

⁵⁸Owen Chadwick, Victorian Church, p. 96 and Dictionary of National Biography, eds. Sir Leslie Stephens and Sir Sidney Lee (London: Oxford University Press, 1917), vol. IV, p. 1250. The Dictionary is hereinafter referred to as the D.N.B.

⁵⁹See Thomas Mackay, A History of the English Poor Law: Volume III: From 1834 to the present time, rpt. 1900, (London: Frank Cass 1967), pp. 37-40 and pp. 54-5; Finer, Chadwick, pp. 12-39 and p. 70.

three men that rounded out the list of Commissioners.⁶⁰ While these men had no detectable philosophical bias, there was no lack of Benthamite or Malthusian ideology amongst the other Commissioners. It was these ideologies that moulded the Commissioners' findings. While Bentham had imparted the spirit for reform, Malthus had inadvertently dictated that 'providence' forbade state intervention in bastardy cases.

VI - A biased Commission

goes to work.

While the observer would suspect the Commission held a strong bias because of its membership, this does not necessarily mean that the Report they generated was biased. To prove this, the next step of actually inquiring into the bastardy clauses must be examined.

The Commissioners first decided that a questionnaire, distributed nation-wide to each parish, would yield satisfactory results on which to formulate reforms for all the

⁶⁰See Mackay, English Poor Law, pp. 22 and 31; and Brundage, Poor Law, p. 20. Little is known or can be deduced about the moral values of Rev. Henry Bishop, William Sturges-Bourne, Henry Grawler or James Traill. They either do not have biographies that probe their moral concerns, or do not have biographies at all, in the D.N.B. Neither have they written any books that would yield any information about their moral beliefs according to the National Union Catalog pre-1956 Inprints (Chicago: Mansell, 1968) or the British Museum General Catalogue of Printed Books, Photolithographic edition to 1955 (London: Trustees of the British Museum, 1961). These are hereinafter referred to as the N.U.C. and the B.M.G.C. respectively.

Poor Laws, including the bastardy clauses. Senior and Chadwick designed this questionnaire, and, in so doing, played a central role in generating the results that the Commissioners wanted to hear. Being disciples of both Bentham and Malthus, the Commissioners believed that the Poor Laws needed reform, and that this reform must accede to God's will. Therefore, to authenticate their preconceived notion, the old bastardy clauses had to be shown as both abused and immoral. To this end, the Commissioners posed questions that begged to have a negative and parsimonious response. As a continuation of this 'negativism', the Commissioners were not prepared to take the positive step of asking the poor what relief they needed, but preferred to ask the parishes if it was feasible to reduce this maintenance.⁶¹

Since numerous parishes sometimes answered open-ended

⁶¹The Poor Law Commission posed the following questions regarding bastardy:

"What is the allowance received by a Woman for a Bastard, and does it generally repay her, or more than repay her, the expense of keeping it? and is the existing Law for the punishment of the Mother whose Bastard Child becomes chargeable often executed for the first or for the second offence?"

"What Number of Bastards have been chargeable to your Parish? and what has been the expense occasioned by them during each of the last Five Years? and how much of that expense has been recovered from the putative Fathers? and how much from the Mothers?"

"Can you suggest any and what Change in the Laws respecting Bastardy?"

The questions asked in the Rural Queries, Appendix B1, pt. V, ques. 47-49 are the same as those asked in the Town Queries, Appendix B2, pt. V, ques. 55-7. See SP., 1834, vol. XXXVI, p. 550.

41
questions with long paragraphs, it is not surprising that the results of the questionnaire could not be tabulated. Declaring the replies "imperfect", the Commission dispatched its group of Assistant Commissioners to every part of the country, and empowered them "to sift the facts and opinions contained in the different replies" of the questionnaires. The goal of this process was to "ascertain the state of the poor by personal inquiry among them." Yet this second aim was never completely realized, since the Assistants concentrated more on reporting the sometimes hearsay evidence and views of middle-class parish officials, than they did reporting the testimony of the lower class poor. Like the Commissioners' questionnaires then, the Assistants inevitably yielded negative impressions.

Unlike the case of the questionnaires, which had asked leading questions devised by the Commissioners themselves, the Assistants were apparently given a free hand. In an instructive pamphlet, the Assistants were informed that bastardy was "one of the most important subjects" under investigation, and that they should keep a daily journal and send weekly reports from the counties under investigation to London. Unfortunately, none of these diaries are extant. The Commissioners did charge their Assistants to dwell "principally on those facts from which some general inference may be drawn, and which form the rule rather than the exception." Yet, despite this sugges-

tion that invited dwelling on the negative abuses experienced in most parishes, while ignoring the successes of the few parishes where new ideas of administration might have been learned, it appeared that the Poor Law Commissioners had not attempted to influence their Assistants' findings.⁶²

This outward appearance of non-interference by the Commissioners was an illusion. Chadwick had apparently disguised his own opinions in instructions other than the Assistant Commissioner's handbook. "His method was to coach the Assistant Commissioners and put them forward to raise his ideas."⁶³ Yet these negative impressions did not necessarily motivate the Assistant Commissioners. One Assistant, John D. Tweedy who investigated West Yorkshire, reported that he was very conscious of the "instructions furnished to me" which had suggested that the old bastardy

⁶²For all the above, see Brundage, New Poor Law, pp. 21-3 and Great Britain Reports, Instructions from The Central Board of Poor Law Commissioners to Assistant Commissioners, n.p., n. pub., n.d. Others too, suggest that the preconceptions of Senior and Chadwick were born out in some preselection of the evidence. See G. Kitson-Clark, Churchmen and the Condition of England: 1832-1885; A Study in the Development of Social Ideas and Practice from the Old Regime to the Modern State (London: Methuen, 1973), p. 152. Assistant Commissioners did not necessarily have to limit themselves to carefully packaged commentaries. Ashurst Majendie wrote: "My apology for a degree of minuteness; which will, I fear, appear very tedious, is, that I am anxious not to be supposed to give an exaggerated representation, by a selection of extreme cases, but to prove, by many examples, the real state of the country." See SP., 1834, Vol. XXVIII, p. 169.

⁶³R.A. Lewis, Edwin Chadwick and the Public Health Movement, 1832-1854 (London: Longman Green, 1952), p. 22.

clauses operated to promote the abuse known as 'improvident' marriages. Tweedy found this was not the case in his district.⁶⁴ Thus, while the Commission failed to completely control the character of proposals submitted to them, these appointed officials still exercised considerable hegemonic mastery. Clearly, such control acted as a barrier to any true spirit of inquiry and understanding.

VII - The Commission produces preliminary findings

The Commission's inquiry was largely restricted, then, to the weekly reports that their Assistants soon started sending back from the provinces. The Government was impatient during this period of the inquiry, however, and pressed the Commission for visible signs of the efforts that they were making in the cause of reform. As a result, the Poor Law Commissioners produced a four hundred page book of Extracts, that they based on only the initial weekly reports of the Assistant Commissioners. This popular text sold fifteen thousand copies while a subsequent two hundred page edition of the Extracts sold ten thousand copies.⁶⁵ Since this book of Extracts, containing the paraphrased feelings of the Assistant Commissioners, affected public opinion more than the Assistants' completed reports did, it is worth examining.

⁶⁴Sp., 1834, vol. XXVIII, p. 735.

⁶⁵Himmelfarb, Poverty, p. 155.

Generally the reports of the Assistant Commissioners were not favourable concerning the bastardy clauses. All of the parishes discussed in the Extracts, save two, found the cost of maintaining bastards very high.⁶⁶ While this expense offended the pocket book, the Assistants also reported events that 'offended' morality. They reported that extortion and perjury were frequently alleged to have occurred under the old bastardy clauses. Furthermore, the Assistants found the old bastardy clauses did little to deter premarital sex and its consequence of bastardy. The Assistants suggested that the custom of hiring servants to live on farms away from parental superintendence was one cause of bastardy. Worse yet, the bastardy clauses were even ineffectual in dealing with the bastard-bearing daughters of small farmers who were rarely punished because of their class.⁶⁷

Since some Assistants felt the Old Poor Law was ineffectual because it failed in forcing the father of a bastard to indemnify the parish, because it allowed criminal abuses such as extortion and perjury, and because it failed

⁶⁶For high costs to the parish, see Great Britain, Report, Extracts from the Information Received by His Majesty's Commissioners, as to the Administration and Operation of the Poor Laws, published by authority (London: B. Fellows, 1833), pp. 84, 101, 105 and 116. For low cost to the parish, see Extracts, p. 358 and the Okeden Report on More Criche, Dorset, n.p.

⁶⁷On extortion and perjury, see Extracts, pp. 122, 264-5 and 385. On charging sexual practices see Extracts, p. 404.

to deter both lower class servants and the middle class from bastard-bearing, they decided to make some suggestions on exactly how the old bastardy clauses might be reformed. Yet, despite the major abuses that the book of Extracts reported, only Assistant Commissioner Cowell felt the bastardy clauses should be abolished. He wrote that even though "the man may in all cases be as guilty as the woman; and it may seem hard or unjust to punish ... the weaker and more helpless of the two ...," bastardy could only be decreased by absolving the putative father of liability for his children and giving poor relief to the woman only after three to six months of imprisonment.⁶⁸

In contrast to Cowell, three Assistant Commissioners adopted the less reactionary tack of suggesting changes to the bastardy clauses that could work under the loose framework that the Old Poor Laws provided. C.P. Villiers reported his experience of a parish which only gave relief to a bastard child inside the unpleasant accommodations of its local workhouse rather than at the home of the mother. Villiers apparently felt that, if this were a nation-wide practice, it might deter women who thought a bastard child would provide them with an 'income' from its putative father. Edwin Chadwick reported a modified version of this practice when he wrote of a parish which only gave the mother 1s. a week for the maintenance of her bastard child.

⁶⁸ Extracts, pp. 398-9.

even if it collected more from the putative father. Only if the bastard were put in the workhouse did it receive full relief. Assistant Commissioner Henderson also suggested a solution to the problems of bastardy he had uncovered. He would reduce the loss the parish suffered from making bastardy maintenance payments through a stricter collection of the putative father's debts to the parish. At the same time, Henderson would attempt to reduce bastard-bearing altogether by attaching further social stigmas to it.⁶⁹

The Poor Law Commission, which was largely composed of members with Benthamite and Malthusian ideologies, now faced a problem. The Benthamites wanted reform, but yet three out of the four Assistants who actually suggested changes to the bastardy clauses felt they could be accomplished within the framework of the Old Poor Law. At the same time, the Malthusians not only wanted bastardy to decline, but felt it should be stopped 'naturally' by eliminating relief to bastard children's mothers. Again, three of four Assistant Commissioners, despite certain directives, believed that a reduction in bastardy could be accomplished by reducing, rather than eliminating, child support payments to the mothers of bastards. Therefore, the Commissioners were apparently faced with a choice: they could either accede to the suggestions of their Assistants

⁶⁹ For Villiers' suggestions, see Extracts, pp. 158-9; for Chadwick's, see his report on Cookham, Berkshire, (n.p.); and for Henderson's, see p. 371.

in the book of Extracts, or they could ignore their Assistants, and, utilizing only the negative reports concerning abuse, reach a final conclusion that apparently 'substantiated' their preconceived Benthamite and Malthusian notions. Instead, the Commissioners ignored both choices in favour of a third option. Since the Extracts were incomplete, they turned to the final reports from each of their Assistants in an effort to substantiate their own ideology. Although these reports remained unpublished, and therefore less known, the preponderance of evidence dealing with the bastardy clauses lay there. For this reason, this source will be examined to see if it could account for the Commissioners final suggestions, which did indeed conform to Benthamite and Malthusian ideology.

VIII - The Commission produces a final report

In examining the final reports of their Assistants, the Commission had to examine twenty-eight different submissions, commenting on most areas of England and Wales. From these twenty-eight, the Commissioners could dismiss seven reports which did not comment on bastardy in any way. Another five Assistant Commissioners failed to offer suggestions concerning the bastardy clauses, although they did indirectly indicate how they felt about the law.

Even though three seemed to be against the old bastardy clauses, one offered a balance of evidence both opposing and in favour of them, and the fifth offered evidence supporting them, this evidence is very much immaterial. As one might learn from the Extracts, there is little doubt that the old bastardy clauses were abused. The question is, would the Commissioners ignore or diminish the suggestions of their Assistants concerning reform. Therefore, to address this question, the actual suggestions for change to the bastardy clauses that were made in the sixteen remaining reports must be considered.⁷⁰

Of the sixteen Assistant Commissioners who actually expressed an opinion on whether the practice of "swearing the father" should continue, eight believed the practice should be abolished, while seven felt it should stand. There was one suggestion that the practice of the parish relieving the mother be abolished and that instead she should turn to the magistrate who would order support from the man. Thus, while eight Assistant Commissioners expressed their support of abolishing the old bastardy clauses and their principle that both the father and the mother should support their child, all together, eight others wanted to maintain the principle of joint liability.

A paradox quickly appears when one compares the

⁷⁰For a table containing the opinions of each Assistant Commissioner and the districts they investigated, see Appendix A.

findings of the Assistants with those of the Commissioners in their final Report. In the Extracts, three of the four Assistants who made suggestions for reforms wanted to maintain the principles of the Old Poor Law regarding bastardy. In the completed reports, eight of the sixteen Assistants who made recommendations regarding bastardy wanted to retain the principles of the Old Poor Law. In the Commissioners' Report, however, there is no mention of this. The Commissioners failed to even say that the opinions regarding reforms to the bastardy clauses were evenly split among their Assistants, and instead, sought to use only negative evidence that was prejudicial to the old bastardy clauses to document their opinions. Their investigation was not an inquiry but rather a 'witch-hunt'; a quest for information they could use to validate the Benthamite and Malthusian reforms that they wanted enacted.⁷¹

There are many examples of abuse which the Commissioners used to substantiate their desire for extensive reforms to the old bastardy clauses. Many of these abuses, however, could easily have been eliminated without the radical reforms that the Commissioners eventually proposed.

⁷¹The Commissioners even solicited information on bastardy from other countries in order to justify their solutions. See 1834 Report, pp. 348-9 and SP., 1834, vol. XXXIX. Since this kind of material cannot be appraised without inquiring into the state of bastardy in many other countries, it is not dealt with in this thesis.

The Commissioners failed to consider, or even discuss, the use of moderate reforms, because moderation would fail to accommodate the Benthamite and Malthusian ideology they collectively propounded. One instance of abuse involved the London resident Mary Shave, who had given birth to a bastard, but was refused relief by her parish's officers. In an attempt to appeal her case, she lined up with other vagrants at the police office before she presented her story to the magistrate. Naturally, she exchanged this story with others waiting with her. A woman claiming to be Mary Shave then appeared in court and was immediately awarded 1s. 4d. "Soon afterwards, the real Mary Shave appeared and substantiated her claim, and she was relieved. The other had made off with the money." Here, clearly, it is the circumstances of administration which permitted the abuse, rather than the fact that bastard-bearers received relief. Indeed, this particular problem of administration in the police office was soon recognized and changed.⁷² Nevertheless, based on these kinds of abuses, the Commissioners maintained that the liability of the man toward his bastard child should be abolished.

Another problem that the Poor Law Commissioners addressed was the increasing parish expense of maintaining bastards whose fathers had refused or escaped paying affiliation orders. Again, this loss by the parish exper-

⁷²For all the above, see SP., 1834, vol. XXIX, p. 391.

enced under the Old Poor Law was the fault of ineffective legal administration. Such an administrative flaw meant that the parish failed to recover two-thirds or even half of the money from the putative fathers, that it had paid to the mothers on the behalf of bastards. For example, in the parish of Mildenhall, in the six quarters leading to Midsummer 1832, £91 . 8s. 9d. was paid out on the bastard account, and only £37, 19s. was recovered from the putative fathers. Meanwhile, the parish had spent £93. 10s., 4d. on the legal administration incurred in the "removal of paupers, attendance on justices, apprehension of putative fathers, orders of affiliation, and constables bills..." It was reckoned that if only one quarter of this was related to the enforcement of bastardy orders, the parish was barely indemnified at all. Because the system of legal administration was so backward, the expense of recovering money owed by fathers, especially by fathers who 'absconded' or evaded parish officers, was greater than the sum the father owed.⁷³

Due to these problems in legal administration the parish officials who were interviewed by the Assistant Commissioners did suggest solutions that were duly noted in the Assistants' reports. While the solutions the parish officials developed regarding legal administration might not

⁷³sp., 1834, vol. XXVIII, p. 542. For more on parish losses, see SP., vol. XXVIII, pp. 10, 17, 315, 343 and 443.

have been perfectly practicable for enactment, it is nevertheless significant that the Commissioners completely ignored them instead of stating why the proposals were unacceptable. The solutions were ignored, then, because they failed to fit the Benthamite and Malthusian solutions the Commissioners favoured.

Basically, the parish officials suggested two categories of solutions which dealt with the abuse of the man avoiding or escaping the payments due to the parish under an affiliation order. Some officials suggested that the parish should stop giving a verbal warning to the man, which threatened him with arrest unless he paid his arrears to the parish.⁷⁴ If the man had no warning that there was a warrant for his arrest, the officials contended, he might be captured before he absconded. While some believed that this would actually reduce the parish's loss on its bastardy account,⁷⁵ others felt it was the only logical change in a desperate situation:

Suggestions for altering the bastardy laws we acknowledge we have none. We think, however, that if the magistrates were enabled to grant a warrant against putative fathers neglecting to pay bastard arrears, it would save the principles a great deal of money for a demand of arrears only acts as a hint to be off before a warrant can be used.⁷⁶

⁷⁴SP., 1834, vol. XXIX, p. 734, and vol. XXIX, p. 92.

⁷⁵SP., 1834, vol. XXVIII, p. 343.

⁷⁶SP., 1834, vol. XXIX, p. 101.

In addition to this legal reform, the parish officials also hinted at a complete reorganization of the method of collecting maintenance payments from putative fathers. This involved the introduction of compounding. Essentially, 'compounding' involved the parish collecting one large payment from the putative father, rather than hundreds of small payments made each week over the course of a bastard child's maturation.⁷⁷ Because this payment was made all at once, the officials had apparently eliminated the problem of tracking down a father who would have the opportunity to abscond at any time during a period of several years. Although the practice of compounding was illegal under the Old Poor Law,⁷⁸ many parishes had nevertheless collected sums of £3 to £50.⁷⁹ While the parish had only recovered a part of the money it might spend on maintaining a bastard until it reached adulthood, compounding seemed to offer a good way of combatting the absconding father,⁸⁰ especially where the man possessed the mobility of a day labourer.⁸¹

⁷⁷Compounding was defined as "a sum of money according to the father's means [being] at once levied without the necessity of previous notice [the verbal warning that usually preceded arrest]..." See SP., 1834, vol. XXVIII, p. 270.

⁷⁸SP., 1834, vol. XXVIII, p. 119.

⁷⁹See SP., 1834, vol. XXVIII, pp. 544 and 762.

⁸⁰SP., 1834, vol. XXVIII, pp. 120-1.

⁸¹SP., 1834, vol. XXVIII, p. 117.

So far, then, the Commissioners had examined the reports of their Assistants who were divided on the question of relief to the bastard mother. They had also examined some of their Assistants' suggestions for various reforms, including improvements to general administrative practices, better procedures for the arrest of putative fathers who were in debt to the parish, and the use of 'compounding' as a way of at least partially indemnifying the parish for its expenses in maintaining bastards. Yet the Commissioners completely ignored these suggestions, which were never discussed in their final Report. The Commissioners did not restrict themselves, however, to ignoring proposals for new procedures. They also ignored evidence that suggested the old bastardy clauses were working effectively and which might jeopardise the supposedly pressing need for reform.

One of the great concerns of the Commissioners was that improvident marriages often occurred in cases of premarital pregnancy. They believed that "marriage will always be preferred by the woman if she can attain it."⁸² To enhance the likelihood of marriage, then, one Assistant Commissioner suspected that "it is found, and the fact is so flagrant as to make a part of all testimony on this subject,

⁸²1834 Report, p. 172. Assistant Commissioner Alfred Power who wrote that forced marriage was a part of all testimony on the Poor Laws, could only produce the proof that there had been a number of 'young marriages' in a small village in a certain year. See SP., 1834, vol. XXVIII, p. 265.

that the female in very many cases becomes the corruptor".⁸³

The Commissioners also believed that 'improvident' marriages were founded on more than the schemes of an evil seductress. They felt that many lower class men might think it would be cheaper to marry a woman than to pay her child support. The parish was also a party to improvident marriages, the Commissioners thought. If the man could not afford to make affiliation payments, the parish officials threatened him with imprisonment: The magistrates "do not put it in so many words," but the man nevertheless understood that "such and such will be the case."⁸⁴ Indeed, there was evidence before the Commissioners that money was held out by parish officers as an incentive for a reluctant man to marry.⁸⁵

While the parish might want a couple to marry so the single mother would not apply for support, the Commissioners were less than impressed with such ingenuity. They pointed to women who still maintained friendships with their peers after pregnancy and suggested they were 'free from shame'.⁸⁶ The idea that the "parish will right her" for her own 'im-

⁸³See Power's evidence as cited in the 1834 Report, p. 173. This evidence is quoted from SP., 1834, vol. XXVIII, p. 265.

⁸⁴SP., 1831, vol. VIII, pp. 387 and 605.

⁸⁵SP., 1834, vol. XXVIII, p. 545.

⁸⁶SP., 1834, vol. XXVIII, p. 763. The 1834 Report also suggested women were free of shame. See p. 173.

morality' was abhorrent.⁸⁷ To the Commissioner's minds, the system all too often produced "a marriage of which we may estimate the consequences, when we consider that it is founded, not on affection...but on fear on one side, and vice on both."⁸⁸ The evil triumvirate of a female seductress, a rationalizing immoral male, and a miserly scheming parish had to be crushed. Thus, the Commissioners could not agree more than with their Assistant who insisted on the importance of female virtue:

In collecting opinions upon a change in the Bastardy Laws,...every moral consideration seems to coincide with the object of a saving to the parish. The virtue of the female, her dependence on character and the personal inconveniences of incontinence to herself, are the materials of which most advantage might be taken on behalf of the community; and in her resistance of temptation the cause of chastity must ever find its safest stronghold. The object, therefore, will be to fortify virtue by the suggestion of all providential motives....⁸⁹

Yet the Commissioner's conclusion that the Old Poor Law should be abolished because it promoted 'improvident' marriages was not altogether founded on irrefutable evidence. Power, for example, who suggested that the woman rather than the man practised seduction, founded his questionable observation on the village of Girton, whose populace of 331 in one year experienced twelve marriages

⁸⁷SP., 1834, vol. XXVII, p. 454.

⁸⁸1834 Report, p. 168.

⁸⁹SP., 1834, vol. XXVIII, p. 265.

where "all parties were young."⁹⁰ Although there were many parish officials who believed the old bastardy clauses did promote 'improvident marriage', there were others who either felt that this was not the case, or who claimed that the parish's threat of imprisonment, albeit unconscionable, was not effective in inducing the man to marry.⁹¹ Assistant Commissioner John Tweedy found that often women would not swear to an affiliation order because they wanted the man to marry them. They seemed to feel that if they 'swore to the man' he might feel some kind of pressure which would make him not want to marry. This was precisely the opposite effect that Commissioners propounded. Tweedy suggested that women often held off on an affiliation order until they had two or three children by the same man.⁹²

The Commissioners not only ignored this evidence which countered prevailing opinion, but even twisted some factual accounts reported by their Assistants, so that they could more readily be used as evidence against the successful operation of the old bastardy clauses. One of their

⁹⁰See Power's evidence as cited in the 1834 Report, p. 173. This evidence is quoted from SP., 1834, vol. XX-VIII, p. 265.

⁹¹SP., 1831, vol. VIII, pp. 522 and 394 respectively.

⁹²SP., 1834, vol. XXVIII, pp. 735 and 810. Modern commentators also believe that the inducements offered by the parish if a couple were to get married were hardly enough for the poor to wed and breed recklessly. See Mark Blaug, "Myth of the Old Poor Law", Journal of Economic History, XXIII (1963), p. 161.

concerns, for example, was that young men who were alleged to be fathers and who were too poor to put up a security could be gaoled for several months until after the birth of 'their' child when an affiliation action could take place. The Commissioners felt that this amounted to imprisonment without trial; but rather than trying to solve this legal and administrative flaw, they sought to denigrate the whole process of 'swearing the father' and, therefore, paternal liability:

At Exeter, an apprentice under eighteen years of age, was recently committed to the house of correction for want of security. It was admitted that there was no chance of his absconding but the overseers said he had been brought for punishment. The woman stated that she was only three months gone with child; and thus the boy is taken from his work, is confined five or six months among persons of all classes, and probably ruined forever, on the oath of a person with whom he was not confronted, and with whom he denied having had any intercourse.⁹³

The Commissioners went on to criticize the youth's inability to defend himself because the initial tribunal requiring a security or 'bail' was unable to hear such a defence:

he was punished simply for his youth, poverty and friendlessness for not being able to find security or find sureties; and his punishment was five or six month's imprisonment - a punishment severe even to hardened criminals, but absolutely ruinous to a boy of eighteen.⁹⁴

⁹³From Captain Chapman's Report, SP., 1834, vol. XX-VIII, p. 456 as cited in the 1834 Report, p. 167.

⁹⁴1834 Report, p. 167.

The Commissioners used this report as evidence that the requirement of the court for security was unjust and, therefore, one of the reasons why lower class men should be absolved of liability. More exceptional than the Commissioners' quotation from Assistant Commissioner Chapman's report on this Essex apprentice, was their excision of Chapman's opening notation:

Committals for want of security to indemnify the parish were not numerous, in consequence of the facility with which such security can be provided, as well as of a strong feeling on the part of the magistrates against committing a person who has had a child sworn to him, without having been confronted with the mother.

Chapman had given the case the Commissioners held up and paraded about as an exception to the rule, rather than the rule itself. Indeed, he goes on to say that "the numbers of committals for want of security to indemnify the parish," in Cornwall and Devon combined for 1831-2 totalled all of twenty-three.⁹⁵ Many others agreed that the difficulty of finding security was not as great as one might believe.⁹⁶ One Assistant Commissioner seems disgusted with the ease with which pitmen, who made good money, could provide security. (They could not be imprisoned until after the child's birth, and then only for non-payment of a sum

⁹⁵Sp., 1834, vol. XXVIII, p. 456.

⁹⁶Sp., 1831, vol. VIII, p. 387.

ordered on them by affiliation orders.⁹⁷ Clearly the Commissioners edited the data to confirm their own preconceptions.

The Commissioners had other concerns about the affiliation process. Not only were the circumstances surrounding the man's detention unfair, but so was the procedure of affiliation. Because the woman got the same amount from the parish as the parish did from the putative father, it was apparently in the woman's interest to affiliate a rich man. The magistrates would then order the father to make a greater maintenance payment to the parish, which was in turn given to the mother.⁹⁸ Since the affiliation procedure did not require the parish to provide corroborating evidence for the mother's testimony, the Commissioners suggested she frequently perjured herself to obtain a large order.⁹⁹ It was the opinion of most parish officers in one district that nine out of ten bastards in towns were falsely sworn.¹⁰⁰ The Commissioners also gave many examples of women who had affiliated men who, for various reasons, could not possibly have fathered their children.¹⁰¹

⁹⁷sp., 1834, vol. XXVIII, p. 135.

⁹⁸sp., 1834, vol. XXVIII, p. 121.

⁹⁹1834 Report, p. 171.

¹⁰⁰1834 Report, p. 170.

¹⁰¹sp., 1834, vol. XXVIII, pp. 457, 596 and 651.

The Commissioners never substantiated statistically or in other ways, with the exception of a few case histories, how wide-spread the problem of perjury was. Furthermore, despite the existence of perjury, it never occurred to the Commissioners that with the mere requirement of corroborative evidence, it could be eliminated. Instead, the crime of perjury was only another problem that was added to the list of reasons why the old bastardy clauses should be abolished.

The Commissioners added one other large problem to this list. Whether a man was affiliated to the child or not, the indigent woman still received a maintenance payment for her child from the parish. This sum was even higher if the mother had succeeded in affiliating her child to a wealthy man. It was this payment, the Commissioner's believed, that tempted the woman to promiscuity¹⁰² and 'prostitution'. It seemed to them that women were actually getting paid for having bastards; they were profiting from immorality.¹⁰³ The Commissioners duly reported the belief of one witness who declared women "don't in reality keep the children; they let them run wild and enjoy themselves with the money."¹⁰⁴ The child maintenance payment in "pauper

¹⁰²See SP., 1831, vol. VIII, p. 623.

¹⁰³See SP., 1834, vol. XXVIII, pp. 6, 682 and 818.

¹⁰⁴SP., 1834, vol. XXVIII, p. 140 as cited in the 1834 Report, p. 172.

language" supposedly equalled "Pay."¹⁰⁵

It was not at all clear that women could actually profit from bastardy, as the Commissioners had suggested. At a time when the day's pay for a labourer was 1s. 8d.,¹⁰⁶ the mother of his child might only get a weekly allowance of 1s. 3d. to 1s. 8d. A more substantial fellow might pay a maximum of 3s. Yet, the daily cost of sending a toddler to 'school' was 2d., which might quickly consume any affiliation payment the mother might receive. One Assistant Commissioner reckoned that, while the mother might pocket money before the child was four and after it was eight, she could only sustain her family in the interim years.¹⁰⁷

To quash any disbelief that the mother might not be profiting from bastardy, then, the Commissioners promptly inflated the sums that mothers received. The sums in the country had now 'grown' from about 1s. 6d. a week to 2s. a week. Likewise, well-off townfolk, the Commissioners alleged, were supposedly contributing more than 3s. a week

¹⁰⁵Sp., 1834, vol. XXVIII, p. 169 as cited in the 1834 Report, p. 170.

¹⁰⁶After a set of riots for higher wages in 1830, it was revealed weekly wages in Wiltshire were at the very low rate of 6s. or 7s. a week. See J.L. and Barbara Hammond, The Village Labourer, 1760-1832; A Study in the Government of England before the Reform Bill (New York: Kelley, 1967), p. 259. On proposing a new system for poor relief, J. Richardson cites labourers' wages in Norwich as being 9 or 10 shillings a week. See J. Richardson, A Letter to the Right Hon. Henry, Lord Brougham and Vaux... (Norwich: Bacon and Kinnebrook, 1831).

¹⁰⁷Sp., 1834, vol. XXIX, p. 298.

for their bastard children.¹⁰⁸

To solve this bogus problem, which the Commissioners themselves had posed, they continued to suggest that the old bastardy clauses must be completely repealed. They ignored the example set by some parishes in Dorset, which met the criticism that women profited in bastardy, by reducing all affiliation orders to a subsistence level of 1s. 3d. a week.¹⁰⁹ They also ignored many parishes where the affiliation orders were considered by officials or observers to be insufficient.¹¹⁰

In short, the minds of the Commissioners were closed to any kind of piece-meal Poor Law reform. It had been suggested to them that all past attempts to reduce the cost of bastardy had only been met by "more ingenuity."¹¹¹ To these closed minds, the only reform could be a sweeping change.

¹⁰⁸ 1834 Report, p. 167.

¹⁰⁹ SP., 1834, vol. XVIII, p. 27.

¹¹⁰ See SP., 1834, vol. XXVIII, pp. 130, 735, 754, 770, 787, 810, 818 and 832. In one parish, where the cost of a wet nurse was 4s. a week, magistrates lowered the maintenance order from 3s. to 2s. a week for fear it would be considered a source of income. See SP., 1834, vol. XXVIII, p. 130.

¹¹¹ SP., 1834, vol. XXVIII, p. 344. Even after new bastardy clauses were passed, it was felt "that any Poor Laws [which would] prevent bastardy it would be absurd to propose;..." See [Earl of Liverpool], An Account of the Operation of the Poor Law Amendment in the Wickfield Union... (London, Samuel Bentley, 1836), pp. 32-3.

IX - Conclusion: the Commissioner's proposal

Completely ignoring all the minor changes that were suggested to them and which could certainly have been used to reform the old bastardy clauses to some extent, the Commissioners departed on a major reform that could only be defined as Benthamite in being so extensive, and Malthusian in being so 'moralistic'. They adopted the philosophy that, when a woman became pregnant, she had "voluntarily become a mother, without procuring to herself and her child the assistance of a husband and a father."¹¹² Essentially, then, she had breeched Malthus' 'social contract', and since Malthus placed the power of 'choice' in becoming a parent, entirely on the woman's shoulders, the liability for the bastard was also completely placed there.

The Commissioners ignored both Malthus' and Bentham's exhortations that punishments for bastardy should be equal on both parents, and instead used these doctrines within their own frames of reference. Their solutions were preconceived before they began any inquiry, fixed by both the willingness to reform that characterised Whig values and by class-specific nineteenth-century morality. The Commissioners' ignorance of lower-class traditional moral and sexual values betrayed a hegemonic attitude; the old law became completely "at variance with the common experience

¹¹² 1834 Report, p. 347.

and practice of mankind."¹¹³ The Commissioners therefore intended to return the bastardy clauses to a state of harmony with both man's and God's laws. Their proposal was

intended to restore things, as far as it is possible, to the state in which they would have been if no such laws had ever existed; to trust to those checks ... which Providence has imposed on licentiousness....[They recommend] as a further step towards the natural state of things,...that the mother of an illegitimate child born after the passing of the Act, be required to support it.¹¹⁴

The Commissioners expected that those who remained 'un-enlightened' by the 'sciences' of Bentham and Malthus might not accede to their recommendations. Poor Law reformers attempted to stifle this criticism by acknowledging the new proposals would be met "with clamorous opposition from the ignorant in all quarters."¹¹⁵ They even extended their mercy by suggesting that it was truly unfortunate that the man could not be fined in a hardship case such as seduction, but nevertheless chided that "the object of law is not to

¹¹³Sp., 1834, vol. XXIX, p. 298.

¹¹⁴1834 Report, pp. 346-7. Malthus had earlier written: "Natural and moral evil seems to be the instruments employed by the Deity in admonishing us to avoid any mode of conduct which is not suited to our being, and will consequently injure our happiness." See Malthus, Essay, 1890, p. 441.

¹¹⁵1834 Report, p. 351. Later, Senior would regret the role of the Press which "pandered to coarse tastes and political ignorance" by telling of the "refusal of a pension to which the mother of a bastard was formerly entitled." See Nassau Senior, Industrial Efficiency and Social Economy, vol. II, (New York: Henry Holt, 1928), p. 327.

punish, but to prevent [bastardy]¹¹⁶

While the Poor Law Commission accepted this, the entire country would not. The Commissioners would soon find that Parliament was much less Malthusian in its thinking than they were. The Commission had set itself up for a disappointment. Opposing factions, which had little input into reforms at the earliest stage, soon got their chance to criticise.

¹¹⁶sp., 1834, vol. XXVIII, p. 650.

CHAPTER II

THE BIRTH OF AN ACT;
THE RECOMMENDATIONS OF THE POOR LAW
COMMISSION ARE ENACTED BY PARLIAMENT

I: Introduction

With the signing of the Poor Law Commission Report on 20 February 1834, the ideas engendered by the Commissioners would have to start on a new path of twists and turns.¹ Now that the Report, which encapsulated the views of many throughout the kingdom, had finally been completed, the immense task of drawing up a bill, that would be assaulted by members of both Houses of Parliament and could still be passed into law, had to begin. As the last chapter suggests, the bill had one major flaw. Essentially, through their choice of Commissioners, the Whig government had ensured that the Report conformed to a mixture of Malthusian, Benthamite and moralistic ideologies. In effect, the government had allowed the Commission to publish a 'bogus' Report, which constituted a statement of belief, rather than the result of a prolonged 'inquiry'. Since the Commissioners had not sought the truth about bastardy, they could hardly be expected to institute a successful reform. Because the Poor Law Amendment Bill was based on their Report, already the next ten years of Poor Law administration were doomed to failure.

While the government prepared to enact a law which abolished the liability of a putative father toward his

¹Nassau Senior, Diary Regarding the Poor Law Amendment Act, microfilm of MS. in New York; Columbia University, 1834, p. 24.

bastard, an opposition composed of two factions formed. A small group of Radicals existed in the Commons, who suggested that the maintenance of a bastard child should be shared by both parents and that oppressive acts operating against single mothers should be repealed. These Radicals had a limited strength, however, since they comprised only a small number of members in the Commons, with few ties to other political factions. There were no Radicals at all in the House of Lords.

Considerably more powerful than the Radicals was a faction of Tories. These Tories would demand that both the father and the mother of a bastard child should support it, with the added proviso that more carefully administered punitive action be taken against both parents in the hope of decreasing bastardy.²

Generally, when conflicts between the opposition and the government arose, conciliatory steps were taken that led to some sort of 'compromise', which in turn expedited the passage of a bill. In the case of the bastardy clauses, there was little common ground between the government, which suggested the old law was bad, and the opposition, which suggested the new proposals were worse. Nevertheless, in keeping with the give and take of Parliamentary debate, the

²It has already been noted that, while most Tories supported the Whig government concerning the bastardy clauses, a fraction of Tories did not. It is this group to which the author refers when discussing the Tory opposition.

opposition's input did succeed in altering the government's initial proposal. Despite these alterations, the law that was finally passed by Parliament still suffered from the inadequacies of the Poor Law Commission's inquisition. It was this initial flaw that caused the bastardy clauses to undergo so many changes between 1832 and 1844.

II - A bill is drafted

At the beginning of March, 1834, the cabinet requested that Nassau Senior and William Sturges-Bourne begin to translate the recommendations of the 1834 Report into a tangible Bill.³ One of the most difficult matters in formulating this Bill was in fact the bastardy clauses. On 2 March 1834, Senior wrote that the government might not be successful in passing the clauses.⁴ Yet, while Senior sensed that Parliament might be dissatisfied with the punitive action contemplated against single mothers, he also had his own complaints.

Senior's principle difficulty with the 1834 Report's proposals was that they provided an insufficient punishment

³Brundage comments that it was unusual for Chadwick to have no control over the New Poor Law after it left the Report stage. See Brundage, Making of the New Poor Law, pp. 47-8. Both Senior and Sturges-Bourne had, of course, been Poor Law Commissioners who assisted in writing the 1834 Report. See Chapter I.

⁴Senior, personal letter, 2 March, 1834, Diary, p. 5.

for bastardy. While Senior wanted to punish the father of a bastard, he felt the existence of any fine might still give single women a chance to extort money from the putative fathers. He hoped that reformers of the bastardy clauses might come up with some kind of solution to this stumbling block: "we are not at all desirous of letting him [the father of a bastard] off if you can point out any mode of punishing him which shall not in fact promote the crime." If a satisfactory solution could not be found, Senior promised the government could escape accusations of unfairness from the opposition by merely suggesting that "the existing mode of punishing a putative father is most mischievous."⁵

A second difficulty for Senior was the treatment single mothers would receive under the proposed law. Senior confessed "that I think we err in being too kind to her." In explaining that the parish would still relieve indigent bastards and their mothers under the proposed scheme, Senior allowed that "we do not, as perhaps we ought to do, say that the public shall not be forced to assist her"⁶ Fortunately, this avenue of thought, which would forbid the minimal subsistence of the workhouse in favour of allowing mother and child to starve in the street, was never pursued.

Shortly after Senior and Sturges-Bourne began their work in drafting the Poor Law Bill, they visited John

⁵Senior, personal letter, 2 March, 1834, Diary, pp. 20-1.

⁶Senior, personal letter, 2 March, 1834, Diary, pp. 19-20.

Meadows White. White worked for a law firm employed by the government to draft the initial Bill. On 14 March, White finished an abstract of principle points of concern related to the Bill, prepared for Cabinet consideration at Senior and Sturges-Bourne's request. After the fourteen-member Cabinet had finished examining White's abstract, they met with both Senior and Sturges-Bourne on 17 March.⁷

During a discussion lasting over three hours on 17 March, the cabinet had only examined five clauses. In an effort to expedite the process, the Prime Minister, Lord Grey,⁸ suggested to Senior that he feel free to make any changes he thought were necessary to improve the draft of the Poor Law Amendment Bill. Both Senior and White subsequently met with the home secretary, Lord Melbourne⁹, on 20 March. Once again, in an effort to stop wasting time, Melbourne appointed a committee of Cabinet members to deal with the Poor Law. In addition to himself, Richmond, Lansdowne, Ripon, Russell, Althorpe and Graham were all appointed to the committee.¹⁰ On 30 March, at a meeting of

⁷See Senior, Dairy, pp. 24 and 34-7.

⁸D.N.B., vol. VIII, pp. 621-2.

⁹D.N.B., vol. XI, pp. 434-6.

¹⁰Members of this committee were the Duke of Richmond, who was at one time an ultra-tory and frequently crossed the floor; Lord Lansdowne, who soon became a Commissioner of the Reform Bill; Lord Ripon who was to be a short-lived secretary for war and the colonies; Lord John Russell who had led the Reform Bill through the Commons two years before and was reputed to have had bastards himself; Lord Althorpe, who led

the Committee, the initial bastardy clauses "were approved without alteration", despite the absence of Ripon, Russell and Althorpe.¹¹

Thus, notwithstanding a national 'inquiry' lasting over two years, the government still hardly seemed to be equipped to handle the administrative difficulties that the bastardy clauses posed. Senior himself disapproved of the 1834 Report's recommendations because they were too lax, and yet he could not think of a better proposal. Even when the Cabinet met to discuss the Poor Law Bill, they did not seem to appreciate the length or complexity of the reform. As a result, the drafting of the clauses were left to Senior who was merely a hired hand. Even when a committee of Cabinet approved the final draft of Senior's Poor Law clauses, only four out of seven members were present. It is no wonder, then, that many of the oversights and vast generalizations that provided the foundation for the 1834 Report's recommendations went uncorrected.

the Whigs in the Commons; and Lord Graham, who was first Lord of the Admiralty. See D.N.B., vol. XI, pp. 927-8; vol. XV, pp. 1014-5; vol. XVII, pp. 9-10; vol. XVII, pp. 457-9; vol. XVIII, pp. 772-4; and vol. VIII, pp. 329-31 respectively. On Lord John Russell's bastards see John Prest, Lord John Russell (Columbia, South Carolina: Univ. of South Carolina Press, 1972), pp. 70-1.

¹¹For all the above, see Senior, Diary, pp. 34-7 and p. 59.

III - The first debate in the Commons, and the themes on which debate would develop

On June 18th, 1834, the Poor Law Amendment Bill was introduced in the House of Commons. Although the Bill was quite lengthy, only four clauses concerned bastardy. Clause 69 removed the liability of a bastard from the putative father and repealed certain Acts concerning the punishment of the mother. The malevolent effects of clause 70 were much worse. It proclaimed that all affiliation orders against putative fathers of bastard children were void. Thus, even if a man had been giving an allowance to the mother of his bastard for ten years, he was no longer legally obligated to do so. Clause 71 declared that the liability for maintaining a bastard rested on the mother's shoulders, and, if she defaulted, Clause 72 placed the onus of maintaining the bastard on the mother's parents.¹²

The first attack on these clauses came from the Tory member for East Somerset, Sir William Miles.¹³ He proposed an amendment that would make the father pay for the child's maintenance if the mother could not. The Whig house leader, Althorpe, initially supported this amendment, suggesting it:

¹²Hansard, 1834, XXIV, 521.

¹³Michael Stenton, Who's Who of British Members of Parliament: vol. 1, 1832-1885 (Atlantic Highlands, N.J.: Humanities Press, 1976), p. 269.

entirely deprived the woman of a principal inducement to select one person from another ... because ... no part of the money charged should go to the mother, and ... no affiliation should take place until she became chargeable to the parish.¹⁴

Althorpe suggested that because the Miles' proposal would not alter clause 71, but merely add to it, the House could proceed with further discussions.¹⁵ Thus, even though the Commons never voted on Miles' amendment, it was tentatively accepted because it had won the favour of the government's house leader, who wielded the majority of votes.

The opposition next attempted to throw out Clause 69. When they made an amendment opposing this clause, which abolished a putative father's liability, they were voted down 114 to 33. Thus, the clause had been tentatively accepted by the Commons. The opposition was successful, however, in forcing Althorpe to strike clause 72 from the Bill, which would have forced the mother's parents to support her bastard. Nevertheless, because clause 69, which abolished paternal liability had passed, it seemed as if single mothers would be in for a difficult time indeed.¹⁶

Some common themes emerged out of this debate in the Commons, which would continue to predominate throughout

¹⁴Hansard, 1834, XXIV, 526.

¹⁵Hansard, 1834, XXIV, 540.

¹⁶Hansard, 1834, XXIV, 520-43.

the remainder of the New Poor Law's history. The principal belief of those who supported the new bastardy clauses was that the New Poor Law better addressed 'moral' concerns than the Old Poor Law. Opposition supporters, on the other hand, felt that the principles of the old bastardy clauses were superior to the new clauses. Althorpe questioned this opposition belief when he suggested they had "inferred that there was an inducement [in the Old Poor Law] to chastity and morality in the females of the labouring class of society, which really did not exist."¹⁷ On the contrary, Althorpe said, the practice of affiliation under the old law had completely destroyed "moral feeling".¹⁸ Althorpe claimed that when speaking about 'abandoned characters', "he did not [have to] reply for his proofs to the evidence which had been collected by the Poor Law Commissioners, but to the experience of every man in [the] House."¹⁹ The government believed that the new law would rehabilitate these women and "increase the purity ... of the female sex"²⁰

A principal advantage of the new bastardy proposals was, the government suggested, that single mothers would now be shielded from the humiliating disgrace of swearing out an affiliation order in the glare of a public tribunal. "The

¹⁷ Hansard, 1834, XXIV, 525.

¹⁸ Hansard, 1834, XXIV, 525.

¹⁹ Hansard, 1834, XXIV, 524.

²⁰ Hansard, 1834, XXIV, 534.

female sex stood much more in need of protection in this respect than our own; and the effect of the alteration in the law of bastardy would be to afford them this protection."²¹ While some bastardy clause supporters regretted that the man would not be punished for his offence,²² the government nevertheless felt it was impossible to punish the man.²³

The government saw the new bastardy clauses as a panacea for the immorality of the lower class. There were, however, two instances of turpitude to which the government paid particular attention. Members of the upper class at this time believed that all women's raison d'etre was to obtain a husband. Even George Robinson, a conservative ship owner engaged in the Newfoundland trade²⁴ who opposed the new proposals, claimed that no law "could annihilate the natural desires of woman".²⁵ The government intended to try altering these 'desires', though, since they thought the old bastardy clauses led to improvident marriage. It was feared that a man might have no choice but to marry a woman if he could not meet either an extortion payment or the sum of maintenance that a Magistrate awarded when the woman at-

²¹Hansard, 1834, XXII, 894.

²²Hansard, 1834, XXIV, 528.

²³Hansard, 1834, XXII, 888 and XXIV, 527.

²⁴Stanton, Who's Who, vol. I, p. 330.

²⁵Hansard, 1834, XXIV, 522.

filiated a child to him.²⁶ By abolishing the putative father's liability, the government felt these 'forced' marriages could be avoided.

The government's supporters also believed that perjury was rampant amongst bastard-bearers.²⁷ Many believed the woman carried out a thriving trade in bastardy,²⁸ extorting as much as £10 or £20 from strangers by threatening to swear that they were really the father of her child.²⁹ By denying the woman this recourse, the new law would strengthen "the inducement [of chastity], which was in general more powerful and natural in females".³⁰

Because the parish would no longer be able to collect a maintenance payment from a putative father, one would think the cost of the new measure would be carefully considered. In matters of bastardy, however, "financial

²⁶Hansard, 1834, XXIV, 526. Yet, it was a principle of the Old Poor Laws which was widely published in Parish overseers' handbooks, that an unreasonable order could be quashed. See Sir Gregory A. Lewin, A Summary of the Laws relating to the Government and Maintenance of the Poor (London: William Benning, 1828), p. 456. Also see Senior, Diary, p. 126.

²⁷Hansard, 1834, XXIV, 535.

²⁸Hansard, 1834, XXII, 893 and XXIV, 528 and 530.

²⁹Hansard, 1834, XXIV, 537.

³⁰Hansard, 1834, XXIV, 525. The irony of this statement is that the upper class expected the woman to be more passionate, and yet more chaste. One member declared that he "thought it clear enough that young men were not deterred from - what he meant was, let the woman know the responsibility and the penalty, and she would take care not to run the risk of either." See Hansard, 1834, XXII, 893.

concerns were secondary - most members were concerned about the moral implications of the change.³¹ While the government thought that the cost of bastardy to the parish would decline because of the new law, since bastardy itself would supposedly decline,³² other members felt differently.³³

Members also felt that the Poor Law Amendment Bill should be in several parts so that each issue of reform, such as relief to the able-bodied, to the elderly, and to bastards could be dealt with separately.³⁴ Yet the government felt that one bill was more "convenient".³⁵ Indeed, some members felt that while an omnibus bill was politically expedient, it was a lesser evil to pass bastardy clauses that were not fully debated, rather than perpetuate a greater evil by deferring the clauses for later debate.³⁶

Thus, the 1834 Report had engendered amongst many members a considerable degree of concern and the belief that the government must act hastily. The old laws, which apparently caused many improvident marriages, were even

³¹Brundage, Making of the New Poor Law, p. 66.

³²Althorpe calculated that bastardy would have to decline by one quarter before the parish would save money. Meanwhile Senior reckoned that the new law would cut the rate of bastard births in half. See Senior, Diary, pp. 125 and 127.

³³Hansard, 1834, XXIV, 521 and 536.

³⁴Hansard, 1834, XXIII, 957 and 959-60.

³⁵Hansard, 1834, XXIII, 958.

³⁶Hansard, 1834, XXIV, 527-8.

indirectly held accountable for murder. Viscount Howick told of a labouring man who was 'forced' to marry a "notoriously profligate character." After "a wretched and miserable cohabitation" she was found dead: her "body was cut up into different parts and buried in divers situations—in the vicinity of [Brighton]".³⁷

Many opposition members were incensed by the new measure because it seemed extremely unjust to deny a mother and child support from the father. The reaction to the government's proposition in the Commons ranged from the most conservative to the most radical of ideals. One opposition member, "to his astonishment as a man and a Christian", felt the principles of chivalric manhood had been abrogated.³⁸ Meanwhile, the Radical William Cobbett, who had earlier worked as a soldier, farmer and writer,³⁹ and who had been blamed for inciting riots in Sussex through his writings,⁴⁰ claimed many parishes paid the wedding expenses of couples when the woman was pregnant to ensure she would not end up on the relief rolls as a single parent. Because many couples were too poor to pay for their own wedding, Cobbett contended they saw premarital pregnancy as a convenient way to have someone else defray the cost of marriage. Thus, the bastardy

³⁷Hansard, 1834, XXIV, 538.

³⁸Hansard, 1834, XXIV, 521.

³⁹Stenton, Who's Who, vol. I, p. 82.

⁴⁰Hansard, 1834, XXIV, 1053.

rate had nothing to do with immorality, but was rather an index of how truly poor the populace of the country was.⁴¹

Even the Tory Robinson complained that the government had no idea as to the condition of its citizens, claiming that the bastardy clauses had been "framed by men who had looked at life only through the medium of books".⁴² Cobbett decried the upper class for this piece of legislation, questioning: "Were there no bastards to be found in high and elevated places?" and "Were there no bastards on the pension list?"⁴³ Robinson also chimed in:

As females were excluded not only from all seats in the Legislature, but also from all suffrage at elections, he thought that the house ought not, without mature deliberation, to sanction clauses which pressed so partially and severely upon them.⁴⁴

For the opposition, the Old Poor Law did have a moral effect on people. Tory Edward Buller defended the old bastardy clauses by saying they "had considerable effect on the middling class, and the class just above the lowest, which class [sic] was most important as far as regarded the morality of the country at large."⁴⁵ The opposition also dismissed the government's belief that perjury was wide-

⁴¹Hansard, 1834, XXIV, 532.

⁴²Hansard, 1834, XXIV, 522.

⁴³Hansard, 1834, XXIV, 533.

⁴⁴Hansard, 1834, XXIV, 523.

⁴⁵Hansard, 1834, XXIV, 528.

spread. Tory John Bennett,⁴⁶ who had sat on the bench for thirty years, claimed "he had never reason to suspect, that any woman who had sworn her child before him ... had perjured herself." To suppose that these "honest" women were conspiring to commit a crime for 2s.6d. a week was preposterous.⁴⁷ Even in the few instances where perjury did occur, the man was often "guilty of some imprudence or other with respect to the woman."⁴⁸

The principle redeeming value of the Old Poor Law was that it held both parents responsible for their bastard child. For the opposition, this was a principle that seemed socially just. Thus, to advocate that a man should be allowed to go "scot free"⁴⁹ and impregnate women as he pleased, leaving them to wallow in poverty, was completely unacceptable.⁵⁰ To the opposition's mind, this is what the government was recommending. If the government persisted in the measure, the opposition felt it could only give an ominous warning:

⁴⁶Stenton, Who's Who, vol. I, p. 29. Bennett was a member for Wiltshire South, between 1819 and 1852.

⁴⁷Hansard, 1834, XXIV, 530.

⁴⁸Hansard, 1834, XXIV, 536 and 522.

⁴⁹Hansard, 1834, XXI, 892 and XXIV, 531.

⁵⁰Hansard, 1834, XXIII, 968.

It was true,...that under the present system these poor women were sometimes guilty of other crimes; they were guilty of procuring abortion, of concealing the birth of their children, and sometimes too, of destroying them. What, then, would be the consequence of the proposed alterations in the law, as far as those crimes were concerned?⁵¹

IV - The Bill leaves the Commons when a "compromise" is apparently struck

The next debate on the Poor Law that concerned the bastardy clauses occurred on 21 June 1834. Because clause 71 had only been tentatively accepted three days before, but had not actually been voted on, the session on the twenty-first opened with further debate on it. On 18 June, both the government and the opposition had informally seemed to agree on a suggestion by William Miles. On the twenty-first, Miles felt confident enough to formally propose his amendment. While clause 71 originally sought to place all liability for a bastard child on its mother and absolved the father of financial responsibility, Miles suggested that a low rate of maintenance be charged against the father for his bastard if the mother went to the parish for poor relief.

While Althorp had accepted this proposal before, he now spoke against it. Suggesting that mothers might easily

⁵¹See Hansard, 1834, XXIII, 956 and XXIV, 523.

escape their liability merely by leaving their children in the parish's workhouse, he intimated the Miles amendment would have a tendency to reduce all workhouses to hospitals for foundlings. Althorp soon realized that many in the commons disagreed with him on this issue, and he backed down, giving his support to Miles only "as matter [sic] of expediency...." After the House voted, Miles' amendment was added to clause 71 with a majority of seventy-five votes.⁵²

It seems that the Miles amendment in many ways represented a 'compromise' between the government and the opposition. The government's interest was protected because the mother would have to support her child by herself. The Tory's interest was also protected, because, if the mother applied to the parish for relief, the father could still be liable. While under the Old Poor Law it had been the practice to support bastard-bearer's outside the workhouse, the Tory Quarterly Review claimed it was still acceptable under the old law's principles to insist that the mothers of bastards be relieved only inside the house.⁵³ Essentially, the Review claimed, the new Bill was only refining, and not altering, the principles of the old law that the Tories had always supported.

Since the man could still be found liable for the

⁵²For all the above, Hansard, 1834, XXIV, 717-9.

⁵³G. Poulett Scrope, "The New Poor Law", Quarterly Review, LII (August, 1834), p. 257.

support of his bastard child in the workhouse under the Miles amendment, the government remained concerned. Miles had originally suggested that a Justice examining a liability case against a putative father be empowered to investigate beyond the claims of paternity offered by a bastard's mother. Yet, after this clause had been adopted by the Commons, Senior revised the amendment before it was printed, requiring the Justice to look beyond the mother's claims for proof of paternity.

When the [revised] clause was brought up they [sic] were however violently objected to by Mr. Miles and his supporters, who said that they did not intend to require, but merely to empower the Justices to ask for evidence beyond the woman's oath.⁵⁴

Because of Miles' objection to Senior's alteration, the clause remained unchanged.

Thus, the government and the Tories had seemingly struck a compromise which remained intact through its first test. This compromise would not escape the House of Commons, though. On the night of 1 July, when the entire Poor Law Amendment Bill received third reading by a majority of 137 votes,⁵⁵ Senior was understandably excited. He was under the mistaken impression that the bastardy clauses, upon passing third reading, had escaped the Commons with the

⁵⁴Senior, Diary, pp. 129/32.

⁵⁵Hansard, 1834, XXIV, 1061.

important principle of exclusive female liability intact.⁵⁶ Since it was midnight, and there were apparently only a few insignificant amendments to the Poor Law Bill to be proposed by different members, Senior left the Commons gallery. He was very surprised, then, to find that in preparing the bill for the House of Lords, an entirely new and previously unheard of amendment had been made to one clause:

That when a woman pregnant of an illegitimate child shall become chargeable to any parish, ... it shall be lawful for the overseers to inquire, in the same manner, as if she had been delivered who is the father of the child with which she is pregnant.⁵⁷

Senior was furious at this proviso. He felt that with this amendment women would still be able to extort money or marriage from reluctant men. To Senior, the amendment, passed in the dead of night, undermined all of the concerns to which the new bastardy clauses were directed. It seemed that the entire compromise between the government and opposition had been ruined, and the Bill proceeded to the Lords in tatters, with Senior maintaining that "the whole clause requires alteration."⁵⁸

⁵⁶Senior, Diary, pp. 132-3.

⁵⁷Senior, Diary, p. 136.

⁵⁸Senior, Diary, pp. 136-7 and 194. Little of this surprise amendment appears in Hansard, which notes only that the Bill was "read a third time and various Amendments were proposed; some were added to the Bill, others were rejected, and the Bill was finally passed." See Hansard, 1834, XXIV, 1061. The Mirror of Parliament, a periodical similar to Hansard, notes only a little more. See John Henry Barrow

Even though the 'compromise' between the government and the opposition was not sustained, it is still interesting to note under what kind of pressure the settlement was forged. In the very first debate by the Commons, everything from morality, to poverty, to justice was discussed. Yet, when the opposition argued in favour of the Miles amendment during the 21 June debate, their attack was much more concise. Responding to the government's suggestion that a single mother could sue the father privately, without involving the parish or the welfare system, the Tories depicted the Old Poor Law as a primitive form of 'legal aid'. The father's liability under the bastardy clauses was, they claimed, a matter of social justice:

The rich father could obtain damages (*per quod servitum amisit*) from a wrongdoer; but how was a poor woman or a poor father to enter a Court of Law? It would cost at least £100. in the country to maintain such an action, and thus a woman suffering under a grievous wrong would be without a remedy.⁵⁹

The Tories continued this attack when one Member questioned if the legislature would "allow the seducer to stalk abroad

ed., The Mirror of Parliament For the second Session of the Eleventh Parliament of Great Britain and Ireland in the fourth year of the Reign of King William IV Appointed to meet 3rd February, 1834, vol. 3, (London: John Henry Barrow, 1834), pp. 2559-61. It is likely then, that this amendment was passed very late at night when the opposition might temporarily have outnumbered the government.

⁵⁹ Hansard, 1834, XXIV, 718.

with impunity?"⁶⁰

The government also faced criticism from individuals within its own camp. One Whig paper reported:

What cruel division! The poor girl whose bread is obtained by the daily labour of her fingers, whose fortune may reach 20s., she may bring her action for breach of promise of marriage! The father, whose weekly pittance of ten shillings is expended in supporting his wife and family, he may bring his action for the loss of his daughter's service! This language but adds insult to injury.⁶¹

Even T.F. Lewis, who would later become one of three Commissioners to operate the Poor Law Scheme after it was enacted, felt it necessary to admit "that a responsibility should rest upon the putative father of the child",⁶² albeit the liability should be limited.

To this attack from within and without the government could only stonewall. They maintained that the old law created immorality.⁶³ They also feared that because the father still had a minimal liability under the Miles amendment, this alone would be enough to give the mother leverage.

⁶⁰Hansard, 1834, XXIV, 1068.

⁶¹Hereford Times, 28 June, 1834 in Baxter, The Book of the Bastiles, p. 127. For the most part, the press was initially favourable to the Bill. During debate, tory and radical papers opposed the New Poor Law, but Whig papers condemned harsh attacks. See Michael Rose, "The Anti-Poor Law Movement in the North of England," Northern History, I (1966), pp. 72-76.

⁶²Hansard, 1834, XXIV, 716.

⁶³Hansard, 1834, XXIV, 717.

by which she might extort marriage or money from the man.⁶⁴ Nevertheless, the government gave in to the opposition's attacks, apparently believing that "the inconvenience of being obliged to receive relief only in the workhouse," would be enough to deter a woman from her 'immoral' ways.⁶⁵

V. - The Debate in the House of Lords: Part I

The discussion of the Poor Law shifted to the House of Lords when Earl Grey moved the first reading of the Bill on 2 July 1834.⁶⁶ Grey had little to say about the Bill, since, on 9 July, he opted for retirement, leaving the Prime Minister's job to Melbourne. On 21 July, the second reading of the Bill was approved with a majority of sixty-three votes.⁶⁷

Although the debate on the second reading was a quiet one, the Lord Chancellor Brougham nevertheless presented a speech which demonstrated how two principal ideals held by the government were entrenched in the new Bill. Brougham promoted the 'science' of political economy, claiming that Malthus had "been foully slandered by some who had the

⁶⁴Hansard, 1834, XXIV, 716.

⁶⁵Hansard, 1834, XXIV, 717.

⁶⁶Hansard, 1834, XXIV, 1066.

⁶⁷For all the above see Mackay, History of the English Poor Law, pp. 139-40 and Hansard, 1834, XXV, 275.

excuse of ignorance".⁶⁸ Comparing Malthus to the 'great men', such as Pitt, Canning and Adam Smith,⁶⁹ the Lord Chancellor adopted the principal tenets of Malthusianism for himself:

...whatever little check [to population] the poor-laws in one view may interpose, is immeasurably counter-balanced by their affording the greatest stimulus to population which the wit of man could devise-the most willful and direct encouragement that possibly could have been discovered to (sic) improvident marriages?⁷⁰

In embracing Malthusianism however, Brougham and the government made the same miscalculation that their Commissioners had.⁷¹ While they had remained faithful to Malthus in their desire to make the Poor Laws more punitive, they never acknowledged that Malthus had postulated punishment of both the man and the woman for bastardy.

It is likely that this distortion arose out of the hard-line attitudes toward the lower class that the Whig Peers of the Realm took. Brougham clearly embraced the

⁶⁸Hansard, 1834, XXV, 224.

⁶⁹Hansard, 1834, XXV, 235-7.

⁷⁰Hansard, 1834, XXV, 223.

⁷¹Indeed, Brougham was more of a Malthusian than other Cabinet members. He took the position that Poor Laws should be completely abolished even though Melbourne and Althorp "prayed him for God's sake not to hold such language." Despite this, Senior claimed that on the whole Brougham's views "were founded on truth," and so, in much of his speech, he spoke the government's mind. See Mackay, History of the English Poor Law, p. 140.

gender-biased laws that were on the books at the time, and equated them to the proposed bastardy clauses. As an example, the Lord Chancellor pointed to the divorce laws, which allowed a man to divorce his wife but forbade a woman to divorce her husband. As with these laws, he argued, it would be to the interest of society to enact the bastardy clauses, which would punish only the woman for her crime: "If she is afraid to yield, the seducer may beat at the door in vain; his object will be frustrated."⁷² Since no Radicals sat in the Lords, only the Tories opposed to the bastardy clauses could confront the government. As one might suspect, they too held a class and gender bias similar to the government's. Nevertheless, these feelings gave shape to a different set of beliefs concerning bastardy. The Tories favoured a law that would give the parish more authority, thereby strengthening the traditional forms of superintendence over the lower class, which, in turn, would decrease the bastard rate. Since the Tories in the lower house felt the Miles amendment would accomplish this, they had given it their support. The Tories in the upper house also supported that amendment, which strengthened the traditional system set down by the archetypal Poor Law, the Act of 43 Elizabeth.⁷³ When the debate moved to the Lords, it fell on this group of Tories to dissuade the government from animating their new

⁷²Hansard, 1834, XXV, 250.

⁷³For all the above, see Hansard, 1834, XXV, 258.

proposals, which were Malthusian in ideology, Benthamite in administration, and only punitive against the woman.

Earnest debate did not begin until 28 July, with discussion of the newly renumbered clause 67.⁷² Clause 67 would repeal the Acts that provided punishments for the father or mother of a bastard child, and also abolished the liability of the man. As an alternative to this, the conservatives proposed a clause that sought the joint liability of either parent, as long as one of them could afford to support their child.⁷⁴ The leader of these Tories and the initiator of the clause calling for joint liability was the Bishop of Exeter, Henry Philpotts. Philpotts, who had begun a writing career with an interest in social questions during the 1820's, was considered a very high Churchman.⁷⁵ It was this Bishop who would prove to be the conservative of conservatives in this fight for a way of life.

The Bishop began his attack on the bastardy clauses by questioning the language used by the commissioners in the 1834 Report. He suggested "there was a harshness of judgment applied to those unhappy women [bastard-bearers] for which it was not very easy to account."⁷⁶ Exeter went on to

⁷⁴Hansard, 1834, XXV, 594.

⁷⁵D.N.B., vol. XV, pp. 1108-10. Henriques describes the Bishop of Exeter as, "a high tory and a religious bigot of narrow Anglican views." See Henriques, "Bastardy and the New Poor Law", p. 113.

⁷⁶Hansard, 1834, XXV, 586.

complain that:

In the Report, the fathers of bastard children were uniformly spoken of as 'unfortunate' persons ... but whenever the mother was spoken of, allusion was certain to be made to her 'vice' [This language] pervaded the whole Report....⁷⁷

Charles James Blomfield, the Bishop of London, had been an original Commissioner on the board of Poor Law Inquiry, which was now under attack. In an attempt to rebuff Philpott's statements, Blomfield claimed it was only the Assistant Commissioners who made specific attacks on the morality of women. Blomfield did, however, persist in the gender-biased stance that the 1834 Report had adopted. He suggested to Philpotts that, although the Commissioners had not used "terms of as great severity as the nature of the case might appear to desire [he] feared that if they looked to the evidence laid before the Chief Commissioners, they should find statements very nearly corroborating that of the Assistant Commissioner, who had been referred to."⁷⁸

Despite Blomfield's rebuff, Philpotts asserted that the old bastardy clauses were best left as they were. He suggested that the clauses were more or less founded on the principles of natural justice. There were two types of contracts known to a just society, Philpotts claimed. Verba in presenti occurred when intercourse took place after

⁷⁷Hansard, 1834, XXV, 586-7.

⁷⁸Hansard, 1834, XXV, 595-6.

marriage. Since marriage had been celebrated, the man had completed a 'contract' to look after his children. Likewise, verba de futuro governed intercourse where marriage had not taken place. Philpotts claimed that merely by having intercourse, the man had a contractual obligation to support his progeny verba de futuro. This contract demanded that both parties complete its requirements in facie ecclesiae.⁷⁹

Philpotts also suggested that the old law, which was founded on justice, could be effective. He drew on the 1834 Report's claim that it was only very rigorous administration in Swallowfield, Berkshire, which had kept the poor relief system working well. If the system based on the principle of the old law could work well in this case, the Bishop questioned, why couldn't the old law be retained.⁸⁰ While the government was unable to respond to his legal argument about contracts, they were able to say that the few exceptions to success were only accomplished with extraordinary effort, and such effort was unlikely to be displayed throughout the nation.⁸¹

Finally, Philpotts attacked the government and their 1834 Report by attempting to put the statistics used into some sort of perspective. In Cookham parish, for

⁷⁹Hansard, 1834, XXV, 593.

⁸⁰Hansard, 1834, XXV, 591.

⁸¹Hansard, 1834, XXV, 598.

example, the 1834 Report said that there were fifteen bastards on the dole in a community of 3,337. Assuming, Philpotts responded, that half the population of Cookham were women, then only one percent of women had a bastard child.⁸²

The Bishop of London countered this argument with the moral rebuttals government members were so fond of making. The extent of "forced marriage" was so high, Blomfield said, that if the Bishop of Exeter was willing to count premaritally pregnant women in the Cookham parish, the number of those "morally illegitimate" might equal 150.⁸³

At last, the debate on clause 67, which proposed to dissolve the liability of putative fathers, had turned to the crux of the whole bastardy issue. All the members of the government were seeking a way to reform the morality of lower class women, rather than merely supply relief to single mothers. Not only did Blomfield betray this agenda when he coined the idea of 'moral illegitimacy', but Brougham substantiated it:

[The] want of chastity [in woman] was a much more grievous offence than want of chastity in man. How could any person deny this?... Was it nothing for a woman to bring a spurious offspring to the bed of her husband; and would any noble Lord deny, that the sin of incontinence was not greater in an unmarried female than in an unmarried man?... [W]ould any man hesitate to say, that if he saw his daughter in a house of ill-

⁸²Hansard, 1834, XXV, 591-2.

⁸³Hansard, 1834, XXV, 596.

fame he would not hold her in a very different light from that in which he would regard his son if he discovered him in the same situation?...The laws of society took precisely the same view of the subject; a virtuous woman was regarded as the bond of society, and when she once lost her virtue, a pearl of great price, adieu to all decorum and decency in society....⁸⁴

Because Brougham felt female virtue was the woman's most valuable asset, he once again attempted to justify the bastardy clauses by comparing them with a gender-biased law. Adultery, he said,

was visited by the law more severely in the woman than in the man; and could any man blame that law which placed the peeresses in the land-the woman of the first rank-on the same footing with women of the middling and lower classes of society?⁸⁵

The Bishop of Exeter felt he had to respond to these claims. When Brougham compared the bastardy proposals to other laws, the Bishop said, he spoke only of human enactments. Yet, God himself spoke on the matter of nurturing one's progeny. Recognizing Philpott's attempt to debate the bastardy clauses on religious grounds, the Bishop of London attempted to intervene, claiming that any religious debate could only be an abstract one based on speculative points.⁸⁶ Philpotts was not to be discouraged though. He

⁸⁴Hansard, 1834, XXV, 607-8.

⁸⁵Hansard, 1834, XXV, 608.

⁸⁶Hansard, 1834, XXV, 599.

replied that there could be no doubt of what Holy Scripture said on the point. It held that "he who does not provide for his own is worse than an infidel" and the belief of a man that a child might not necessarily be his did not excuse him from the requirement of maintenance: "Nothing could excuse him from maintaining a child unless he had a moral certainty, some irrefragable proof, that it was not his."⁸⁷

Against Holy Scripture itself, the government's only defence was toeing the line which it had followed for such a long time: the old scheme left ample opportunity for perjury, especially if the man was as convincing as the opposition said he was. The government especially enjoyed fantasizing about hypothetical cases that would illustrate their point: An "unwily seducer" that is a cunning man, could easily convince his lover to perjure herself, and swear that someone else was the father of her child. The seducer would have corrupted first, the woman's chastity, then, her honesty, and, feeling encouraged, might even "render her the wife of one who had not been actually guilty of her seduction, and might afterwards, perhaps, commit with her the still more heinous offence of adultery?"⁸⁸

In their attempt to pass clause 67, which would abolish the father's liability, the government tried one final tactic. They ignored the opposition's claim that there

⁸⁷Hansard, 1834, XXV, 610.

⁸⁸Hansard, 1834, XXV, 608.

was a matter of justice involved, and instead combined their plea for morality with a reductio ad absurdum. The emotion connected with the issue of paternity must be forgotten, the government said, because, really the question was not one of justice and fair-play, but rather one of the English language. The issue was resolvable into the grammatical question:

'whether it were just to fix a penalty not upon the man, but upon a man. It was very true that if it were possible in all cases to fix upon the actual father, it would be proper to legislate with a view to impose upon him a certain pecuniary penalty; but there was no security for fixing the offence upon the real offender.... it was quite clear, that when an unfortunate woman ceased to blush, she had no scruple in making her shame her trade, and fixing without remorse upon a man who might be, perhaps, perfectly innocent, with respect either to herself or to others⁸⁹

While the government used its device of reducing the issue to an absurd 'grammatical' question, the Bishop of Exeter employed a dramatic touch to make his final point. Claiming that the government offered a man freedom while it offered a woman the workhouse, he suggested that men would hold to a "career of vice and profligacy." In the meantime, the single mother would "be compelled to labour until her frame was worn out, and exhausted nature drove her into an almost interminable imprisonment [the workhouse] for the

⁸⁹Hansard, 1834, XXV, 601.

maintenance of the offspring of their common offence."⁹⁰ The Bishop advocated that an inscription from Dante's Inferno should hang over the gates to the workhouse: "Who enters here, leaves hope behind."⁹¹

After this kind of wide-ranging debate, a vote on clause 67, which removed the liability of putative fathers, was finally taken. The clause passed by twenty-four votes and with this, the outcome of the Bill was almost sealed.⁹² Yet, while the government had won the day, they had lost in the long run. In 1882, they had apparently appointed a Commission to inquire into the Poor Law. As Chapter One demonstrated, the Commission was largely influenced by the government's predisposed beliefs. This influence was not one-way though. Once the Commission produced its results, the government drew on them to strengthen its own beliefs, so that its initial prejudices were reinvigorated. The result was not only a clause that abolished a father's liability to his bastard child, but one that was really supposed to make young lower class women behave properly. It is this second goal that displays the hegemonic designs of the governing class. The new bastardy clauses, the government claimed, actually held "the interests of those unhappy females" close

⁹⁰See Hansard, 1834, XXV, 611-2.

⁹¹Hansard, 1834, XXV, 611.

⁹²Hansard, 1834, XXV, 612-3.

to heart.⁹³

The government members, who were "as chivalrously devoted as any man in or out of [the]...House" to the protection of a woman's honour and virtue," had actually shortchanged themselves.⁹⁴ There had been no 'Inquiry' on how best to dispense relief, but rather a rambling disquisition on the moral condition of a people. The government had not only refused to make these two different questions the objects of separate pieces of legislation, but had apparently not at all recognized a difference between relieving the poor and 'enhancing' their moral values. Finally, after all their arguments concerning morals, the government attempted to reduce the whole issue to insignificance by suggesting that, really, the issue was a grammatical question and hence, "was one of expediency."⁹⁵ It is no wonder, then, that the bastardy clauses, which were supposedly well-researched, went through so many changes during their short existence between 1832 and 1844..

VI - The debate in the House of Lords: Part II

On 31 July 1834, there were only two clauses left

⁹³Hansard, 1834, XXV, 595.

⁹⁴Hansard, 1834, XXV, 607.

⁹⁵Hansard, 1834, XXV, 605.

to debate regarding bastardy. Clause 69 dealt merely with an administrative matter. It dictated that a bastard child should follow the 'settlement' of the mother, instead of the parish in which it was born. The clause was approved by the Lords without amendment.⁹⁶

Clause 70 posed a greater problem because it still held the Miles amendment, which had been passed earlier by the Commons. While the Miles amendment called for either parent to support their bastard child, clause 67, which had been passed only three days before by the Lords, declared that the father's liability was abolished. Clearly, as the Earl of Falmouth pointed out, the two clauses were completely incongruous with one another, and could not co-exist.⁹⁷

Thus, after the debate on 31 July, clause 70 was struck from the Bill,⁹⁸ but because it was the antithesis of clause 67, which abolished the man's liability, the opposition had a second forum in which to rehash all of their arguments against the new proposals. Before, the opposition had a chance to speak, though, the government began to

⁹⁶ Hansard, 1834, XXV, 777-80. 'Settlements' were important for administrative purposes. Previously, a child was settled in the parish where it was born. This meant that the parish would have to pay for any poor relief incurred in that child's lifetime. By allowing the child's settlement to follow its mother's, the government assured that both mother and child could get relief from the same parish, thereby simplifying the entire process of administration.

⁹⁷ See Hansard, 1834, XXV, 780-5.

⁹⁸ See Hansard, 1834, XXV, 780-5.

suggest why the Miles clause was unacceptable. There were many ways in which the Miles proposal could go awry, the government hypothesized. The woman might threaten the man that, unless he married her, she would go to the workhouse for relief and the parish might take out a damage suit against him for the maintenance of their child.⁹⁹ The parish itself might attempt to marry the woman off to the man, thereby saving the cost of maintaining both the woman and her bastard in the workhouse.¹⁰⁰ Perhaps the part of the Miles clause which left the requirement for corroborative testimony at the discretion of the judge would not be enforced.¹⁰¹ In short, the government reasoned that there were too many ways in which the woman could 'profit' from her child's bastardy.

The government went on to claim that their proposals should not be interpreted as a moral punishment. The Marquis of Lansdowne said he "had never brought himself to look upon the Bill as a measure of punishment, but as an attempt by a better administration of the Poor Laws, to give relief to poor persons in a manner the most economical to the parish."¹⁰²

The opposition took issue with this, suggesting that not only did the new proposals constitute a moral

⁹⁹Hansard, 1834, XXV, 780.

¹⁰⁰Hansard, 1834, XXV, 913.

¹⁰¹Hansard, 1834, XXV, 784.

¹⁰²Hansard, 1834, XXV, 782.

punishment, but also that the wrong party was being punished. The Tory, Lord Wynford, who had at one time been a Whig, claimed that the accursed new clauses were based upon "the unfounded assumption that the female was the chief aggressor".¹⁰³ The Tory press wondered why, if moral considerations were the basis for the new law, "the broad line of distinction between the case of a girl having a natural child for the first time, and one guilty of a second transgression [could not have been drawn]. It appears to us that reason and justice and human sympathy would all alike have recognised the distinction of these cases."¹⁰⁴ Yet, despite the condemnation of the Tories, the government was still able to strike the Miles clause from the Bill.

During 4 August 1834, the Earl of Falmouth and the Bishop of Exeter apparently attempted an underhanded addition to the bastardy clauses. Attached to a clause on providential institutions, such as hospitals, orphanages and workhouses, they had suggested some kind of pecuniary punishment of the man who was accused in a case of bastardy. Unfortunately for the conservatives, the clause on providential institutions was postponed and the Bishop of Exeter's amendment was never heard of again.¹⁰⁵

Finally, on 8 August, after months of debate, the

¹⁰³D.N.B., vol. II, pp. 420-1 and Hansard, 1834, XXV, 784.

¹⁰⁴Scrope, "The New Poor Law", p. 257.

¹⁰⁵For all the above, see Hansard, 1834, XXV, 913-4.

government proposed that a vote be taken on whether "the clauses [should] stand part of the Bill." The results were surprisingly close. Including the proxy votes, 93 Peers opted for the new clauses and 82 did not. Yet, the results were even closer when only those present in the Lords at the time the vote was taken are considered. Only 42 of those present voted for the new measure while 40 opposed it.¹⁰⁶

VII - The government attempts
to placate its disconcerted supporters

Even though the government had finally won the right to enact their proposals, they seemed discontented with their victory. In light of their narrow margin of success, they must have perceived that they had disaffected many of their supporters. Apparently, in an effort to repair damage inflicted by the vociferous opposition during the debate, the government now imparted on an attempt to placate its source of support lest it wane.

Both the Duke of Wellington and the Marquis of Lansdowne moved several clauses before the government disposed of the Bill.¹⁰⁷ This series of last-minute amendments began with a move by Lansdowne to approve clause 68,

¹⁰⁶Hansard, 1834, XXV, 1096-7.

¹⁰⁶Haneard, 1834, XXV, 1096-7.

¹⁰⁷Unfortunately, Hansard does not record what was said during these debates, but the Mirror of Parliament does provide a more complete picture. See Hansard, 1834, XXV, 1097.

which repealed the imprisonment of women for bastard-bearing. While this component had originally been included in the clause abolishing the father's liability, it now became the subject of a separate clause. In any case, clause 68 was quickly agreed to.

Lansdowne now proceeded to another administrative change contained in clause 69 which concerned 'settlements'.⁴ He proposed that a child should follow the settlement of its mother until the age of sixteen. Although this had been previously proposed and defeated, it was accepted this time.

Finally, the most significant change was proposed by the Duke of Wellington, and it concerned clause 70 governing additional support for the mother. Essentially, the Duke proposed a new system that would impose liabilities on the father. Thus, despite the government's success in abolishing these liabilities, it was now about to go and reintroduce them.¹⁰⁸

The Duke conceived of a highly regulated procedure where the mother only affiliated the father after the birth of a bastard child. The mother could not gain any payment from the father, and the parish could only obtain a payment from him if both the mother and the child were in the work-

¹⁰⁸For all the above see Mirror, vol. IV, 1834, pp. 3301-4. The clause providing for the repeal of imprisonment of the mother was generally accepted by everyone. Even Senior felt that this proposal was fair, since it achieved an equality with the man who was unlikely to suffer imprisonment under the new law. See Senior, Diary, pp. 260-2.

house. Even then, the parish could only inquire into the man's identity if the woman had not previously given birth to a bastard. If the parish decided to sue the man, they had to give him at least two weeks notice, and had to launch their action in the costly Quarter Sessions court. Meanwhile, the parish could make an application to one justice of the peace, who could summon the putative father before him. The man could be placed on his own recognizance, or, upon refusal, be held in jail if the justice felt he might abscond.¹⁰⁹

The Duke's requirements at the trial were even more demanding. When the trial date arrived, both the mother's testimony and corroborating evidence were required to make an order on the father. The father also had the opportunity to make a defence. The court had to be "satisfied" that the man was in fact the true father of the child to make an affiliation order. Even then, the order had to be reasonable, could not exceed the expense incurred by the parish, and could not be given or applied to the mother. If the payment was ordered, it had to stop when the child reached age seven. The father could remain in arrears up to one month before he was brought before two justices where he might have his goods seized or wages attached.¹¹⁰

In some ways the Duke's proposal was not unlike the Miles clause, since both allowed the parish to sue a putative

¹⁰⁹ For all of the above, see Mirror, vol. IV, 1834, pp. 3301-4.

¹¹⁰ For all of the above, see Mirror, vol. IV, 1834, pp. 3301-4.

father for support when his bastard was in the workhouse. Unlike the Miles clause, though, the Duke's proposal was designed not to work. The rigorous requirements placed on the parish and the demand that law suits take place in the expensive Quarter Sessions rather than the cheaper Petty Sessions courts, ensured that very few parishes would begin legal proceedings against fathers. The opposition recognised this intent, and accordingly despised the measure. The new proposal must, therefore, have arisen from internal pressures within the government. Perhaps they feared that their silent majority were really becoming doubting Thomases. In any case, the clauses were agreed to without debate and the Bill passed without further division.¹¹¹

The government made it fairly clear that it was indeed their intention to enact a clause to relieve mothers which would be inoperative. The Bishop of London claimed the only reason the new clauses were initiated was because of "the certainty that they will be inoperative." He must have been a happy man, since he had earlier proclaimed his desire to have "a measure in its original simplicity, which ... proceeds upon the original law of nature which requires an unmarried mother to maintain her child."¹¹² As Lansdowne put it:

¹¹¹For all of the above, see Mirror, vol. IV, 1834, pp. 3301-4.

¹¹²See Mirror, 1834, vol. IV, p. 3303 and Hansard, 1834, XXV, 1082.

The object of these clauses is to alleviate the feelings which prevail, that this Bill does not administer equal justice to the man and the woman. I think that they will accomplish that object, and that, at the same time, they will not give rise to any of the evils of the original practice;....¹¹³

Even Senior recognised the very close similarity that the government had achieved between the original 1834 Report and the newly reformed Bill:

The amendments have a tendency to bring back the bill to its first state, and [sic] so far are beneficial and [sic] on the other hand they certainly please some persons who were opposed to the old bill. I prefer them to Mile's amendment;....¹¹⁴

Lest anyone doubt that the government might have actually wanted their proposal to be ineffective, it should be noted that the Earl of Chichester attempted to substitute the cheaper process of Petty Sessions in place of the expensive Quarter Sessions. This would result in law suits being dealt with cheaply and expediently. His measure was quickly quashed.¹¹⁵

While the new proposals might have satisfied any wavering government supporters, the opposition was hardly nonplussed. They recognized, as the words dropped from Wellington's mouth, that the clause was designed not to

¹¹³For all the above, see Mirror, 1834, vol. IV, p. 3303.

¹¹⁴Senior, Diary, pp. 260-2.

¹¹⁵For all the above, see Mirror, 1834, vol. IV, p. 3303.

work.¹¹⁶ On the contrary, the new clauses only

mitigate[d] the severity of their own [government's] Bill. It appeared then that when the poor female had been completely exhausted of all means to maintain her child, and not until this distressed state had reached her, the partner of her offence was to be called upon to contribute - not to her in her distress, observe, but to the parish itself, which hardly needed the contribution.¹¹⁷

The Tories continued their criticisms along the lines of justice, which had been their main argument since debate on the bastardy clauses opened. The Bishop of Exeter poetically reminded their Lordships that they had removed all assistance from the 'weak' woman, whose helplessness God had suffered to "show ... in the most trying and effecting manner."¹¹⁸ The Bill was unjust, the Tory's claimed, because both the woman and the man had an equal role in the conception of the child, and they were therefore equally obligated to maintain it.¹¹⁹

Philpotts finished by pointing out that even the great authority on English law, Blackstone, had written it was the duty of the man "to provide for those descended from his loins."¹²⁰

Surprisingly, a government supporter answered

¹¹⁶Scrope, "The New Poor Law," p. 257.

¹¹⁷Hansard, 1834, XXV, 1098.

¹¹⁸Hansard, 1834, XXV, 1068.

¹¹⁹Hansard, 1834, XXV, 1089 and 1099-1100.

¹²⁰Hansard, 1834, XXV, 1066.

Philpotts by conceding his point. The Bishop of London said that he fully acquiesced "in the justice of that principle; no doubt it is the duty of both parents to do all in their power to support the progeny which [sic] they have been the means of adding to the human race."¹²¹ Yet, Blomfield suggested that, while the man could maintain his child if he wished to, he should not be forced to pay an allowance. The application of force upon the man only led to greater evils than the government's measure would. As Blomfield put it, the question was not "whether we ought", but "whether we can" enforce child support by legislation. Blomfield apparently did not think that this could be done.¹²²

In an effort to counter Blomfield's utilitarian effort, Philpotts opted for high melodrama. Philpotts foresaw some women turning to infanticide as an act of revenge against the state. The woman, "in the hour of her utmost distress", would use her "utmost ingenuity" to "prove to you that you cannot ascertain the mother of a bastard child more easily than the father".¹²³ In the majority of cases, Philpotts felt the new clauses would have to have a demoralizing effect on women. The new clauses meant that a man who married a woman, had to provide for her bastards,

¹²¹Hansard, 1834, XXV, 1080.

¹²²Hansard, 1834, XXV, 1080.

¹²³Hansard, 1834, XXV, 1071. For more on infanticide also see Hansard, 1834, XXV, 1077, 1090, and 1100-01.

even if he was not the biological father. When the woman realized that she was unlikely to have many suitors because of this drawback, Philpotts claimed she would not only feel "cut off from ... society," but would invite the whole community to "ascend her bed".¹²⁴

To this the government could only state that they felt these assertions were very unlikely, for they possessed authorities who suggested that the new law might operate to the benefit of the mother and the child.¹²⁵ In any case, anything was better than the "endless perjury of the worse description" that had existed under the old law.¹²⁶ As a gentlemanly, but parting shot, the government went so far as to allege that if the Tories were justified in calling them the oppressors "of unfortunate females, the defenders of the immorality of males, and the encouragers of incontinence," then the government would be justified in retorting that the Tories:

...held out inducements to want of chastity, that they were encouragers of conspiracy and fraud, and were protectors of perjury.... [The Lord Chancellor] did not for a moment mean to say, that those who supported the law as

¹²⁴Hansard, 1834, XXV, 1088 and 1074.

¹²⁵See Hansard, 1834, XXV, 1086-7.

¹²⁶Hansard, 1834, XXV, 914.

it now stood were encouragers of fraud or perjury. But it would be as just on his part to make use of such accusations as the persons who had made such gross and unfounded charges against the right reverend prelate (the Bishop of London).¹²⁷

VIII - Denouement

On August 10th, 1834, the Lords passed the Poor Law Amendment Bill and sent it back to the Commons, where, in its amended shape, it could only be accepted or rejected.¹²⁸ When some members hoped to amend certain points within the Bill, they were informed that this was not within the power of the Commons.¹²⁹ The entire Bill quickly came to a vote, and the Commons accepted the measure 50 to 19.¹³⁰ The government gained an even greater victory when one con-

¹²⁷Hansard, 1834, XXV, 1093. The debate had not been completely bitter. Indeed, some members appeared to enjoy themselves. As Mr. Hughes Hughes [sic], a member from Oxford who was concerned about the seething numbers of lustful young men in the university there, put it: the board of guardians of local parishes were very distressed, "for, as might be supposed, the number of seductions in that city was unavoidably great - (laughter)." See Hansard, 1834, XXV, 1213. Lord Wynford suggested "The seducer ... had better and more attractive inducements to hold out to the woman than the bastardy pay. He had now got too old to recollect what those inducements were, but he was certain, that there were a thousand inducements far more seductive than the mere telling her" she would get 2s. per week for each bastard child. See Hansard, 1834, XXV, 1091.

¹²⁸MacKay, History of the English Poor Law, p. 144.

¹²⁹Hansard, 1834, XXV, 1212-3.

¹³⁰Hansard, 1834, XXV, 1227.

servative proposed making the requirement of corroborative evidence for the woman's testimony optional at the discretion of the judge. This motion was defeated 44 to 4.¹³¹ While Lord Althorp expressed contentment with the Bill as it finally stood, the Tory press suggested it was a measure that "no Christian legislature ought to have adopted."¹³²

When the smoke cleared, it can perhaps be said that no political faction won. While the Radicals promoted the cause of the lower class, they made no successful alterations in the original bastardy clauses. The Tories had some success in introducing the Miles amendment, but ultimately lost the measure in the House of Lords. Their real aim of punishing the father of a bastard and strengthening the paternalistic control of the parish over its lower class charges was never realized.

Finally, the government had the biggest loss of all. It originally construed the bastardy clauses as a provision which would ease parish administration, largely by reducing bastardy and 'immorality'. It never separated the two very distinct issues of parish administration and 'immorality'. The government commissioned an expensive two year inquiry, which it had purposely biased with its own preconceived notions, to examine the bastardy problem. They then

¹³¹Hansard, 1834, XXV, 1228.

¹³²Hansard, 1834, XXV, 1227 and Scrope?, "The New Poor Law," p. 257.

acted on their Commission's recommendations, which they had mistakenly interpreted as being correct, and succeeded in pushing a reform through Parliament. Nevertheless, in the process of reforming the bastardy clauses, the government must have alienated a marginal group of its own supporters. The 1834 Report's recommendations, which the government had insisted were correct and 'scientifically' based, were then abruptly disowned. Instead, the government produced the Duke of Wellington's clauses, which contained little foresight, having been conceived in a short period of time. Essentially, what that measure tried to do was provide a law on the books which would purposely be inoperative in daily practice. The history of the government's efforts at bastardy clause reform then, could hardly be interpreted as an unparalleled success. It is no wonder that the Act passed in 1834 soon ran into trouble and required further revision.

CHAPTER III

THE LIFE OF THE POOR LAW AMENDMENT

ACT: THE PUBLIC AND POLITICAL

OPPOSITION TO THE GOVERNMENT'S

POSITION: 1834-1842.

I - Introduction

Once the Poor Law Amendment Bill received Royal Assent, a new Act governed social policy in England and Wales. The provisions enacted by this new law were similar to the clauses of the Bill discussed in the previous chapter.¹ Essentially, the mother was stripped of child support payments from the father of her bastard. If she went to a parish workhouse for relief from her poverty, then the parish could undertake an expensive suit against the father to reimburse itself for the expenses incurred in maintaining the child.

The entire New Poor Law scheme, including the bastardy clauses, was supported by a large bureaucracy known as the Poor Law Commission. George Nicholls, Sir Thomas Frankland Lewis and John Georges Lefevre, were the three Commissioners who comprised the Board while Edwin Chadwick acted as their secretary. Nicholls had reduced the parish's costs under the old bastardy clauses in his home of Southwell, Nottingham, between 1821 and 1823, by rigourously applying rarely used statutes that were still on the books. The qualifications of the other two Commissioners were, however, negligible. Lewis was merely considered to be a

¹See Appendix B for a summary of the law enacted by 4 and 5 William IV, c. 76.

man "of official experience" and Lefevre "was considered an able man of business". The Commissioners were in turn served by an assortment of Assistant Commissioners, who advised individual parishes on how to form Parish Unions. The Unions, or groups of parishes, would eventually make the Poor Law Commission's administration a little easier.²

This entirely new system of relieving the poor in general, and bastards in particular, engendered considerable opposition. There was a small political faction in parliament and on select committees who opposed the government's position on the new bastardy clauses.³ While these individuals continued to attack the government on the same points that the Tories did in 1834, they failed to experience the same limited success.

The government's position on the bastardy clauses was

²On Nicholls, See D.N.B., vol. 14, pp. 438-41; George Nicholls, A History of the English Poor Law, vol. II (1898; rpt. London: Frank Cass, 1967), p. 233 and George Nicholls, Eight Letters on the Management of our Poor ..., Letter 6 (Newark: S. & J. Ridge, 1822), p. 47. In January, 1839; T.F. Lewis was succeeded by his son George Cornwall Lewis, and in May, 1841, Lefevre was succeeded by Sir Edmund Head. Head would first make many interesting comments as an Assistant Commissioner, that are described later in this chapter. For all the above, see Mackay, History of the English Poor Law, pp. 155-6 and p. 271. The government hoped that by grouping parishes into groups, or 'Unions', the Benthamite principles of administrative reform would be accomplished.

³G.C. Lewis referred to those who opposed the poor laws as the "refuse" of the House of Commons. This opposition did not come from any particular political faction in Parliament, but rather from the representations of individual members. See Mackay, History of the English Poor Law, p. 261.

also opposed by public groups. The ten-hours movement gave a natural and speedy impetus to the Anti-Poor Law movement, and short-time committees were instrumental in organizing Anti-Poor Law demonstrations.⁴ The tendency for Tories and radicals to oppose the bastardy clauses, which began in the House of Commons, extended to acts of public opposition after the New Poor Law was enacted.⁵

The Tory element in public opposition was led by the evangelical radical Tory Richard Oastler, and the curate George Stringer Bull. Both of these factory movement leaders felt the new law would upset the 'social compact' between classes. The radical element of popular opposition was composed of those who felt the new Act was an act of Whig treachery.⁶

This public opposition at first mirrored its political counterpart by attacking the same issues concerning bastardy that had emerged in the House of Lords' debates. The public faction soon realized that this would not succeed and turned to more sensational attacks. Those who publicly

⁴See Michael Rose, "The Anti-Poor Law Agitation", in J.T. Ward (ed.), Popular Movements, c. 1830-1850 (London: MacMillan, 1970).

⁵For much of the above, see Anne Digby, The Poor Law in Nineteenth-Century England and Wales (London: Historical Association, 1972).

⁶See Michael Rose, "Anti-Poor Law Movement," p. 81. For more on Oastler and the Anti-Poor Law movement, see Cecil Driver, Tory Radical, The Life of Richard Oastler (New York: Oxford University Press, 1946).

opposed the new bastardy clauses suggested there was a direct relationship between the passage of the New Poor Law, which contained oppressive clauses concerning bastardy, and the practice of infanticide by the mothers of bastards. While infanticide had undoubtedly occurred throughout English history, its frequency is still very difficult to establish. Since the crime of infanticide formed the exception in cases of bastard birth, it was easy for the government to say that the causes and the frequency of infanticide could not be ascertained, and therefore that the correlation the opposition drew between the new bastardy clauses and infanticide was a bogey. The public also expressed its opposition to the government in riots and petitions, but the government was still not affected.⁷

The government did act on reforms suggested in its own, internal reports. At least two Assistant Commissioners, as well as other individuals, recommended that the mother of a bastard be given redress outside the poor law scheme. It was these internal reports which accounted for the government's eventual modification of its policy

⁷See Michael Rose, "Anti-Poor Law Agitation", p. 81 and MacKay, History of the English Poor Law, pp. 234-6. Many of the petitions reported in Hansard give only a brief title and the names of those who presented them. The microprinted edition of the Parliamentary Papers does have an appendix containing a "General Index to the Reports on Public Petitions; 1833-1852", but this does not indicate the substance of those petitions. Because of this limitation in sources, the use of petitions is not detailed in this overview concerning the treatment of bastardy between 1834 and 1842.

regarding bastard relief. The government's action on its internal reports underlines the difficulty with the 'inquiry' into the bastardy clauses. If the government had been truly interested in 'rectifying' the Poor Law, its inquiring mind would naturally have considered the opinions of the opposition. The government failed to consider these opinions, yet when its own bureaucrats suggested a similar reform, they quickly acted. It is this mode of inquiry that was bungled from the start of the Poor Law reform, and which accounts for the many changes the bastardy laws underwent. Even after the government modified its policy regarding bastardy, a Welsh revolt would force yet one more change in the bastardy laws, beginning in 1844.

II - The initial attack on the new bastardy clauses after 1834, and the government's response

There was considerable public discontent about the Poor Law in general, and the bastardy clauses in particular, after the new measure was enacted. The most important source of support for the Anti-Poor Law movement was the popular press. Many Anti-Poor Law associations, often organized by a local curate or prominent inhabitant, sprung up throughout England.⁸ Their meetings were reported and advertised in a variety of papers, including the Northern

⁸See Michael Rose, "Anti-Poor Law Agitation," pp. 82-7.

Star, the Sheffield Iris and the Leeds Intelligencer.⁹

Because these papers expounded on the complaints voiced in Anti-Poor Law meetings, both meetings and Press coverage influenced the development of the Anti-Poor Law movement.

Initially in 1834, the press favoured well-known arguments against the bastardy clauses involving the nature of 'justice' and fair-play. These arguments were largely a continuation of the ones the Bishop of Exeter had adopted in the House of Lords with mediocre success. The Pioneer, for example, questioned the apparent injustice which the New Poor Law perpetrated upon the woman: "If guilt it be to her, why not to him?"¹⁰ Likewise, the Poor Man's Guardian also argued for an equality of treatment between the man and the woman.¹¹

Other issues had been raised in the debate of the Poor Law Amendment Bill, which were now addressed by public opposition. The popular press advised that infanticide and abortion would be the natural consequences of the new

⁹Unfortunately, only the Northern Star, out of all these prominent Anti-Poor Law newspapers, is available to this researcher. Its articles are dealt with later in this chapter because it began to publish in November, 1837. Among the main-stream and readily available political journals, only the Edinburgh Review carried any articles concerning bastardy and the New Poor Law.

¹⁰"Woman's Page", The Pioneer; or Grand National Consolidated Trade's Union Magazine, 28 June 1834, p. 423.

¹¹"The Bastardy Clause in the Poor Law Amendment Bill and its consequences if made law", The Poor Man's Guardian, A Weekly Paper for the People, no. 155, Saturday, 24 May 1834, p. 124.

bastardy clauses unless the Act was amended.¹² The press also wondered whether the new bastardy clauses dealt fairly with women who were often 'innocent'. One paper told of a woman who had lived faithfully with a man in a consensual union for some time. When she woke up one morning, she found the man's real wife and children, of whom she knew nothing, arriving from Ireland on her doorstep. The Poor Man's Guardian noted that the magistrate merely reprimanded the man for his conduct, and questioned whether this was the kind of 'justice' that was to be exacted from male seducers.

A final argument against the bastardy clauses, which had originally been initiated in Parliamentary debate, was that the new law was a burden on the lower class. Newspapers suggested that the upper class had done more than neglect their responsibilities in caring for those 'beneath' them and had actually partaken in immoral acts themselves. "Yes, yes, Sir James; it is not the poor alone who are seceeders from the paths of virtue. But the poor have to pay for a great many more illegitimates than they are aware of." It was the aristocracy, the paper alleged, that was responsible for the majority of bastard births.¹³

The press was not alone in its opposition to the new

¹²See "Woman's Page", Pioneer, 28 June, 1834, p. 423 and "The Bastardy clause...", Poor Man's Guardian, no. 155, Saturday, 24 May 1834, p. 124.

¹³"Woman's Page", Pioneer, 28 June 1834, p. 423.

bastardy clauses. There was also political opposition to the law presented by assorted members of parliament. These political opponents had the same criticisms about the law that the public had initially expounded. Individual members claimed that the law was 'hard' on women who had become "unfortunate" mothers,¹⁴ while it allowed rich men to escape the burden of paternity or brutalised other men by teaching them they had nothing to fear in the way of responsibility toward a woman they had impregnated.¹⁵ Yet, because only a few individuals rather than a particular 'faction' opposed the new bastardy clauses in the Houses of Parliament, the principle burden of refuting the government's stand fell back on the shoulders of the public.

In an effort to have the new bastardy clauses further amended, those who publicly opposed the law attempted a new tack. The Anti-Poor Law press adopted the strategy of "wholesale undifferentiated denunciation."¹⁶ The Poor Man's Guardian reported the sensational case of "a woman - a woman in the hour of childbirth, out in the cold and wet, [who was] actually refused admittance into the workhouse in this Christian country, on a night when a dog or a cat would have

¹⁴Hansard, 1836, vol. XXXVI, 1137.

¹⁵Hansard, 1836, vol. XXXVI, 1137 and SP, 1836, vol. XXIX, pt. 1, p. 299.

¹⁶Nicholas Edsall, The anti-Poor law movement, 1834-44 (Manchester: Manchester University Press, 1971), p. 137.

been let in; and this is the law."¹⁷

After 1834, a text known as the Book of Murder was published under the pseudonym 'Marcus' and was widely advertised in Anti-Poor Law newspapers.¹⁸ Although the Poor Law Commissioners strongly denied it, the actual authorship of the book was widely attributed to them or someone close to them.¹⁹ This Anti-Poor Law literature claimed that the previous fears of infanticide had actually been translated into the act of murder because of the new bastardy clauses:

The Murder-Book proposes that population shall be kept down by murdering infants wholesale. The new poor law absolves the fathers of illegitimate children from the responsibility of feeding and nourishing their own offspring, or of assuaging the suffering and sorrow of the unhappy mothers, whom the fathers have seduced. The father of the illegitimate child, therefore, is already authorized by law to murder his own infant, if

¹⁷Poor Man's Guardian, no. 238, Saturday, 26 December 1835, p. 196. The law, of course, did not forbid women in labour from entering the workhouse. In fact, the Poor Law Commissioners went to great lengths to declare that anyone who was indigent could have relief in the House.

¹⁸Michael Rose, "Anti-Poor Law-Agitation", pp. 85-6.

¹⁹See Mackay, History of the English Poor Law, pp. 239-41. It was rumoured that the Poor Law Commissioners defended infanticide. See McLaren, Birth Control, pp. 90-1.

that shall occur by his withholding from it necessary nurture and support.... The new law, therefore, is the evident, palpable, and undeniable precursor of the Murder-Book. It is the first born of the philosophical and political school from which the Murder-Book has proceeded.²⁰

The Taunton Courier reported that a Coroner's Inquest declared "it to be their unanimous opinion, from the numerous cases of... [infanticide] which had been brought to light, that many others occurred which were never discovered and that they had no doubt that many or most of them might be attributed to the bastardy clause, in the Poor Law Amendment Act".²¹

The government had an easy time of responding to the allegations of infanticide. Since such a criminal act still is difficult to document, the government passed any allegation of infanticide off as a wild rumor. In their First Annual Report, the Poor Law Commissioners argued that, although hardship, desertion, and infanticide were all expected, there was no evidence that such brutalities had occurred. In fact, the Commissioners maintained, all of the cases investigated before the publication of the First

²⁰ 'Marcus', ... The Book of Murder!... (London: William Dugdale, 1839), p. 5.

²¹ Quoted from the Taunton Courier, 23 March 1836, in C.A. Buchanan, "The introduction of the New Poor Law of 1834 into the unions of Bridgwater, Taunton Wells and Williton in the County of Somerset" (unpublished M.Sc. thesis, Bristol, 1978), p. 228.

Annual Report were fraudulent.²²

The government also had a well-defined ideological view of public opposition to its new bastardy clauses. Senior later wrote, for example, that the sensational press merely validated the beliefs of the "half-educated... by stories of infanticide, [and stories] on the refusal of a pension to which the mother of a bastard was formerly entitled".²³ In a contemporary pamphlet, while not mentioning bastardy specifically, Senior suggested that anyone who opposed the new law had completely unfounded opinions.²⁴

The government still felt that it had more explaining to do. Both the public and the political opposition had earlier raised the criticism that the new bastardy clauses were unjust, and the government wished to respond. Moreover, the government wanted to substantiate in its own mind that its new law was effective. The supporters of the new bastardy clauses first turned to the number of affiliation

²²Sp., 1835, vol. XXXV, pp. 144-5. Despite the Commissioner's claims, Buchanan reports that in some areas actions against mothers for abandoning their illegitimate children were common. See C.A. Buchanan, "Introduction of the New Poor Law", p. 227.

²³My emphasis. See Nassau Senior, Industrial Efficiency and Social Economy, (ed.) S. Leon Levy, vol. II, 1928, rpt. (New York: Arno Press, 1972), p. 327.

²⁴Anonymous [N.W. Senior], Remarks on the opposition to the Poor Law Amendment Bill by a guardian (London: John Murray, 1841), pp. 55-70.

orders made by the courts to support their case. The Poor Law Commissioners, for example, found that the courts had affiliated fewer fathers to bastard children after 1834 than they had before the bastardy clauses were enacted.²⁵ While the Commissioners declared that "the new bastardy clauses held a "sounder course" than the old bastardy clauses,²⁶ even they had to admit that the only reason there were fewer affiliations after 1834 was because of the great expense incurred in launching a law suit in a Quarter Sessions court.²⁷ Simply by pointing to a decline in affiliations, then, the new law's supporters were unable to claim that bastard births had declined.

²⁵For example, in one Union there had been fourteen affiliations previous to 1834, but only three after it. See SP., 1835, vol. XXXV, p. 232. The First Annual Report of the Poor Law Commissioners claimed there was only one affiliation then, where there had been ten before. See SP., 1835, vol. XXXV, pp. 143 and 1438.

²⁶See SP., 1836, vol. XXIX, pt. 1, p. 15.

²⁷Between August, 1834 and August, 1837, for example, the North Bierley Overseers did not pursue one case of affiliation because of the expense. See David Ashforth, "The Poor Law in Bradford c. 1834-71. A study of relief of poverty in mid-nineteenth century Bradford", Ph.D. Diss., Univ. of Bradford 1979, p. 334. The Poor Law Commissioners reported: "In numerous communications made to us by parish officers, they have declared, in complaining of the [affiliation] process, that as they were convinced the parish could only lose by it, they intended to abandon the pursuit of the father." See SP., 1835, vol. XXXV, p. 143. The Commissioners did not deny that that was a result of the expense of quarter sessions: "...we believe this to be the result which the Legislature intended to produce." SP., 1836, vol. XXIX, pt. 1, p. 15.

The supporters of the new bastardy clauses next demonstrated that the number of bastards chargeable to, or being maintained by, the parish had declined. The Second Annual Report claimed that the number of bastards chargeable to the parish had dropped from 71,298 in 1835, to 61,286 in 1836.²⁸ In some cases, this decline meant a considerable saving to the parish.²⁹ Yet again, a decline in the parish's expense did not mean that there were fewer bastards being born, but merely that they were not being maintained under the New Poor Law scheme.

In an effort to prove that the new bastardy clauses were effective in decreasing bastardy itself, the supporters of the new law finally "endeavoured to obtain an account of the numbers [of bastards] born...chiefly, as shown in the baptismal registrars". In taking this final conclusive step in claiming that the new bastardy clauses were effective, however, the Poor Law Commissioners were repelled by their respondents who "declare[d] that these returns are extremely

²⁸ sp., 1836, vol. XXIX, pt. 1, p. 16. There is the possibility that this entire result was a concoction. See Ursula Henriques, "How Cruel was the Victorian Poor Law?", Historical Journal, XI, 2 (1968), p. 367.

²⁹ In the Easry Union, composed of twenty-six parishes, the cost of bastard relief for the year ending in Christmas, 1836, was 300, while in February, 1837, there were no bastards receiving relief. This decline was not necessarily accomplished in two months as it may appear. The decrease in expenditure of 300 might have been accomplished over the entire year of 1836, so that by February, 1837, there was no one left on the books. See Hansard, 1837, vol. XXXVI, 1029.

imperfect, [and] that no reliance can be placed upon them for accuracy".³⁰ In an effort to prove that bastard births had already declined, the Commissioners were forced to turn to popular reports. James Edmonds, the Overseer of Chalfont, reported that every year there had been one or two bastards born, but, in the year following the New Poor Law, there were none. The ex-chairman of the River board of guardians reported no cases of infanticide and said only two bastards had been born within a year of terminating out-door relief.³¹

Since there is no statistical significance to support these local observations, some bastardy clause supporters sought to confirm their support of the new law with rumors and hearsay observations. One Assistant Commissioner of the Poor Laws expressed a willingness to disbelieve his own eyes

³⁰SP., 1836, vol. XXIX, pt. 1, p. 16. It had already been suggested that at least one respondent "contented himself with the information derived from partisans in that part of the country". See Hansard, 1836, vol. XXXI, 1137. No doubt the validity of baptismal registers was even more difficult to assess in the nineteenth century than it is currently. Nevertheless, it is likely that a careful inquiry was not undertaken because of the fear it would produce a damaging case for the new bastardy clauses. One contemporary source indicates that there were more bastards baptized, but dismissed it as being only a more 'full' registration and not an actual increase in bastard births. See Anonymous, The Parish and the Union or the poor and the poor laws under the old system and the new (London: Charles Knight, 1837), pp. 86-7.

³¹See SP., 1835, vol. XXXV, p. 265 and SP., 1836, vol. XXIX, pt. 1, p. 200.

and place his faith in the popular opinions circulating among overseers and boards of guardians: "...I regret to add, that the best information which I can obtain is insufficient to prove any decided moral effect which has hitherto been produced by its agency. [but,] ... I am inclined to believe from rumour, that had time permitted me to procure more general and complete returns, that I should have been able to prove a positive decrease".³² In their exuberance to 'prove' that bastardy itself was actually decreasing, some local parish officials based their opinions on what they hoped would happen, rather than on what had actually happened: "I am not aware of any difference yet, but I think they [improvident marriages] will be less frequent", one official suggested.³³

With a lack of believable evidence to the contrary, some supporters of the bastardy clauses regretfully had to admit that the New Poor Law seemed ineffectual. In parts of Wales, one Assistant Poor Law Commissioner reported that even two years after the passage of the new law, "marriages are contracted at the earliest possible period, and yet illegitimate children are exceedingly numerous, the 25 [sic] parishes composing the Carmarthen union are now supporting

³²SP., 1836, vol. XXIX, pt. 1, p. 216.

³³SP., 1836, vol. XXIX, p. 339. My emphasis.

nearly 400 [sic] bastards".³⁴ J.P. Kay, another Assistant Commissioner, also found increased marriages and a 'steady rate of bastard births in another area. He could only offer the bastardy clause supporters the meaningless consolation that there had been an 'improvement' in the minds of young ladies on the "subject of bastardy".³⁵

With the absence of conclusive evidence to show that bastardy itself was decreasing because of the new law, the bastardy clause supporters were in a difficult situation. The conclusion that the number of bastard births had remained the same or was even increasing since 1834 was completely untenable. Therefore, unable to prove that the new law had been effective, its supporters chose to hold out the proviso of future success. One pamphleteer claimed in 1837 that, although it was too soon to judge the effects of the bastardy clauses, the law would give greater incentives for chastity to young women.³⁶ Chadwick reported the testimony of a farmer, who felt that the effect of the new

³⁴SP., 1836, vol. XXIX, p. 367.

³⁵SP., 1836, vol. XXIX, pt. 1, p. 185.

³⁶John Boudier, Remarks on some of the more prominent features and the general tendency of the Poor Law Bill, addressed to those who are disposed to think it a harsh and oppressive Act (Warwick: Henry T. Cooke, 1837), p. 32.

system "will be to raise the moral feeling of the people".³⁷

The Commissioners of the new law were even edified by the testimony of Sarah Allen. Although she did not require relief from the parish, she went to declare the father to the overseer under the misapprehension that the provisions of the Old Poor Law were still in effect. When she found out about the new provisions, she exclaimed, "What! isn't [sic] it necessary to swear to the father nor nothing.... Dear me, then it will be a great caution to young girls now how they behave."³⁸

While the new bastardy clauses would eventually be successful, its supporters claimed, the alternative of the old bastardy clauses were unacceptable. The supporters trotted out numerous horror stories about the old law in an attempt to dissuade opposition and confirm their own beliefs.³⁹ Brougham discussed a parish workhouse before 1834 which contained three bastard-bearers, who were not models "of absolute cleanliness", mixed with nineteen sick

³⁷Edwin Chadwick, "The New Poor Law," Edinburgh Review, vol. 63, (July, 1836), p. 514. My emphasis.

³⁸SP., 1836, vol. XXIX, pt. 1, p. 268.

³⁹For various parallels to the old law, see SP., 1835, vol. XXXV, pp. 143 and 230; SP., 1836, vol. XXIX, pt. 1, p. 328 and Chadwick, "The New Poor Law", Edinburgh Review, p. 488.

individuals.⁴⁰ A pamphleteer declared that the parish workhouses before 1834 were "sinks of iniquity", but that after 1834, bastards in the workhouse could sometimes go to school.⁴¹ In addition to these practical changes in the workhouse, the bastardy clause supporters also perceived a philosophical change in the new measure. The clergyman Mordaunt Barnard felt he could safely conclude that the new law made it the woman's interest to remain chaste. This was apparently not the case under the old law.⁴²

While the new bastardy clause supporters had convinced themselves that the law was a success, they still advocated change. A woman had always been allowed to sue a man for damages if he were the father of her bastard child. Since such suit was extremely expensive, this provision of the Common Law was limited to middle and upper class women. Lower class women were effectually limited to pressing their claims under the Poor Law Act, which was chiefly welfare legislation. When the law was changed in 1834, they could not even do this. Thus, the Poor Law

⁴⁰Hansard, 1835, vol. XXVI, 1065-7.

⁴¹[Earl of Liverpool], ...the Operation of the Poor Law Amendment in the Uckfield Union..., p. 32

⁴²Mordaunt Barnard, Reasons of a Clergyman for acting as a guardian of the Poor, (London: Simpkin and Marshall, Hatchard and Son; Hamilton Adams and Co., 1837), p. 40.

Commissioners advocated that the law should somehow be changed, so that all women could benefit from the same Common Law principle.⁴³ At first, nothing came of this suggestion, which amounted to 'legal aid' for the poor. In years to come, however, this suggestion would assume increased significance.

III. - The 1837 select committee

The new bastardy clauses next test was the inquiry of a Parliamentary select committee in 1837, which answered general questions about the effectiveness of the entire New Poor Law. The select committee seems to have been mainly composed of individuals who favoured the new bastardy clauses, and, hence, the committee acted largely as a government spokesman.⁴⁴ There were, however, still groups

⁴³sp., 1835, vol. XXXV, p. 144.

⁴⁴The committee consisted of the following members: Mr. Baines, Mr. Barneby, Mr. Cartwright, Mr. J.P.B. Chichester, Mr. T.H.S. Estcourt, Mr. Fazakerly, Sir Thomas Freemantle, Mr. Robert Gordon, Sir James Graham, Mr. Harvey, Mr. Law Hodges, Mr. Hume, Mr. James Loch, Sir Oswald Mosley, Mr. Miles, Mr. John Ponsonby, Lord John Russell, Mr. Poulett Scrope, Mr. Charles Villiers, Mr. Wakley, and Mr. John Walter. See SP., 1837, vol. XVII, pt. 1, p. 2. It is very difficult to assess the feelings of each of these men concerning the New Poor Law, let alone the bastardy clauses. However, using Stepton's Who's Who, the political stripe of each individual can roughly be deduced as Radical, Reform, Liberal, Whig or Conservative. Considering that reformers (because the New Poor Law was an unprecedented reform of the old system of relief), liberals and whigs would likely be favourable to the new law, and

who publicly opposed the new bastardy clauses, and they continued to direct criticism at Parliament. In Bradford, on 6 March 1837, a local Magistrate addressed a crowd, claiming that the bastardy clauses of the New Poor Law were

among the worst. By... their practical working, the seducer of the weaker sex was allowed to go unscathed; and the whole onus of the crime, as to present consequences was laid upon the, too often, least guilty party. He would most confidently state, upon his own experience, as a magistrate, that so far from bastardy having decreased, it had most fearfully augmented. His frequent communications with the overseers and parish officers around had convinced him that this was the case. Affiliations had indeed, nearly ceased, but illicit connection and births had not diminished.⁴⁵

Medical officials were also publicly opposed to the new law. One coroner's report stated that "the jury were of [the] opinion, that the desertion of the children by the parent, was attributable to the injustice and demoralising effects of the bastardy clause of the new Poor Bill."⁴⁶

that radicals and certain conservatives would oppose it, it appears that the numbers of those in favour of the law handily outweighed the opposition. In March 1837, during the appointment of the select committee, Walter fought for a cross-section of members to sit on it. See Hansard, 1837, vol. XXXVI, 1281. Walter may have felt he failed in his bid to have a cross-section of members on the committee, because he ultimately withdrew from it. See Mackay, History of the English Poor Law, p. 264 and Rose, "Anti-Poor Law Movement", p. 75.

⁴⁵Hansard, 1837, vol. XXXIX, 951-2.

⁴⁶Hansard, 1837, vol. XXXVI, 1007.

Likewise, the public maintained the new measure was oppressive to the mothers of bastards. One pamphleteer examined the case of Elizabeth Scott, age twenty-five, who was given 1s.6d. per week for herself and her bastard child in a parish that still gave relief to individuals outside of the workhouse. From this pittance she had to pay 1s. a week for lodging: "They gave her and infant six pence a week to live upon, and the Board says it felt justified in doing this!"⁴⁷

While these public criticisms had only been directed at Parliament, there were other criticisms that were actually presented to the select committee in person. One magistrate testified that he felt the new bastardy clauses were based on "unjust" principles.⁴⁸ Other witnesses

⁴⁷Robert Blakey, An Exposure of the Cruelty and Inhumanity of the New Poor Law Bill as exhibited in the treatment of the helpless poor, by the board of guardians of the Morpeth Union, in a letter addressed to the Mechanics and Labouring Men of the North of England, by Robert Blakey, Mayor of Morpeth, (Newcastle: Charles Larkin, 1837), Letter I, p. 8 and Letter II, p. 6. Some parishes insisted that relief only be given inside the workhouse even if a bastard child had been affiliated before 1834. See SP., 1837, vol. XVII, pt. 1, p. 71, and pt. II, p. 132. In other cases the affiliation order made out on the father before 1834 was ignored and not enforced by the parish. See SP., 1837, vol. XVII, pt. 2, p. 505. There were also cases where no affiliation attempts were made because of the expense for Quarter Sessions actions. In other cases, the parish proceeded only if it felt income derived from the putative father outweighed the cost of affiliation. See SP., 1837, vol. XVII, pt. 1, p. 117 and pt. 2, p. 68 respectively.

⁴⁸See SP., 1837, vol. XVII, pt. 2, pp. 504-5.

claimed that the new law was ineffective. The Rev. S. Butler, said there had been an increase in bastards from three in 1836, to seven in only the first three months, of 1837. The Rev. Thomas Sockett also found that the number of bastards baptized in his Petworth parish had increased from about two in each year before 1834 to four or five after it.⁴⁹

Essentially, those who opposed the new bastardy clauses were unable to devise a viable alternative to the law. Without this alternative, politicians ignored the haphazard attacks of various witnesses and concentrated on the benefits of the bastardy reform.⁵⁰ This was an easy approach to take, since the 1837 committee members who opposed the new bastardy clauses spent most of their time attempting to prove unsubstantiated tales. Ultimately, this effort merely gave credence to those who supported the new bastardy clauses.⁵¹

One member of the House of Commons, for example, claimed that "in the town of Sunderland the parochial allowance of two hundred children had been suddenly stopped

⁴⁹See SP., 1837, vol. XVII, pt. 1, p. 294 and p. 26 respectively.

⁵⁰See Edsall, Anti-Poor Law Movement, p. 138 and Mackay, History of the English Poor Law, p. 265.

⁵¹Edsall, Anti-Poor Law Movement, pp. 137-8.

- and strong and dark rumours were afloat of children having been found dead." Under questioning, however, he revealed that the tales of infanticide had been reported in the 'press', and that he was unable to name any particular case of infant murder. A letter from the Vice-chairman of that Union said there had been only one inquest into infanticide since the passage of the new law.⁵² The inflammatory allegations of the member were then dismissed, and the new bastardy clauses received an additional boost.

The 1837 select committee responded to general criticisms levied in public and in the press by denying that detractors existed. The committee reported that "no complaints of any moment have been made" concerning bastardy.⁵³ It dealt with opposition to the bastardy clauses which was presented directly before the committee in a much subtler manner. Since the opposition was unable to concoct an alternative to the new bastardy law, the law's supporters only had to maintain that the new provisions were having the desired effect of actually decreasing the number of bastards born.⁵⁴ Once again, the supporters of the bastardy clauses

⁵²See Hansard, 1837, vol. XXXIX, 324-5 and 1012.

⁵³Sp., 1837, vol. XVII, pt. 1, p. 9.

⁵⁴The Earl of Winchester later said that he had voted for the new law because "it would tend to improve the moral character of the peasantry." See Hansard, March 26th, 1838, vol. XLI, 1235. This desire to 'improve' the poor is more carefully discussed in the earlier chapters.

attempted to suggest that, because there were fewer affiliation orders made by courts, bastardy itself had declined.⁵⁵ Mr. Abraham Barnett claimed that, because the parish had spent less on maintaining bastards, there must have been fewer bastards born.⁵⁶ Yet, neither a decline in affiliation orders nor a decrease in the amount of money spent on maintaining bastards, meant that the actual number of bastards born had declined.

In an effort to prove that bastardy itself had actually declined, many bastardy clause supporters reported rumours they had heard in various parishes. John Spackman, for example, claimed that bastardy had decreased based on the information of medical men and the opinions of others in the parish.⁵⁷ Mr. A. Dainstrey felt forced marriages had declined based on his "general impression arising from what I have heard,... [although] what I have said should not be considered as an authority upon the subject."⁵⁸

Since village rumours hardly confirmed the decline in bastardy which the new law's supporters sought, witnesses

⁵⁵See sp., 1837, vol. XVII, pt. 1, pp. 201 and 422.

⁵⁶sp., 1837, vol. XVII, pt. 2, p. 546.

⁵⁷sp., 1837, vol. XVII, pt. 2, p. 421.

⁵⁸sp., 1837, vol. XVII, pt. 1, p. 72.

turned to more statistical evidence. Yet, while they claimed there had been a universal decline in bastardy throughout the nation,⁵⁹ they were extremely uncertain about the statistics which proved such a decline: "I believe that there are fewer Bastard children", based on baptismal returns. "I have been given to understand - I do not know that my understanding upon the subject is founded upon sufficient data - that the number of bastard children has decreased throughout the country".⁶⁰ Only one firm conclusion can be drawn from these statements: 'common knowledge' merely confirmed the hopes of the bastardy clause supporters rather, than the facts, and the proof that bastardy itself had declined, could not be found.

Those who supported the new law bolstered their faith in it with one final device. The supporters stopped questioning the success of the new bastardy clauses, and instead concentrated on the flaws of the old bastardy clauses. Pamphleteers claimed that the new clauses were an improvement, because women could no longer perjure themselves as they had before 1834.⁶¹ The questions asked by

⁵⁹See SP., 1837, vol. XVII, pt. 1, p. 244 and pp. 347-8.

⁶⁰SP., 1837, vol. XVII, pt. 1, p. 71.

⁶¹Boudier, Remarks on...features...of the New Poor Law, pp. 30-1.

the examiners on the select committee were also purposefully leading, to show the contrast between the old and new laws:

[Question 422]. You have said that it was constantly the interest of the single labourer to threaten the parish with marriage; was it not very natural that the man who so threatened the parish should induce the girl to consent upon such promising terms? - That was one of the modes.

4222. Was there not, also, the certainty that the woman had, that if she failed in the fulfillment of the promise of marriage, she would receive relief from the parish; would not that be an inducement? - Yes.

4223. And if she had one bastard, was she not better off if she had two? - Yes; I have paid a girl that had four, and it was quite an income for her.

4224. Then do the Committee understand you that the old system operated as a premium to married people on legitimate children [by giving allowance payments to couples who could not support all their children], and to unmarried women, that it offered a premium on illegitimate children? - No doubt.

4225. Both these premiums are now withdrawn under the new law? - Yes.

4226. Do you think that conducive to the morals of society or not? - It has made a beneficial change, no doubt.⁶²

By comfortably quashing opposition through a variety of methods, the 1837 Select committee felt no need to make recommendations for change.⁶³ Yet, by concentrating on the defect of the old bastardy clauses, and ignoring the defects of the new clauses, the fundamental aim of maintaining laws which were just and efficient was jeopardised.

⁶²SP., 1837, vol. XVII, pt. 1, p. 245.

⁶³See SP., 1837, vol. XVII, pt. 1, p. 9.

IV - The 1838 select committee

The 'new bastardy clauses' next test was the inquiry of yet another Parliamentary select committee, in 1838. Like the inquiry the year before, it was empowered to answer general questions about the entire New Poor Law. Also as in the previous year, the public still expressed their opposition to the bastardy clauses which had been revised in 1834. Various Anti-Poor Law newspapers continued to report the meetings and petitions of the movement. Yet, both the newspapers and the Anti-Poor law leaders were increasingly absorbed by Chartism so that the existence of an anti-bastardy clause sentiment became increasingly difficult to detect.⁶⁴

The public continued to question the 'justice' of the principle entrenched in the new bastardy clauses. At a public meeting of the Hull Working Men's Association, those

⁶⁴See Edsall, Anti-Poor Law Movement, pp. 172-86 and Michael Rose, "Anti-Poor Law Agitation", p. 90. The 1838 committee originally consisted of Mr. Baines, Mr. Bolling, Mr. Borneby, Mr. Chichester, Mr. Estcourt, Mr. Fazakerly, Mr. John Fielden, Sir Thomas Fremantle, Mr. Freshfield, Mr. Law Hodges, Viscount Howick, Mr. Liddell, Mr. Lister, Mr. Miles, Lord John Russell, Mr. Poulett Scrope, Mr. Slaney, Mr. Villier, Mr. Wakley, Mr. Ward Walker, and Mr. Ward. On 2 March 1838 Ward was discharged and Mr. Langdale was added. See SP., 1837-8, v. XVIII, pt. 1, p. 2. Once again, using the political wheels in Stenton's Who's Who, it appears that those in favour of and those opposed to the New Poor Law were more evenly balanced in 1838 than they were in 1837.

present resolved to oppose the bastardy clauses in as much as it provided "that the father of an illegitimate child shall be exonerated from the liability to maintain his own progeny, and... [it threw] the maintenance...from the seducer to the seduced."⁶⁵

For the most part, though, the public directed its concerns at more inflammatory targets. An apparently well-known sonnet was calculated to appeal to even the coldest heart:

O cursed is the law that lends its aid
To full-blown villainy to crush the weak!
Poor Simon's daughter have, a flow'ret meek,
Alas! no wife, a wretched mother made;
Scorn'd in her poverty and shame, dismay'd,
Slew both herself and babe. Young Farmer Sleek
Pass'd by while they in the cold trench were laid!
"It broke his heart?" "He had no heart to
break".
"Nor would maintain his own?" "It is the law:
Young Farmer Sleek approved it, and could quote;
Nor Parson Conscience there could find a flaw.
He awed the Vestries; gave a liberal vote;
Brawl'd for Reforms - There ends the tale. Yet more
Young Farmer Sleek is Guardian of the Poor."⁶⁶

The Northern Star also continued its tirade against infanticide. A public meeting in Paddock, the Star reported, found "the law...[was] most inhuman, seeing that the

⁶⁵Northern Star and Leeds General Advertiser, vol. I, no. 13 (Saturday, 10 February 1838), p. 4. Generally, the editorials in the Star concentrated on general denunciation of the law, rather than on specific issues such as bastardy.

⁶⁶This sonnet, as part of a larger poem, was printed in both Blackwood's Edinburgh Magazine, vol. L, no. 270 (April, 1838), pp. 492-3 and G.R. Wythen-Baxter, Bastiles, p. 608.

bastardy clause is nothing less than offering a Premium for Seduction and Infanticide."⁶⁷

In order to substantiate this meeting's claims, the Star carried the story of an infanticide case in the same issue. One night in Nether-Hayford, Northampton, a servant awoke in the bedroom she shared with the cook, only to hear a crying infant. Startled, she ran for her master who happened to be the local curate. Rev. Crawley awoke and ran into the bedroom, only to find the cook sitting on top of her now deceased, illegitimate new-born, whose head had been crushed by its mother's weight. A coroner's inquest found her guilty of murder.⁶⁸

In addition to these public criticisms made at meetings and in the press, opponents to the new bastardy clauses also made presentations directly to the select committee of Parliament. While the opposition to the entire New Poor Law may have been more effective in 1838 than it was the year before,⁶⁹ the attack on the new bastardy clauses was still extremely weak. One witness who appeared before the 1838 select committee, for example, had no first-

⁶⁷See Northern Star, vol. I, no. 8 (Saturday, 6 January 1838), pp. 4 and 6.

⁶⁸See Northern Star, vol. I, no. 8 (Saturday, 6 January 1838), pp. 4 and 6.

⁶⁹Edsall suggests that perhaps because of a set-back in a motion in Parliament to have the Poor Laws repealed, the opposition to the Poor Law coalesced into a more effective force. See Edsall, Anti-Poor Law Movement, p. 138.

hand knowledge of the law. Because he lived in the north of England where the new bastardy clauses still had not been introduced, he could only base his opposition to the law on scandalous newspaper accounts.⁷⁰ The select committee was not impressed by the extent of his experience.

Another witness suggested that the new bastardy clauses were failing in their objective of deterring women from having premarital sex. He claimed that women tended to "forget on those occasions" of having intercourse, that only they were liable for the maintenance of a bastard child.⁷¹ The opponents of the bastardy clauses pointed to one parish, where there had been an increase of five or six bastard births per year, to substantiate their belief that the new law was ineffectual.⁷²

The select committee of 1838 was not swayed by the evidence against the new bastardy clauses, presented either through the public media or directly before the inquiry by witnesses. Returns made to Parliament on infanticide showed no great change between the number of homicide charges laid, or the convictions obtained, over the five year period between 1832 and 1837.⁷³ The select committee not only

⁷⁰SP., 1837-8, vol. XVIII, pt. 1, p. 13.

⁷¹See SP., 1837-8, vol. XVIII, pt. 1, p. 20 and pt. 2, p. 327.

⁷²See SP., 1837-8, vol. XVIII, pt. 2, p. 232 and pt. 3, p. 466.

⁷³SP., 1837-8, vol. XVIII, pt. 1, p. 33.

doubted the allegations of infanticide, but also dismissed the other criticisms that were made regarding the new bastardy clauses. They claimed that there were "a few, but very few, instances of individual complaint" concerning the bastardy clauses.⁷⁴

Those who supported the new bastardy clauses were not satisfied in merely answering the claims of the opposition. They also wanted to prove, to themselves and to the select committee, that the new law was effective in decreasing the number of bastard births. The decline of bastards chargeable to the parish was once again generalized, and interpreted as a decline in the overall rate of bastard births.⁷⁵ Likewise, the decline in the number of now expensive court proceedings which affiliated bastards to their fathers was also construed as a decline in bastardy.⁷⁶ Yet, there was not necessarily any relationship between the number of impoverished bastards maintained by a parish and the number

⁷⁴SP., 1837-8, vol. XVIII, pt. 1, p. 26.

⁷⁵See SP., 1837-8, vol. XVIII, pt. 1, p. 20; pt. 3, p. 141; and vol. XXVIII, p. 163.

⁷⁶See SP., 1837-8, vol. XVIII, pt. 3, pp. 151-2. As in 1837, the select committee of 1838 referred to the Poor Law Commissioners who suggested the high cost of a quarter sessions action was "to discourage proceedings". There is no reason why a decline in bastardy should result from a decline in affiliation, which itself was only achieved because of the procedure's inordinate cost. See SP., 1837-8, vol. XVIII, pt. 1, p. 33. Indeed, there is some evidence to suggest that even the number of affiliations had not declined. See Henriques, "How Cruel was the Victorian Poor Law?", p. 367.

of bastards born throughout England and Wales, nor is there necessarily a relationship between court cases and bastardy.

Undaunted, the supporters of the new law endeavoured to find other proofs to support their claims. They frequently cited their own opinions, based on their parish experiences, to justify their belief that bastardy was on the decline. These opinions were often based on very little fact.

The Assistant Poor Law Commissioner Richard Hall, for example, was asked by the 1838 select committee whether bastardy was increasing or decreasing in Leicester. Hall explained that he was unable to answer the question, since he had not been in that area for a year. Hall was quite eager to claim that he could, however, "state the reasons why I think there would be a decrease."⁷⁷

The Assistant Commissioner Alfred Power offered a more blatant example of how the opinions held by the new bastardy clauses' supporters were often incongruent with the facts. Power found a decline in the number of bastards being maintained by the parish and the number of affiliations by the court. He also found that bastardy itself had actually increased since the passage of the new law:

with regard to the number of bastards born I have heard from several quarters statements that they are not by any means decreased; but on the contrary I have heard an opinion expressed of the number being in-

⁷⁷Sp., 1837-8, vol. XVIII, pt. 1, p. 246. My emphasis.

creased....from the returns made by the overseers of the townships it appears that there is an increase in those districts."

Yet, instead of accepting this evidence which suggested the new bastardy clauses were ineffective, Power defended the integrity of the new law. He suggested that women still believed men could be sued for the support of a bastard child. This incentive to premarital sex, Power claimed, would soon disappear. Only then, would the true merits of the virtuous new bastardy clauses be realized.⁷⁸

Since some of the supporters of the bastardy clauses remained unconvinced by the opinions of their peers, they attempted to use statistics to prove the worthiness of the new law. These investigators 'selected' the parish of Great Bowden, with a population of 1,074. Usually an average of eight marriages took place each year in the parish, but the year before had seen only one marriage solemnized. Bastardy was also found to be "very considerably diminished".⁷⁹ Likewise, in some 'selected' parishes of Cambridge and Suffolk, there had been thirty-six bastards born in 1834 and 1835, but only nineteen born in 1837 and 1838.⁸⁰

The use of such statistical 'evidence' had shortcomings, since it could hardly be used to infer a national

⁷⁸For all the above, see SP., 1837-8, vol. XVIII, pt. 1, pp. 362-3.

⁷⁹SP., 1837-8, vol. XXVIII, p. 287.

⁸⁰SP., 1837-8, vol. XXVIII, p. 489.

trend. Some contemporaries also found other difficulties with the data. A return from Cranfield, for example, showed a drop, from an average of 3.4 bastards born each year before 1834, to 2 bastards born each year after the new law was enacted. Yet, a local cotton spinner claimed that, while the return reported the birth of four bastards during one year in Cranfield, he had counted ten bastards born and four expected to be born.⁸¹

The supporters of the new bastardy clauses pulled out one final stop in their effort to justify the new bastardy clauses. Once again, they side-stepped the issue of whether or not the new law worked and claimed merely that the old law did not work. The proponents of the law refused to submit to critics, who claimed that the liability for a bastard should be on the man. Such a revision would lead to an "increase of illegitimacy greatly more than to its suppression", some petitioners claimed.⁸²

Other respondents said that, since the parish had never been reimbursed by the father for the maintenance it provided to his bastard, the whole concept of male liability was nugatory.⁸³

The supporters of the new bastardy clauses appeared

⁸¹SP., 1837-8, vol. XVIII, pt. 2, pp. 306 and 326 respectively.

⁸²SP., 1837-8, vol. XXVIII, p. 321.

⁸³See SP., 1837-8, vol. XVIII, pt. 1, p. 246; pt. 2, p. 519 and pt. 3, p. 141 respectively.

to have had a strong case. They had comfortably quashed opposition to the new law, and could even point to the administrative efficiency of the enactment. The mother of a bastard usually entered the workhouse for only a short time and, when she left, quickly found work in 'plaiting' or in her former occupation.⁸⁴ In a few cases, the union of parishes kept the child in the workhouse while its mother went out to service,⁸⁵ although women who abandoned their children for even temporary employment could be prosecuted under the Vagrancy Act.⁸⁶

As most of this thesis demonstrates, those who opposed the new bastardy clauses often had only limited success because of their inability to propose a practical alternative to the new law. Yet, there was a faction among those who supported the new law, who also felt that needy

⁸⁴See SP., 1837-8, vol. XVIII, pt. 2, p. 520. 'Plaiting' generally meant weaving or braiding. One Assistant Commissioner suggested jobs might not have been so easy to come by for mothers of bastards. In one union, 543 of the 1,837 occupants in a workhouse were bastards, prompting James Phillip Kay to say this was the natural consequence of the Poor Law, "which has this effect,...that those who are trustworthy and skillful, obtain good situations, and are supported by wages; and those who have given evidence of a want of skill, or a want of trustworthiness, are, to a certain extent, dependent upon the poor-rate." See SP., 1837-8, vol. XVIII, pt. 1, p. 529.

⁸⁵See SP., 1837-8, vol. XVIII, pt. 1, pp. 186 and 529.

⁸⁶See SP., 1837-8, vol. XVIII, pt. 1, p. 249.

single mothers should be allowed to sue their seducers.⁸⁷ Some of the supporters, for the very first time, were able to go beyond the general recommendation of previous witnesses and provide the 1838 select committee with tangible, point-by-point suggestions by which redress might be accomplished. It was these suggestions, which came from the ranks of the law's own supporters, that created the strongest catalyst to reform the new bastardy clauses.

Henry Musgrave Musgrave from Shitlington suggested one of the remedies to the 'unfair law'. He would allow seduced females an opportunity to produce a certificate from a resident minister, church warden, and six principal inhabitants, saying she had previously been of "irreproachable character." Upon the production of such a certificate, she would be examined before special court sessions, and, if her story were judged to be the truth, the man might be charged £20 to £100, depending on his class. In lieu of non-payment, Musgrave provided six months on the treadmill. With this suggestion, he hoped to encourage private agreements between the man and the woman, rather than an actual increase in affiliation actions.⁸⁸

⁸⁷James Phillip Kay made such a general suggestion. See SP., 1837-8, vol. XVIII, pt. 1, p. 532. W. Shadbolt, ex-chairman of the Lambeth board of guardians, suggested that a distinction be made between a woman with her first bastard child, and one with subsequent children, but admitted he did not know how this was to be done. See SP., 1837-8, vol. XVIII, pt. 3, p. 141.

⁸⁸sp., 1837-8, vol. XVIII, pt. 2, pp. 524-5.

Lord Wynford also suggested a system of redress, because he disliked the great expense and the scandalous testimony of a quarter sessions action. He suggested that a bastard-bearer could lodge a complaint with the Magistrate, who would then order the appearance of all parties concerned at a trial conducted by three judges. Although the case would be adjudged only on the woman's oath, payments ordered by the court would be restricted to transactions between the guilty man and the parish's board of guardians. Wynford hoped that this way there would be no incentive for the woman to perjure herself. After one year under this system, the child would be removed from the parent and raised in the workhouse where it would be more "advantageously and virtuously brought up".⁸⁹

A third suggestion made by Assistant Commissioner Alfred Power drew more attention than any others. Under the old law, cases "of peculiar hardship" were dealt with by the relief system, but under the new law they were not. Power suggested "where deception has been practised on the female, and where, in fact, there has been possibly a breach of promise of marriage, or where actual seduction has been effected by any means;" there should be some kind of "local tribunal for the purpose of receiving redress for grievances of that nature". This tribunal, Power stressed, could not in any way be connected with the Poor Law. Although Power

⁸⁹Hansard, 1838, vol. XLII, 736-8.

claimed he only made this suggestion because it had been presented to him by parish officials and expressed "great doubt" whether or not the scheme could be undertaken effectively, he willingly defended the plan by claiming it would only do for the poor what was already accomplished for the rich.⁹⁰

Unlike its predecessor, the select committee of 1838 had a more balanced membership of individuals both in favour of and opposed to the new bastardy clauses.⁹¹ By itself, this balance was probably not sufficient to account for the committee's recommendations, but armed with three specific models for reform, the inquiry felt changes to the bastardy clauses enacted in 1834 were justified.⁹² The committee sided with the new bastardy clauses proponents on the effectiveness of the new law, which they claimed ended perjury and 'compulsory' marriage. Yet the select committee went on to claim that the new law was "generally inoperative" because of the requirement for an expensive Quarter Sessions action, and recommended that the legislature consider a change on this point. Furthermore, the 1838 select committee twice called on the legislature to consider

⁹⁰sp., 1837-8, vol. XVIII, pt. 1, pp. 363-5.

⁹¹ For the list of each individual on the committee, see p.42 of this thesis.

⁹² The committee recommended that the legislature might particularly want to examine Power's suggestions. See SP., 1837-8, vol. XVIII, pt. 1, p. 34.

a law that would indemnify lower-class women: ".... it would appear to be desirable that the woman should be authorized to appeal to some easily accessible and unexpensive [sic] tribunal ... for redress in cases of seduction or of breach of promise of marriage." This tribunal, the committee recommended, should be a completely separate entity from the Poor Law administration.⁹³ It was, therefore, a step toward 'legal aid' for the impoverished.

Despite the recommendations of the 1838 select committee, the government took some six years before it allowed the woman access to an inexpensive tribunal where she could press her claims for redress in bastardy cases. While the government essentially ignored this proposal, it slowly pondered the committee's other suggestion that the law be revised so it could operate more effectively.

During June 1839, Lord John Russell declared that it was too late in the session to introduce the Bastardy Bill he had originally intended.⁹⁴ By July, though, a measure was forthcoming. "The purport of the bastardy clauses would be to transfer the power which was now exercised at the Quarter Sessions to the Petty Sessions, with such provisions as now existed with respect to the Quarter Sessions."⁹⁵

⁹³For all of the above, see SP., 1837-8, vol. XVIII, pt. 1, pp. 5 and 34.

⁹⁴Hansard, 1839, vol. XLVIII, 218.

⁹⁵Hansard, 1839, vol. XLIX, 365.

The Bastardy Bill quickly made its way through Parliament with minimal debate and received Royal Assent only a month after it passed the first reading.⁹⁶ Many observers believed that this new law was intended to answer the allegations of the select committee, which claimed that the use of expensive Quarter Sessions courts made the bastardy clauses inoperative. Yet, even in moving the venue of affiliation proceedings from the expensive Quarter Sessions to the cheaper Petty Sessions court, the government ensured the law would remain ineffectual.

Because the parish was still the only party who could sue the father for a bastard's maintenance, the mother was ostensibly robbed of her only avenue for redress. Moreover, the parish was unlikely to undertake litigation, because the burden of corroborating the woman's testimony was usually too great. Even if the parish did begin a law suit, the man merely had to say that he wanted his case heard in the Quarter Sessions. Upon entering into a recognizance and two sufficient sureties, both of the petty sessions justices who examined the defendant were obliged to transfer the case.⁹⁷

Thus, while the 1838 select committee hoped an effective law would grow out of their recommendation, the government dodged the intent of the inquiry and remained committed

⁹⁶The Bastardy Bill was first read on 23 July, 1839, and received Royal Assent on 26 August, 1839. See Hansard, 1839, vol. XLIX, 690 and vol. L, 588.

⁹⁷See 2 and 3 Victoria, c. LXXXV.

to the justifiability of burdening only the single mother with the maintenance of her bastard.

V - The attack on the bastardy clauses
after 1839, and the government's response

Those who were against the bastardy clauses enacted in 1834 were hardly placated by the government's piece-meal reform. Although the revision allowed affiliation actions to be pursued in Petty Sessions courts, nothing else had changed for the indigent mother of a bastard child. Thus, the opponents of the bastardy law continued to use the same tactics they had throughout the history of their campaign for reform.

Public opposition to the law was hampered because Chartism had tapped most of the Anti-Poor Law movement's organizational strength and enthusiasm at this time. Nevertheless, a few books and tracts which attacked the entire New Poor Law were published between 1838 and 1841.⁹⁸ In the Book of the Bastiles, Baxter claimed the law on bastardy was "a cowardly attack on the female sex".⁹⁹ He went on to use the popular argument that the bastardy

⁹⁸The vade-mecum by 'Marcus', which proposed the systematic murder of the poor, was published in 1838 and 1839. Baxter's Book of the Bastiles was published in 1841. See Mackay, History of the English Poor Law, pp. 239-41.

⁹⁹Baxter, Bastiles, p. 395.

clauses were the result of class differences between the legislators and the seduced:

In looking over this division of the "bill", my first impulse is to inquire:-- "Had your Lordship ever a mother? and at the time of its (the New Poor-Law's) publication, a wife - a sister - a daughter?" You had! Well, that is curious! for I should have sworn, by this notoriously injurious and unmanly clause, that you had not. But, peradventure, although now so "heroic, stoic, and sententious," your Lordship, in your juvenile days, when one of "us youth" found gallantry - that is the paternity part of it (for you had not five thousand a-year then!) rather too expensive, and out (I only hazard the supposition)-of a philanthropic desire to relieve your successors in the amorous science from such a liability, gratuitously inserted the clause we are talking about."¹⁰⁰

Baxter argued that the legislators should be afraid to leave their houses, for fear their eyes would be "horrified ... with the unnatural sight and indecent exposure of some poor seduced girl... once ... a father's pet and joy...."¹⁰¹

Instead of concentrating on the 'class bias' or 'injustice' of the law, most public opponents of the new bastardy clauses preferred to concentrate on more sensational aspects that might arouse a national outcry. Although few novels considered the plight of the poor, Frances Trollope's Jessie Phillips told the story of a woman's seduction which was contemplated solely because of the New Poor Law. Ultimately the seducer killed the child, while

¹⁰⁰Baxter, Bastiles, p. 8.

¹⁰¹Baxter, Bastiles, p. 19.

the mother died in prison before finding out she was innocent of an infanticide charge.¹⁰²

Other books also suggested that infanticide was the result of the new law. The Bastiles suggested that the bastardy clauses were unjust, because the 'weaker' woman was left unprotected by the law, while the man easily escaped 'his crime'. The result was an increase in seduction and infanticide.¹⁰³ Unfortunately for bastardy clause opponents, the topic of murder allowed Baxter to concentrate on salacious but unsubstantiated tales which could not be expected to convince the government. Baxter described the scene of a workhouse with the roof falling off, while the reader discovered "the Genus of Inhumanity, a 'little friend that scoffs incessantly', throned on a heap of recently starved paupers, enjoying the working of the New Poor Law - videlicet, infanticides, suicides, seductions and universal starvation".¹⁰⁴ Baxter even complained that there were numerous cases where significant evidence pointing to infanticide was dismissed by judges as unimportant, perhaps

¹⁰²See Helen Heinemann, "Frances Trollope's Jessie Phillips: Sexual Politics and the New Poor Law," International Journal of Women's Studies, 1:1, January-February, 1978, 96-106. Trollope's novel was first published in 1843. Heinemann's claim that this novel was the only one to dramatise the problems created by the New Poor Law is not strictly correct, since a few novels took up the cause of un-married pregnant women, although they did not make specific references to the New Poor Law. For more on these novels, see Chapter I.

¹⁰³Baxter, Bastiles, pp. 43-5.

¹⁰⁴Baxter, Bastiles, p. 3.

in some effort to reduce criticism of the New Poor Law.¹⁰⁵

The political attack on the new bastardy clauses was even less vociferous than the public attack was. One return tabled before Parliament showed an 11 1/4 per cent increase of bastard births in 'selected' Parish Unions between 1834 and 1837.¹⁰⁶ Members of Parliament also claimed that, because a woman was unlikely to perjure herself to obtain the pittance offered by the courts for the maintenance of her child, greater recognizances should be placed on the man to support his bastard.¹⁰⁷ While they pondered the question of infanticide and the fate of women who were too dignified to enter the workhouse, none of their observations were ever vigorous enough to obtain any more than a polite rebuttal.¹⁰⁸ It seemed that the government had full control over their opponents on the bastardy issue.¹⁰⁹

Ironically, the Assistant Commissioner Edmund Head included a complaint in one of his reports that the opposit-

¹⁰⁵See Baxter, Bastiles, pp. 570-7.

¹⁰⁶SP., 1840, vol. XVII, p. 495.

¹⁰⁷Lord John Russell responded that extra recognizances were unnecessary. See Hansard, 1839, vol. XLIX, 1387; vol. L, 113-4 and 1841, vol. LVII, 419-20.

¹⁰⁸For infanticide and the law, see Hansard, 1839, vol. XLIX, 742; vol. L, 341 and 1842, vol. LXV, 32.

¹⁰⁹In the summer of 1841, Robert Peel, with help from the Duke of Wellington, succeeded the Whig ministry which had resigned. The new government pledged to continue the same Poor Law policy. See Mackay, History of the English Poor Law, p. 311.

ion to the New Poor Law in general, and the bastardy clauses in particular, was very effective. "For the present time I will only say that it appears to be going on as badly as even Mr. Oastler could desire." While the Magistrate who made this claim, believed that the 1834 law had a good effect, "the grievance-mongers, ... have now succeeded in disabusing their minds of this impression, just as it was beginning to produce the most healthful reformation of conduct and morals among the female peasantry population."¹¹⁰

This assessment was not valid when considering the national scope of the reform. The supporters of the new bastardy clauses easily rebutted their opponents' claim that there had been an 11 1/4 percent increase in bastard births, by countering that the return included areas that had not been incorporated into Parish Unions during the entire period of the survey.¹¹¹ The proponents of the law also demolished their opponents' argument that the bastardy clauses were 'unjust', by claiming that the mother's 'crime' of illegitimacy should be punished as it arose.¹¹² Indeed, the supporters of the new law even claimed that natural justice was on the side of the bastardy clauses, and not on the side of the single mother. "It is idle talk of throwing

¹¹⁰SP., 1840, vol. XVII, p. 496.

¹¹¹See SP., 1840, vol. XVII, p. 496.

¹¹²Hansard, 1841, vol. LIX, 992.

the burthen on the weaker [female] party in such cases; that it does so fall, is the result of those ordinances respecting the propagation of our species, which it is useless to scrutinize and impossible to change."¹¹³

For additional support in justifying the new bastardy clauses, proponents of the law attacked the practices that arose from the old bastardy clauses. The archetypal Poor Law of Elizabeth only provided for an "indemnity to the parish for the charges of maintenance of a bastard." Assistant Commissioner Head argued that the new law was similar, in that it allowed only the parish to affiliate the father. While this system could work, Head claimed, the old practise that grew out of the law, which permitted women to affiliate the fathers of their bastards, could not work. It was this kind of system, which was not provided for in the original statute of Elizabeth, that allowed "an unmarried woman to impose on an unmarried man the obligations of paternity....[tending] inevitably to encourage concubinage and forced marriages".¹¹⁴

The supporters of the new bastardy clauses were also able to point to a well-administered law to stultify their opponents. When the parish guardians in the Easingwold Union all resigned to show their anger over the rule which abolished relief outside the workhouse for first-time

¹¹³See SP., 1840, XVII, p. 499.

¹¹⁴Sp., 1840, vol. XVII, pp. 421-2.

bastard-bearers, the Poor Law Commission quickly handled the revolt. The Commission induced three guardians to stay, warning that all of those who resigned would still be held fully accountable if a scandal arose within the workhouse.¹¹⁵ The supporters of the law claimed that under the old bastardy clauses the mother of a bastard could be imprisoned, old 'respectable' women were forced to mix with repeat bastard-bearers, and women continually perjured themselves during affiliation. Under the new law, none of this occurred.¹¹⁶ Indeed, opposition to the bastardy clauses was of such little consequence that in 1841 Senior felt comfortable enough to ignore the question of illegitimacy in an article he wrote on Poor Law reform.¹¹⁷

While the supporters of the bastardy clauses easily quashed the opposition, there were suggestions for reform from within their own ranks. Like certain officials before

¹¹⁵See Hansard, 1842, vol. LXIV, 117 and Mackay, History of the English Poor Law, p. 307.

¹¹⁶See Hansard, 1839, vol. XLIX, 557-8; 1841, vol. LVII, 431; 1839, vol. L, 114 and SP., 1840, vol. XVII, p. 497 respectively. In an effort to obtain a classification of the workhouse inmates, the guardians of Bourn Union wanted to move widows and pauperized women in with older women so they would not be subject to "the corrupting influences and disgusting conversation and habits...[associated] with women of abandoned character". SP., 1840, vol. XVII, p. 357. Despite careful administration, though, Assistant Commissioner William Day reported some cases of females who became pregnant in the workhouse. See SP., 1843, vol. XXI, p. 184.

¹¹⁷See N.W. Senior, "Poor Law Reform," Edinburgh Review, or Critical Journal, vol. LXXIV (October, 1841), p. 27.

him, Assistant Commissioner Edmund Head hypothesized that some kind of remedy could be administered to the woman which would be similar to the benefits of the old law without its supposedly malevolent effects. He feared using Petty Sessions courts for affiliations, because this might allow the mother to extort a compromise from the putative father, yet saw no other suitable alternative. Head, therefore, considered that civil redress might be contemplated in two cases: in the case of a man who misled a woman by using "her vanity, her passions or her affection"; and in the case of a seduction where there was a promise of marriage. Head suggested that, to win her case, a woman should be required to prove she was defrauded, and had her character damaged. Because of these criteria, Head reckoned that really only women who had taken a formal marriage vow, would successfully win their cases. Head also imposed the further restriction that all of the woman's testimony be corroborated by some means.¹¹⁸ Head's proposal was not immediately considered by government, and for the near future women had to wait in vain for an effective system that would give them redress despite the recommendations for change.

Head's recommendations are nevertheless significant in the overall historical context of the bastardy problem. Despite public and political attacks, those who supported

¹¹⁸For all the above, see SP., 1840, vol. XVII, pp. 491-504.

the new bastardy clauses withstood the demands by their opponents for further reforms. The supporters of the new law often found that these demands appealed to emotional concerns for the mother, rather than hypothesizing a scheme for redressing the grievances of the woman, and which would also 'reduce' the number of bastard births. Moreover, the opponents always offered demands for action but never offered mechanisms that the government felt would work if they were put in place. The public and political demands were therefore unacceptable to the new bastardy clauses' supporters.

The suggestions of Musgrave, Wynford and Power were some of the first recommendations that actually suggested how redress for the mother of a bastard might be accomplished. Because these proposals came from supporters of the bastardy clauses, rather than from opponents of the law, the government was more likely to accept the points with an open-mind and an uncritical eye. Head's recommendations added to this pool of ideas on exactly how the bastardy clauses might be changed. Yet, the government was not predisposed to reform the law and with the exception of the move from Quarter to Petty sessions courts, had resisted the 1838 select committee's recommendation that the procedure for affiliating bastards be made more effective. Thus, some kind of catalyst was needed before the government actively considered all the proposals for redress that lay

before them.

CHAPTER IV

THE DEATH OF THE BASTARDY CLAUSES
OF THE POOR LAW AMENDMENT ACT:

THE REBECCA MOVEMENT

I - The Origins of Rebecca

In the ten years after 1834, the supporters of the new bastardy clauses had consistently resisted efforts by their opponents to entertain further versions of the law. The supporters partly felt that the new law was really the best compromise that could be hoped for between the faction who wanted to reduce bastardy by placing the liability for maintaining a child on the mother and the group who believed the woman should still be allowed some means of redress against the man. Yet, a small group of suggestions had collected on how the division between these two factions might be bridged. Since the government was reluctant to incur any more criticism over the uneasy settlement it had imposed in 1834, it failed to act on the bastardy clauses supporters' own recommendations for reform. Nevertheless, a catalyst motivated the government to make a final change in the bastardy law, which saw the bastardy clauses removed from the purview of Poor Law administration.

The Rebecca Riots that occurred in Wales throughout the early 1840's were the result of many factors. Certainly one of these was the overwhelming poverty that plagued the populace.

Many individuals were so poor that they preferred the minimal provisions of a workhouse or gaol to the even more uncertain existence outside these institutions of society.

Ann Davies from the parish of Bedwellty, who had been released from prison on one day, begged to be returned to it on the next after she and her child spent the night under a hedge.¹ One farmer complained that women who had quit the workhouse were "starving about the country in a naked state."²

The Rebecca Riots also had the source of their discontent in a revolution that had just overtaken the backward social structure of Wales. The 'social compact' of Welsh society had been upset by the Industrial Revolution, which displaced the lesser gentry in favour of middle-class shopkeepers, lawyers and businessmen.³ Because the traditional system of hiring labourers on a yearly basis was being replaced by the middle-class demand for day labourers, the lower class were left in turmoil without guarantees of employment.

The largely English middle-class, which had destroyed the traditional social structures of aristocratic Welsh paternalism, was contemptuous of Wales' lower class.

¹See Baxter, Bastiles, pp. 156-7. Evan David of the Cardiff trust testified some women refused to leave the workhouse because it was too comfortable. Robert Weales' report on a Local Act in Plymouth also found the mother of a bastard child preferring the workhouse to an allowance of only 1s. a week. See SP., 1844, vol. XVI, p. 533 and vol. XIX, p. 85 respectively.

²See SP., 1844, vol. XVI, pp. 206 and 331.

³David Williams, The Rebecca Riots: A Study in Agrarian Discontent, (Cardiff: University of Wales Press, 1955), p. 17.

English Poor Law officials were unable to respect either the Welsh language or Welsh customs, which acted as a barrier in legal and administrative proceedings. Assistant Poor Law Commissioner Edmund Head reported, in a letter to George Cornwall Lewis that

George Clive ended a letter to me not long ago with the following benevolent and pious ejaculation, written from the depths of Wales: "that the devil would fly away with this miserable race of Celtic savages is the fervent prayer of yours sincerely, G.C." - I need not say how heartily I repeat "Amen" to the above petition.... The gradual action of Boards of Guardians, railroads and other opportunities of intercourse, may civilise them in about three centuries.⁴

Yet, the dislike of the Welsh by English bureaucrats did not go unrequited. The New Poor Law was interpreted not only as class hegemony, but also as cultural hegemony. The law intruded on the beliefs of Welsh non-conformists, who felt charity was a religious, rather than a secular act. The Welsh also claimed that English laws had no place in governing the rights of their innocent female citizenry. Welshmen claimed that the new bastardy clauses might be required to administer English urban prostitutes, but were ill-suited in relieving naive Welsh country girls.⁵

⁴See Williams, Rebecca, p. 39 and Head to Lewis, April 27th, 1837, in D.G.G. Kerr, Sir Edmund Head: A Scholarly Governor, (Toronto: University of Toronto Press, 1954), p. 12 respectively. Both Head and Lewis eventually became Poor Law Commissioners. See MacKay, English Poor Law, p. 271.

⁵For all the above, see R.A. Lewis, "William Day and the Poor Law Commissioners," University of Birmingham Historical Journal, IX, (1964), p. 184 and Williams,

II - The Rebecca Riots and government reaction

Thus, with the combination of cultural hegemony, class hegemony, and overwhelming poverty, a powder keg erupted. Wales experienced a rebellion in the summer of 1839, when lime-carrying cart-drivers revolted against the high sum charged by toll gates through which the drivers had to pass. In July, a riot led by an anonymous leader with the alias 'Becca' became the name-sake of what was latter dubbed the Rebecca Riots.⁶

After a lengthy period of uneasy peace, violence again erupted on 24 October 1842, because a new toll gate had been erected. The violence was extreme, and one despised gate-keeper was nearly lynched. The keeper retaliated by attacking a cart-driver who refused to pay the toll at his gate. Yet, the Rebecca Riots quickly devolved into a protest against many items. At one mass rally, participants listened "to a list of grievances regarding the tolls, the tithe, the poor law and church rates". Welshmen even attacked the established Church and the Queen by calling Anglican clergyman "ministers of the national

Rebecca, pp. 138 and 144-6.

⁶For all the above, see Williams, Rebecca, pp. 26 and 188-234.

whore."⁷

The Rebecca movement enjoyed a wide range of support for many reasons. In some ways the legends personified in the mythical Rebecca probably resembled a Welsh Robin Hood. The Welsh saw Rebecca as the only entity which could successfully oppose the forces of class hegemony, cultural hegemony and overwhelming poverty.⁸ Rebecca, therefore, acted as a forum for social justice. Sometimes, for example, its participants took illegitimate children to see their fathers and enjoined the man to support his child. While these visits were often accomplished in a jovial atmosphere, and even met with the amusement of the man's wife, Rebecca could also adopt a more serious role. Young men who refused to marry women they had seduced were more seriously threatened.⁹

The wide-range of support that Rebecca attracted meant that it possessed considerable strength. At one riot,

⁷For all the above, see Williams, Rebecca, pp. 76 and 188-234.

⁸Assistant Poor Law Commissioner William Day failed to recognize that the Rebecca movement was directed at all three of these targets. Instead, he concentrated on Rebecca as an attack on the upper and middle class: "There is now no longer any doubt that this is a movement against Property, and I think there are grounds for supposing that it is now connecting itself with Chartism." See William Day to George Cornwall Lewis, 18 August, 1843, in R.A. Lewis, "William Day", p. 187. Yet, Rebecca did indeed cross over class lines. One witness claimed a riot leader possessed a "gentlemanly voice" and had "a hand unused to work." See Williams, Rebecca, p. 199.

⁹Williams, Rebecca, p. 241.

a mob numbering two thousand on foot and three hundred on horseback, was present to attack a single workhouse. This scale of insurrection forced the military to move field pieces into some areas of Wales. The riots were also extremely difficult to stop, since mobsters frequently coerced witnesses not to testify against them.¹⁰ Fortunately, though, in 1844 the government supplemented its troops with a public inquiry in an effort to determine the roots of dissent and meet the needs of the Welsh people.

The Welsh quickly revealed to the Committee of Inquiry that they were upset with a variety of issues, including the bastardy clauses.¹¹ The Welsh were unable to understand why they could no longer affiliate the father of a bastard, using only the woman's oath. While English women may have perjured themselves under the old bastardy clauses that operated before 1834, the Welsh claimed this did not happen in their land.¹² Many trusted the word of a

¹⁰For all of the above see Williams, Rebecca, pp. 202, 207 and 214.

¹¹The bastardy clauses in particular, and the New Poor Law in general, were only some of the issues under debate. Often the complaints of the Welsh were vague and generalized.

For example, the New Poor Law was described as "extremely repugnant to the feelings, habits and opinions of the country". This blanket statement addressed no particular feature of the new law. See SP., 1844, vol. XVI, p. 257.

¹²SP., 1844, vol. XVI, pp. 180, 327 and 386. There were exceptions to this. Some felt any change to the new law would only bring back the abuses of the old law where "common prostitutes" extorted money or marriage from a range of putative fathers. See SP., 1844, vol. XVI, pp. 292, 336

Welsh woman to such an extent that they felt affiliation orders should be easily obtained, and wanted the return of the Old Poor Law's system where men were condemned to gaol if they refused to pay the sums demanded by the orders.¹³

The Welsh were also upset with the new bastardy clauses because the law denigrated the traditionally accepted styles of courting behaviour popular throughout the countryside. Under the Old Poor Law in Wales, there had been few sanctions against premarital sex, since "marriage, - and that not a forced one, ...almost invariably wiped out the light reproach which public opinion attached to a previous breach of chastity".¹⁴ The New Poor Law attempted to change this by dissolving the man's responsibilities, including the traditional expectations of marriage.

Apparently, traditional patterns of courting behaviour failed to change because of the new law. In 1844, even the Poor Law Commissioners observed that the still remained customs in Wales which were "hardly compatible with a sound state of morality, [and] which expose farm servants and 356.

¹³SP., 1844, vol. XVI, pp. 384 and 403. However, Colonel Vaughan, a Magistrate, felt corroborated testimony must be required to reduce the chance of perjury and extortion. SP., 1844, vol XVI, p. 367.

¹⁴See SP., 1844, vol. XVI, p. 110. One observer reported nine out of ten pregnant women were married under the old law, while thirteen of fifteen remained unmarried under the new law. See SP., 1844, vol. XVI, p. 205.

to great and frequent temptation."¹⁵ One colonel suggested that it was the nature of lodging on farms, where labourers slept in their quarters undifferentiated by sex, which contributed to the bastardy 'problem'. He too, found that men and women continued the tradition of courting "by night".¹⁶ The farmer John Rees of Pansod, Llanarth, also maintained that premarital sex only occurred within traditional courtship patterns: "There is no bastardy in our country without a great deal of courting before [hand]".¹⁷

Although the new bastardy clauses failed to destroy the traditions of premarital sex during courtship they did destroy the claims of liability a mother had against the father of her bastard. Since the community usually did not punish couples for their premarital sex, Welshmen thought it was unjust to place the complete burden of a bastard upon the woman. The Welsh sensibilities were offended by the man's callousness which stemmed from the new bastardy clauses. In answer to the question, what will become of the woman you have impregnated, he too frequently replied, "What does it matter? we are scot free".¹⁸ The country was also angered because the man evaded affiliation orders, "with a confidence and effrontery which has outraged the moral

¹⁵SP., 1844, vol. XIX, p. 34.

¹⁶See SP., 1844, vol. XVI, pp. 205, 231 and 356.

¹⁷See SP., 1844, vol. XVI, pp. 327 and 180.

¹⁸See SP., 1844, vol. XVI, pp. 231, 273 and 367.

feeling and provoked the indignation of the people to a degree that can hardly be described."¹⁹

The Welsh were additionally outraged by further examples of insensitivity. In one case, where a woman consented to premarital sex only after the banns of her marriage had been published three times, her fiance left upon finding she was pregnant.²⁰ Rebecca Riot participants frequently thought they were performing Christian acts in addressing these types of injustices. This was "the opinion of some sensible men" concerning a case where a schoolmaster had written a threatening letter to a well-off man who had refused to maintain his bastard child.²¹ In order to address such injustice, then, the Welsh once again cried out for male liability in bastardy clauses. As farmer Rees put it, "I would give at least as much punishment on the man as on the girl; but I think rather more."²²

The Welsh suggested that child abandonment was a frequent result of a woman's inability to affiliate the man. Under the Old Poor Law, the mother usually raised first child in a hastily arranged marriage, which prevented the child from being born a bastard. Under the New Poor Law, however, women found they were unable to support both

¹⁹See SP., 1844, vol. XI, p. 110.

²⁰See SP., 1844, vol. XVI, pp. 231, 273 and 367.

²¹sp., 1844, vol. XVI, p. 227.

²²See SP., 1844, vol. XVI, pp. 327 and 180.

themselves and their child outside a marriage. In some cases, a woman left her child with a wet-nurse and never returned for it. In other cases, the mother simply abandoned the child. Even though such behaviour was strongly condemned by the Welsh, the parish had no choice but to support the bastard. The people hardly appreciated this expense, which quickly burdened the community.²³

The Welsh claimed that "crime infanticide and general demoralization" were results of the new law.²⁴ They discovered many abandoned-drowned infants, who were probably of bastard birth. They also pointed to the trial of Margaret Hugh. The prosecutor apparently was able to 'demonstrate' how she murdered her two bastards, yet the Jury acquitted Hugh, questioning, "How could we do otherwise, when the New Poor Law acts so hardly against the poor woman?"²⁵ To the Welsh mind, infanticide was but another poison the New Poor Law brought to their country.

While most Welshmen felt that the law failed to work because community traditions remained unaffected by the new

²³For all the above, see SP., 1844, vol. XVI, pp. 327, 401, 398, 476 and 475 respectively.

²⁴See SP., 1844, vol. XVI, pp. 199 and 230.

²⁵See SP., 1844, vol. XVI, pp. 204, 432, 434 & 561. It is interesting to note that the faith Welshmen had in the purity of their countrywomen did not exist in cases of infanticide. Only one Welsh clergyman felt that infanticide had not increased because of the New Poor Law. He claimed, "... life is very sacred in this country." See SP., 1844, vol. XVI, p. 227.

bastardy clauses, other Welshmen suggested a different set of reasons. Henry Leach, Chairman of the Milford Quarter Sessions declared it was all very well to postulate laws which elevated character, but claimed that this was difficult to achieve with girls who earned thirty shillings a year.²⁶ Some felt bastardy had increased because there was no check on the male seducer, some felt it had decreased because there was a greater check on the female seductress, and one clergyman did "not think that any Act of Parliament would interfere with it."²⁷

The Commission that was appointed to inquire into the Rebecca Riots consisted of Chairman Thomas Frankland Lewis, who had been a Poor Law Commissioner, and Tory Members of Parliament Robert Henry Clive and William Cripps. After three months of writing,²⁸ their report confirmed that the root of the "Welsh grievances" were a result of monetary and intellectual poverty. Rural Welshmen were apparently too impoverished to pay a tax which the parish imposed to cover poor relief costs. They also disliked the technocratic class of officials who enforced the law. As a result, they preferred using the Old Poor Law's system of volunteer administrators instead of the New Poor Law's paid of-

²⁶See SP., 1844, vol. XVI, p. 332 and 292.

²⁷See SP., vol. XVI, pp. 327, 563-4, 273, 495 and 228 respectively.

²⁸See Williams, Rebecca, pp. 277 and 280 and Stenton, Who's Who, vol. I, pp. 81 and 95.

officials. The Welsh farmers claimed that the paid officials were of the wrong class, while the expense of their salaries drove up the cost of poor relief. On the other hand, the Poor Law Commissioners reported that the uneducated farmers wanted to control the spending of parochial funds themselves, while "the better educated persons" feared any return to the Old Poor Law's system of volunteer administration.²⁹

The government inquiry admitted that, despite the high cost of parish administration under the new bastardy clauses, there was no obvious decline in the bastardy rate:

... we do not hesitate to state, as the result of our enquiries, in South Wales, that those provisions [the bastardy clauses] have altogether failed of that effect which sanguine persons calculated they might produce on the caution or moral feelings of the weaker sex.³⁰

Yet, the government maintained that the philosophy behind the new bastardy clauses was not responsible for the failure of the law. They believed it was a 'logical' notion to suggest that when affiliation was more difficult to obtain for the mother of a bastard, other women would be more careful not to find themselves in the same 'trouble'. The reason the bastardy clauses failed in Wales, the government claimed, was because of the unique circumstances found in that region. Since not all of the Welsh Parish Unions had a

²⁹SP., 1844, vol. XVI, p. 109.

³⁰See SP., 1844, vol. XVI, p. 110.

workhouse, the 'regimen' the house imposed on bastard-bearers could not be fully implemented.~ It was this administrative problem, the government claimed, which made the bastardy clauses in Wales ineffective.³¹

The English government denied the Welsh accusation that infanticide was the result of the new law. They suggested that, despite wild fluctuations, overall, Wales had experienced neither an increase nor a decrease in the rate of infanticide.³²

The government also answered the Welsh demand for 'justice' in bastardy cases. In January, 1844, the Poor Law Commissioners announced that a new Poor Law Bill would be introduced into Parliament later that summer, which would create a 'fair' law. The Commissioners, motivated by the incensed Welshmen, apparently adopted the suggestions made by their Assistant Commissioners years before. They said that the woman, instead of the parish, should affiliate the man. In their Report, the Poor Law Commissioners even included an Appendix showing how this system of redress for the woman was already at work under Scottish law. Thus, after years of political and public opposition, the govern-

³¹SP., 1844, vol. XIX, p. 34. As if to prove this, the Poor Law Commissioners produced a table that showed bastardy was lowest where there were workhouses, and highest where there were none. See SP., 1844, vol. XIX, p. 34. Once again, this table has no statistical validity because it has samples from only three Welsh Unions.

³²See SP., 1844, vol. XVI, pp. 204, 432, 434 and 561.

ment finally intended to amend the bastardy clauses based on their own internal reports.³³

III - A new Bill in the House of Commons

On 10 February 1844, Sir James Graham introduced a Bill in the Commons which amended the law regarding affiliation proceedings. Graham claimed that the new Bill was but another event in the evolution of the bastardy law. Of course, the measure was really the climax in the history of the previous twelve years of bastardy clause reform. He suggested that the public had been largely opposed to the 1834 law and had remained dissatisfied when the government moved affiliation from the Quarter Sessions back to Petty Sessions courts five years later. Graham reported that the government introduced its newest Bill, which allowed the mother rather than the parish to affiliate the father of a bastard, in an effort to satisfy the malcontents. The law would be somewhat similar to that of Scotland, Graham said. Some corroborative evidence would be required in the

³³For all the above, see SP., 1844, vol. XIX, pp. 1-7 and Mackay, English Poor Law, p. 317. The Poor Law Commissioners' Tenth Annual Report, announced these changes before the Rebecca Inquiry Report was published. There is no doubt, though, that the Commissioners and the government were only acting on the preliminary findings of the Rebecca Inquiry. Poor Law Commissioner Nicholls reckoned that the 1844 reform grew out of recommendations made in 1838. He declined to acknowledge the importance of the Rebecca Riots. See Sir George Nicholls, A History of the English Poor Law, vol. II, p. 359.

presence of two magistrates, who could affiliate the child within six months of its birth. The affiliation order would cease when the child became thirteen.³⁴

Some members of Parliament immediately expressed their happiness with these new provisions, but Mr. T. Duncombe, representing Finsbury, was

sorry to hear that it was the turbulent and tumultuary, and he might almost say insurrectionary, proceedings which had occurred in some districts of Wales that had induced the right hon. Baronet to turn his consideration to that subject.³⁵

Graham immediately defended the government by saying it was not the Welsh violence which had forced a change in the law. He admitted however, that the government had introduced its Bill because of the "warm feelings" in Northern England and the "well-founded cause of complaint in South Wales" that had been discovered by the Rebecca Inquiry.³⁶

Duncombe opposed the government's new measure suggesting that six months was not a long enough period for a mother to affiliate the father of her bastard. Graham quickly conceded this point and amended the Bill to give a one year deadline. Other members now opposed the Bill, suggesting a putative father might make payments to the mother of his child until after the one year deadline.

³⁴Hansard, 1844, vol. LXXII, 477-8.

³⁵Hansard, 1844; vol. LXXII, 482. See also Hansard, 1844, vol. LXXII, 487 and LXXVI, 1495.

³⁶Hansard, 1844, vol. LXXII, 485.

Knowing it was too late for the woman to take court action after this deadline, the man would stop making his voluntary support payments. Once again, Graham conceded, promising to maintain the one year deadline with the added proviso that, if the man had made payments during the first year of the child's life, affiliation could still be pursued thereafter.³⁷

While some members of the Commons were satisfied with Graham's concessions, other members were not. The opposition split into a group of hard-liners, who equated the new proposal with the abuses of the Old Poor Law, and a group who felt that Graham's Bill did not go far enough in supporting the single mother. Hard-liners, such as Bickham Escott, a member for Winchester, claimed that the clause which allowed the imprisonment of a man who refused or was unable to pay on an affiliation order and who had no goods to distrain, was both unnecessary and unconstitutional. Captain Rous, who sat for Westminster, claimed that like the Old Poor Law, the new Bill "was a premium for perjury".³⁸

Members who felt the new Bill did not accomplish enough on the single mother's behalf had other questions. One member felt it was pointless to allow the mother to sue

³⁷For all the above, see Hansard, 1844, vol. LXXVI, 423-4.

³⁸See Hansard., 1844, vol. LXXVI, 425-7 and Stenton, vol. I, pp. 129 and 335.

for affiliation when experience showed that the man never paid, and the woman would still have to rely on the parish for relief. Another Member opposed the Bill claiming "it would be inoperative for good, and that it might and would be operative for evil." Denison attempted to thwart the new Bill by suggesting that three justices, instead of two, should be required to make affiliation orders. By proposing this Amendment, which was blatantly impractical, he hoped the Bill would be defeated. His ultimate goal of protecting the woman might then be achieved through some other means. Denison questioned:

...what chance had a poor woman, with child, friendless, in the presence of strange magistrates-against a father backed by a sharp attorney ready to take every advantage?

Colonel Wood agreed with Denison's proposal, and hoped three magistrates would be practical, since disputes among the judges would be more easily settled.³⁹

Both groups who opposed the new Bill failed in their criticisms. Graham responded that terms of imprisonment for men who refused to pay the sums expressed in an affiliation order were necessary to make the proposed clauses operational. Three magistrates were hardly necessary for an affiliation procedure, Graham claimed, and Denison's amendment was subsequently withdrawn.⁴⁰

³⁹For all the above, see Hansard, 1844, vol. LXXVI, 425-6 and 435.

⁴⁰Hansard, 1844, vol. LXXVI, 426-7.

Yet, there were still other concerns that had to be addressed by Members of the Commons. Peter Borthwick wondered about the clause which had the man make a direct payment of an affiliation order to the woman without the presence of an intervening agent. Borthwick thought this provided the man with an opportunity to continually seduce the woman. Graham, however, was unable to "see the force" of Borthwick's suggestion, and the clause that allowed direct payments from the man to the woman was subsequently agreed to.⁴¹

Graham had the most difficult time defending his Bill against the criticism concerning the appeals process from Petty Sessions to Quarter Sessions courts. When the Bill was introduced, it allowed the man to initiate appeals, but did not extend this right to the woman. Since the cost for the woman of merely responding to the man's appeal could be 4, 10s., critics felt she would be unable to attend the putative father's appeal of a case she had already won in a lower court. Giving the woman the power to appeal a case she had lost was also useless. The cost of initiating appeals might be 10 or 12 and thus out of a poor woman's grasp.

Graham admitted that he had wondered if the appeals process would benefit the wealthy man over the poor woman. He refused to abolish appeals, however, because of the

⁴¹Hansard, 1844, LXXVI, 426-7 and 437.

merits they possessed which his critics had omitted. The value of Quarter Sessions as a watch-dog over the sometimes questionable activities of Magistrates in the lower court could not be denied. Furthermore, the woman's sordid testimony was unsuitable for Quarter Sessions which was considered a public court. Hence, the appeal for the man only was a satisfactory arrangement.⁴²

Thomas Wakley, a member for Finsbury, was outraged by Graham's admissions. How could the Legislature give the man the advantage of appeal while the woman held an infant to her breast, he questioned. Wakley claimed that, because only the man had the ability to appeal the court's decisions, infanticide would be the result. "Child murder! Could it be denied?" The Commons remained unperturbed while Wakley's question went unanswered, and the division on the clause regarding appeal to Quarter Sessions passed with eighty-four Ayes and forty Noes.⁴³

⁴²For all of the above, see Hansard, 1844, vol. LXXVI, 427-33.

⁴³See Hansard, 1844, vol. LXXVI, 429-30; 435-6 and Stenton, vol. I, p. 394.

IV - A new Bill in the House of Lords

Three weeks later on 26 July 1844, the new Bill received its first reading in the House of Lords. While in the Commons Graham had claimed the new Bill was the result of public pressure, the leader of the government in the Lords ⁴⁴ suggested that Parliament itself had not been truly satisfied with the bastardy clauses when they were first enacted in 1834. Lord Wharncliffe said that, by making it the interest of the woman to remain chaste, legislators had originally hoped bastardy would decline. Despite this honourable goal,

[they] could not conceal from themselves that there was a cruelty in not providing the woman with some effectual remedy, or with the means of supporting her child and the question was how that remedy could be given without affecting the poor.⁴⁵

In 1834 there was no answer to this question, and the new bastardy clauses only allowed the affiliation of a bastards' father by the parish in Quarter Sessions.

Lord Wharncliffe also reported that an additional difficulty with the bastardy clauses of the New Poor Law had arisen. The law was not only unjust, but by 1844 it had

⁴⁴See Hansard, 1844, vol. LXXVI, 453 and DNB., vol. XIX, pp. 110-2. Lord Wharncliffe initially joined the Peel ministry in 1834, and was generally considered to have little weight in Cabinet.

⁴⁵See Hansard, 1844, vol. LXXVI, 1753-4.

not even succeeded in reducing the number of illegitimate births. The supporters of the new bastardy clauses had been "deceived [when, they thought bastardy would decline]; for, though in some parts of the country bastardy had decreased, it had on the whole increased. Some alteration was therefore necessary."⁴⁶ The new measure was calculated to give women of the lower class the same redress that middle and upper class women already received. This principle of redress would supposedly devolve from the new mechanisms of affiliation that an unmarried and pregnant woman would have at her disposal. Even if the new measure failed to work, legislators said that Parliament could always reconsider the matter.⁴⁷

Once again, a faction of hard-liners who suggested the abuses of the Old Poor Law would return, and a faction of members who felt the Bill did not do enough for the single mother, opposed the government's proposal. The Earl of Stradbroke was one hard-liner who questioned whether the measure was necessary, since bastardy, in his opinion,

⁴⁶See Hansard, 1844, vol. LXXVI, 1753-4. Graham's claim that public pressure and the Rebecca Riots accounted for the new Bill is much more credible than Wharnccliffe's suggestion. It is plausible that Wharnccliffe hoped to save face by saying that the bastardy clauses were ineffectual instead of admitting that the government succumbed to riotous behaviour.

⁴⁷Both Wharnccliffe in the government, as well as Richmond and Fortescue in the opposition, felt the new Bill should at least be given a try. See Hansard, 1844, vol. LXXVI, 1760 and 1764.

was decreasing rather than increasing. Stradbroke maintained the Bill would have no beneficial effect on the woman, since men would merely refuse to pay the sums demanded by an affiliation order. While the taxpayers suffered the burden of gaols filled with debtors, there would be rejoicing among "a certain class of people", in the hope of receiving money they obtained from perjury, or "what they called their pay". Lord Wrottesley also felt the Bill would offer "a higher premium to perjury and incontinence". Yet, all of these criticisms went unanswered by the government who felt as if they were under very little pressure.⁴⁸

The group that advocated greater protection for the mother of a bastard mounted a considerably stronger attack than the hard-liners. Grounded in conservative ideology, they believed it was the duty of society to shield the weaker female from the stronger male's advances. The female protectionist Lord Teynham postulated three classes of women in workhouses: innocents who had already been contaminated by the wretched, women who should be removed so they would not be tempted by vice, and those whose bastardy offence was their first fall from grace. Teynham advocated giving society's best protection for only the last group, but Wharncliffe denied this veiled request on behalf of first-time bastard-bearers for relief outside the work-

⁴⁸For all the above, see Hansard, 1844, vol. LXXVI, 1770-1 and 1834-5.

house.⁴⁹

The Bishop of Exeter, Henry Philpotts, was also a 'female protectionist' who at first expounded his criticisms of the new Bill in a general denunciation. He claimed that if the Lords "consent[ed] to pass this wretched tissue of miserable expedients, [they] put off the hopes and expectations of the poor to an indefinite period". He also claimed the government had not given enough time to consideration of the Bill, and that the whole question would best be resolved by postponing debate for six months.⁵⁰

When Wellington charged that Philpotts merely sought the repeal, rather than the further consideration, of the bastardy clauses,⁵¹ the Bishop was forced to further substantiate his opposition. His first concern was that the female might be repeatedly seduced because she would have to collect the sum demanded by an affiliation order directly from the father. When Graham had received this criticism in the Commons he was unwilling to make any changes. Wharnccliffe in the Lords, however, promised to remedy this difficulty in the report stage of the Bill. Ultimately there was no amendment forthcoming on this

⁴⁹Hansard, 1844, vol. LXXVI, 1919-20.

⁵⁰Hansard, 1844, vol. LXXVI, 1811-4 and 1817.

⁵¹Hansard, 1844, vol. LXXVI, 1829 and 1832.

point.⁵² Like his counterparts in the commons, Philpotts was also concerned about allowing the man an appeal to Quarter Sessions. Although he believed the man did have a right to such an appeal, he also felt the poor woman might easily be taken advantage of in this process. Wharncliffe answered this criticism by suggesting a solution that had escaped Graham when he had answered a similar reproof in the Commons. Wharncliffe reasoned that, since the man paid the expense of an appeal, attornies would willingly take on a female's case if it was strong enough. Should the man lose his case, the woman's lawyer would be paid by him.⁵³

Ignoring Wharncliffe's rebuttal, the Bishop continued to his final criticism. Philpotts suggested that the woman's oath in her affiliation action against the father of her bastard should not require corroboration. The very nature of the sexual act precluded this kind of testimony, the Bishop said. Instead, the Magistrates judging the case should only be empowered to ask for corroborating testimony if they thought it was required to settle the case. The Marquis of Bute interjected that in Scotland it was the corroborative evidence that was relied on, and the woman was only called as a witness when this corroborative testimony

⁵²Hansard, 1844, vol. LXXVI, 1841. The Earl of Hardwicke also wanted the father's payments passed through the parish official's hands. He received no reply from the government to his suggestion. See Hansard, 1844, vol. Lxxvi, 1768.

⁵³Hansard, 1844, vol. LXXVI, 1841.

failed.

Wharncliffe ignored this allusion and betrayed his true sentiments by saying that in most cases of bastardy it was the man and not the woman who was seduced. Corroborative testimony was therefore required to prevent extortion and perjury. Wharncliffe also attempted to allay further objections by suggesting that the law was not rigorous to the extent that an eye-witness to the sexual act itself was required. Hence, the requirement for corroborating evidence for the woman's testimony constituted both a necessary and a fair safeguard.⁵⁴

V. — The provisions and effect of a new law

Thus, on 9 August 1844, the government succeeded in removing the bastardy clauses from the purview of the New Poor Law.⁵⁵ The new bastardy law gave the woman one year, or longer if the man had previously contributed money toward her child's care, to make an application for affiliation before a justice of the peace. When the mother went to court before two justices, she had to corroborate her word "in some material Particular by other Testimony, to the satisfaction of the said justices", before the man could be

⁵⁴For all the above, see Hansard, 1844, vol. LXXVI, 1838-41.

⁵⁵Hansard, 1844, vol. LXXVI, 1944.

affiliated.

If an affiliation order was granted, the man's liability was limited to 10s. a week for a midwife, 10s. a week for funeral expenses in the event of the child's death, 5s. a week for the first six weeks of the child's life, and 2s. 6d. a week until the child became thirteen years old. Yet, if the father was unsatisfied with the lower court's ruling, he could appeal to the higher Quarter Sessions court after posting certain securities. The putative father's payments under an affiliation order went directly to the woman unless she was insane, incarcerated, transported, dead or married. In the event the mother was incapacitated, this money could be received by a legal guardian of the child who had been appointed by the state. The mother was not permitted merely to refuse to raise her child. If she was "able wholly or in part" to raise the child, but still refused, she would be punished as a "Rogue and Vagabond".⁵⁶

Perhaps one of the most important provisions of the 1844 Act was the clause that forbade the parish officer from becoming involved in affiliation orders. While the penalty for breaking this law was 40s., a substantial fine of £10 was reserved for the more heinous offence of his attempting to contract a marriage between a man and the mother of a

⁵⁶For all the above, see Great Britain, General Statutes, 7 and 8 Victoria, c. 101, ss. 1-6 and s. 9.

bastard. In 1845, the Eleventh Annual Poor Law Report continually warned parishes of the regulations that forbade parish involvement in bastardy cases. This Report also gave a summary to the Board of Guardians, the Clerk of Guardians, and the Parish Overseer, concerning what conduct was expected from them under the new law. All were warned "to abstain from interference in applications in bastardy". The Poor Law Report went on to console local administrative officials:

We have no reason to think that any embarrassment or difficulty of importance will occur in administering the laws for the relief of the poor in the cases of illegitimate children or their mothers in consequence of the Act of last session.⁵⁷

The extent of the poor law officials' interest was to relieve the poor whether or not bastardy was involved. The Poor Law Commissioners claimed that affiliation had been "in every way most mischievous and embarrassing in its operation." Under the new law, they claimed, poor law administrators would be freed from the affiliation blight. Thus, the government had successfully enacted a law which side-stepped the problems bastardy created for the Poor Laws.⁵⁸

⁵⁷For all the above, see 7 and 8 Victoria, c. 101, ss. 7-8 and SP., 1845, vol. XXVII, pp. 339 and 343-4.

⁵⁸Sp., 1845, vol. XXVII, pp. 262 and 337-9. The problems of the Poor Law were not entirely solved. In 1845 the legislature found it necessary to enact a list of standard forms to be used by the courts in affiliation actions. Two years later, in 1847, atrocity tales forced a major Poor Law reform. Under this new law, the administration of the poor law was removed from a three man

Yet, because of this 'side-stepping' process, the 1844 law still presented unique problems for the woman, even though it was supposed to be beneficial for her. In the past, the woman had often used parish officials as informal legal advisors. They willingly helped her in affiliation matters hoping the parish would not have to support her. Under the 1844 law, the parish officials absolutely refused such assistance, fearing the new financial penalties. In the majority of the cases, an ill-educated woman living in the mid-nineteenth century could hardly be expected to know what legal recourse was available to her.⁵⁹ There is some indication that parish officials might have illegally acted by assisting the female in a few cases, but there is no evidence this ever became widespread.⁶⁰ Thus, the female had been abandoned by both her friend and adversary, who had been embodied in the paternalistic parish officer. The government failed to realize that this man was the equivalent of twentieth century legal aid and that their newest proposal had left the woman without counsel in the complex world of government enactments. Thus, while the government

Commission and placed under the purview of a minister of the crown. For the list of forms see Great Britain, General Statutes, 8 Vic., c. 10, and for the transformed Poor Law see Great Britain, General Statutes, 10 and 11 Vic., c. 109.

⁵⁹Henriques, "Bastardy, p. 119.

⁶⁰David Ashforth, "The Poor Law in Bradford c. 1834-1871: A Study of relief of poverty in mid-nineteenth century Bradford", Ph.D. thesis: (University of Bradford, 1979), p. 339.

benefitted from their new measure, the law was still problematic for single mothers.

VI - Conclusion

Despite the political motives of the 1844 revision to the bastardy clauses, important changes that were indeed beneficial to the woman had taken place since the 1834 Report first proposed change. The reforms to the bastardy law centred on question-asking processes. The commissioners who wrote the 1834 Report had ignored these processes. It seemed 'logical' to their minds that, with the threat of the rigorous requirements that were placed on the mothers of bastard children, women would be more likely to remain chaste. Their questions were, in effect, strictly limited to their own Malthusian and Utilitarian way of thinking. By imposing their own suggestions on improvident women, they hoped to achieve their own Malthusian notions of a traditional conservative social ethic and reduce the cost to the parish through a legal, indeed Benthamite reform. Although they based their recommendation for the abolition of affiliation on the information given by officials who felt the Old Poor Law was abused, they did not question what would happen if their scheme failed to work.

Their measure was then considered by Parliament, which limited their questions to political 'point-making'

rather than the pursuit of understanding. No doubt these individuals meant what they said regarding moral questions, but they failed to reflect on the spirit of the proposed Bill and the nature of those it was meant to control.

By 1838, the high spirits of New Poor Law advocates had relented to the point where further amendment could be considered. Although massive changes to the bastardy clauses had been suggested by various groups, once again the spirit of inquiry remained limited. Based on the suggestions of internal reports, the government opted to undertake the token reform of returning affiliation to the Petty Sessions courts, and by so doing was merely adopting a mechanism similar to that which had existed in 1834. They had failed to consider new methods of relief and still limited the right to affiliate to the parish.

While the government had acted on some of the recommendations of their bureaucrats, a pool of suggestions on how to redress the problems of the woman still remained untouched. Yet, the Rebecca Riots acted as a catalyst, and in 1844 the government adopted the principles of redress that had been advocated by an assortment of their officials. In 1840, the Poor Law Commissioners had written that the "sole purpose" of affiliation orders was "the indemnification of the parish or union". Only four years

later, a new law made this concern extinct⁶¹ by abolishing the parishes' right to sue the father of a bastard and extending this right to the mother of the child. The government had considered the new law with a relatively open mind, and a limited spirit of inquiry had actually existed. While some enlightened suggestions made during debate on the law were ignored, others were incorporated into the Act. The next year, the Earl of Carnarvon further demonstrated the questioning process by suggesting further consideration of the bastardy clauses after some additional time-testing had occurred.⁶² Thus, the nature of the inquiry and question-asking process which had changed so radically since 1832, had a considerable effect on the ultimate direction of the bastardy clauses.

The new direction changed the circumstances of each character in the bastardy clause drama. The old bastardy clauses which saw the almost automatic affiliation of a man to a woman's bastard were forever eliminated. Although the woman had a legal recourse because of the 1844 law's provisions, a law suit was a fairly complex matter which could hardly be compared with the almost automatic guarantee of relief that the old bastardy clauses operating before 1834 provided.

⁶¹See SP., 1844, vol. XIX, p. 4 and SP., 1845, vol. XXVII, p. 261.

⁶²Hansard, 1845, vol. LXXXI, 238.

On the surface, the 1844 law was a success for the government, which no longer burdened its Poor Law administrators with problems concerning bastardy. Yet, measured against the original intention of reducing immorality and the cost to rate-payers propounded in 1834, the 1844 law must be considered a failure. Because the government's newest measure represented a limited attempt to redress the 'wrong' perpetrated by a man on the mother of a bastard, it could not be interpreted as a crack-down on her 'immorality'. Likewise, the parish's cost of relieving bastards who entered the workhouse under the 1844 law would hardly be reduced, since any relief that the mother of a bastard received from the father went directly to her and not to reimburse the parish. Thus, this newest measure ignored the problems of immorality and cost that were propounded in 1834, and addressed the riotous demands of the improvident Welsh, whose pleas for any change to the bastardy clauses were supported by government bureaucrats.

The change in the method of redressing the mother's grievances also meant that in the future both public and parliamentary opposition could no longer attack the bastardy clauses on the principle of 'justice.' Any new attacks on the law would per force be required to address the problem of the access of the mother to the courts, since the fact that she did indeed have a legal recourse for redress, and therefore 'justice', could not be denied.

It is this legal reform which points to how the evolutions of the bastardy clauses might really be interpreted. Because the bastardy clauses were originally directed at 'improving' morality and reducing costs, the upper-class Whig government had originally undertaken a reform which tried to impose their conception of a traditional, class-specific, and therefore conservative, social ideal on English and Welsh communities. Ten years later, in 1844, they had admittedly failed in their attempt. Instead, they had achieved a legal, and indeed Benthamite reform, which provided the woman with an avenue for 'redress' and the man with a legal defence unlike the ones he might have employed in 1834. Thus, the bastardy clauses originally represented an attempt at a conservative, traditional ideal, within a Benthamite legal reform perspective. Yet, the only tangible result of this attempt was the Benthamite legal reform which increased the burden of proof that the mother assumed when affiliating her child. The result was, however, one that, without compromising the man's right to a full legal defence, implemented some safeguards against the difficult and unhappy circumstances of conception and birth outside wedlock.

BIBLIOGRAPHY

PRIMARY SOURCES:

I. PERIODICALS:

Blackwoods Edinburgh Magazine, vol. L, no. 270 (April, 1838), pp. 492-3.

Chadwick, Edwin. "The New Poor Law." Edinburgh Review, vol. LXIII (July, 1836), 487-537.

Northern Star, vol. I, no. 8 (Saturday, 6 January 1838), pp. 4-6.

_____. vol. I, no. 13 (Saturday, 10 February 1838), p. 4.

Pioneer: or Grand National Consolidated Trade's Union Magazine, The. 28 June 1834, p. 423.

Poor Man's Guardian, A Weekly Paper for the People, The. "The Bastardy Clause in the Poor Law Amendment Bill and its consequences if made law", #155 (Saturday, 24 May 1834), p. 124.

_____. #238 (Saturday, 26 December 1835), p. 196.

Scrope, G. Poulett. "The New Poor Law". Quarterly Review, 52 (August, 1834), 233-61.

Senior, Nassau. "Poor Law Reform". Edinburgh Review, or Critical Journal, vol. LXXIV (October 1842), pp. 1-44.

II: PRINTED SOURCES (GOVERNMENT):

Great Britain, Commissions. Reports, Copy of the Report made in 1834 by the Commissioners for Inquiry into the Administration and Practical Operation of the Poor Laws. 1834; rpt. London: Eyre & Spottiswoode, 1905.

_____. Extracts from the Information Received by His Majesty's Commissioners, as to the Administration

and Operation of the
Poor Laws, published
by authority.
London: B. Fel-
lowes, 1833.

Instructions from
the Central Board of
Poor Law Commis-
sioners to Assistant
Commissioners. n.p.,
n. pub., n.d.

General Statutes. 18
Elizabeth, c. 3.

13 & 14 Car. II,
c. 11.

6 Geo. II,
c. 31.

26 Geo. II,
c. 33.

49 Geo. III,
c. 68.

4 & 5 Wm. IV,
c. 76.

2 & 3 Victoria,
c. 83.

2 & 3 Victoria,
c. 85.

5 Victoria,
c. 10.

5 & 6 Victoria,
c. 57.

7 & 8 Victoria,
c. 101.

8 Victoria,
c. 10.

10 & 11
Victoria,
c. 109.

Hansard. Readex Microprint
Edition. Ed., Edgar
Erickson, 1834,
vols. IX, X, XXII,
XXIII, XXIV and
XXV.

1835 vol. XXVI.

1836, vols. XXXI and
XXXVI.

1837, vols. XXXVI
and XXXIX

1838, vol. XLI and
XLII

1839, vols. XLVI,
XLVIII, XLIX, and L.

1841, vols. LVII and
LIX

1842, vols. LXIV and
LXV

1843, vol. LXVII

1844, vol. LXXII and
LXXVI.

1845, vol. LXXXI.

Sessional Papers. Readex
Microprint
edition.
Ed. Edgar
Erickson.
1831,
vol. VIII.

1834,
vols. XXV-
III, XXIX,
XXXV and
XXXVI.

1835,
vol. XXXV.

1836,
vol. XXIX

_____	1837, vol. XVII
_____	1837-8, vols. XVIII and XXVIII.
_____	1840, vol. XVII
_____	1843, vols. XXI and XXIII.
_____	1844, vols. XVI and XIX.
_____	1845, vol. XXVII.

III. PRINTED AND MANUSCRIPT SOURCES (OTHER)

Archbold, John Frederick. The Poor Law, comprising the whole of the Law of Relief, Settlement and Removal of the Poor; together with the Law relating to the Poor Rate. London: Shaw & Sons, 1873.

Bamford, Samuel. The Autobiography of Samuel Bamford; Volume One: Early days together with the arrest and c. London: Frank Cass, 1967.

Barnard, Mordaunt. Reasons of a Clergyman for acting as a guardian of the Poor. London: Hamilton Adams & Co., 1837.

Barrow, John Henry, ed. The Mirror of Parliament for the second session of the Eleventh Parliament of Great Britian and Ireland in the fourth year of the Reign of King William IV. Appointed to meet 3rd February, 1834. Vols. III and IV. London: John Henry Barrow, 1834.

Baxter, G.R. Wythen. The Book of the Bastiles or the History of the Working of the New Poor Law. London: John Stephens, 1841.

Bentham, Jeremy. The Works of Jeremy Bentham. ed. John Bowring. Vol. IX. New York: Russell & Russell, 1962.

Biber, Rev. George Edward. Bishop Blomfield and his Times; An historical sketch by the Rev. George Edward Biber, L.L.D. perpetual curate of Roehampton. London: Harrison, 1857.

Blakey, Robert. An Exposure of the Cruelty and Inhumanity of the New Poor Law Bill as exhibited in the treatment of the helpless poor, by the board of guardians of the Morpeth Union, in a letter addressed to the Mechanics and Labouring men of the north of England, by Robert Blakey, Mayor of Morpeth. Newcastle: Charles Larkin, 1837.

Blomfield, Alfred. A Memoir of Charles James Blomfield, D.D. Bishop of London, with selections from his correspondence. Vol I. London: John Murray, 1863.

Boudier, John. Remarks on some of the more prominent features and the general tendency of the Poor Law Bill, addressed to those who are disposed to think it a harsh and oppressive Act. Warwick: Henry T. Cooke, 1837.

Brown, John. The Autobiography of John Brown the Cordwainer; with his sayings and doings in Town and Country: shewing what part he took in the spread of Church principles among the working classes. London: J. Masters; Simpkin & Co., 1867.

Crabbe, George. Poems. Vol. I. Cambridge: Cambridge University Press, 1905.

[Anonymous] An Essay on the Practicability of Modifying the Present System of the Poor Laws; which Whilst it Points out a Method for Profitably Employing the Unoccupied Agricultural Labourers, so as to produce mutual advantages to the poor and their Employers, introduces a Plan for Preventing a Recurrence of that Distress which is occasioned by our Incapability of Employing the Superabundant Population. Andover: R. Maud, 1819.

Jebb, Henry Gladwyn. Out of the Depths: The Story of a Woman's Life. New York: W.A. Townsend and Co., 1860.

Lewin, Sir Gregory A. A Summary of the Laws relating to the Government & Maintenance of the Poor. London: William Benning, 1828.

[Liverpool, Earl of] An Account of the Operation of the Poor Law Amendment in the Uckfield Union in the County of Sussex, during the year ending Lady-day 1836 by the Earl of Liverpool; Chairman of that Union. London: Samuel Bentley, 1836.

Mackay, Thomas. A History of the English Poor Law: Volume III: From 1834 to the Present Time. 1900, rpt. London: Frank Cass, 1967.

Malthus, Thomas Robert. An Essay on the Principle of Population or a view of its past and present effects on Human Happiness with an Inquiry into our prospects respecting the future removal or migration of the evils which it occasions. London: Ward, Lock & Co., n.d.

. First Essay on Population. London: MacMillan, 1966.

'Marcus'. Second Edition (with an additional Preface) of - The Book of Murder! Vade-mecum for the Commissioners and Guardians of the New Poor Law throughout Great Britain and Ireland. Being an exact reprint of the infamous Essay of the Possibility of Limiting Populousness, By Marcus, one of the three with a refutation of the Malthusian Doctrine. London: William Dugdale, 1839.

Marsh-Caldwell, Anne. Mordaunt Hall; or a September Night. London: Henry Colburn, 1849.

More, Hannah. Moral Sketches of prevailing opinions and manners foreign and Domestic: with reflections on prayer. London: T. Cadell and W. Davies, 1819.

. The Works of Hannah More, A New Edition with Additions and Corrections in Eleven volumes. London: T. Cadell, 1830.

[Anonymous]. My Secret Life abridged but unexpurgated. New York: Grove Press, 1966.

Nicholls, George. Eight Letters on the Management of our Poor, And the General Administration of the Poor Laws; in which is shewn the system which has been adopted, and the saving in the Poor Rates, which has recently been effected in the two parishes of Southwell and Bingham, in the county of Nottingham, respectfully offered to the consideration of magistrates and earnestly recommended to the attention of all Parish Officials, By an Overseer. Newark: S. & J. Ridge, 1822.

. A History of the English Poor Law.
Vol. II. 1898, rpt. London: Frank Cass, 1967.

[Anonymous.] Parish and the Union or the poor and the poor laws under the old system and the new, The.
London: Charles Knight, 1837.

Pillet, Rene Martin. Views of England, during a residence of ten years: Six of them as a prisoner of war.
Boston: Parmenter and Norton, 1818.

Richardson, J. A letter to the Right Hon. Henry, Lord Brougham and Vaux, Lord High Chancellor of Great Britain, on an Alteration in the Poor Laws, the Employment of the People, and a Reduction of the Poor Rate. Norwich: Bacon and Kinnebrook, 1831.

Roberts, Samuel. A Defence of the Poor Laws with a Plan for the Suppression of Mendicity and for the Establishment of Universal Parochial Benefit Societies, by Samuel Roberts. Sheffield: James Montgomery, 1819.

Rose, George. Observations on the Poor Laws, and on the Management of the Poor, in Great Britain, arising from a consideration of the Returns, now before Parliament. London: J. Hatchard, 1805.

Senior, Nassau. Diary Regarding the Poor Law Amendment Act. Microfilm of Ms. in New York: Columbia University, d. 1834.

. Industrial Efficiency and Social Economy. S. Leon Levy (ed.). Vols. I and II, 1928, rpt. New York: Arno Press, 1972.

. Remarks on the opposition to the Poor Law Amendment Bill by a guardian. London: John Murray, 1841.

Skinner, John. Journal of A Somerset Rector John Skinner, A.M., Antiquary 1772-1839. London: John Murray, 1930.

Willis, James. On the Poor Laws of England. The Various Plans and Opinions of Judge Blackstone, Swift, Addison, Wimpsey, Winchelsea, Young, Rumford, Estcourt, Gilbert Stewart, Eden, Pitt, Nasmith, Townsend, Pew, Davies, Colquhoun, Wyland, Bate, Rose, Monck, Malthus, Whitbread, and the Society for Bettering the

Condition of the Poor; Stated and Considered, with proposed Amendments of Easy Execution, to Give Effect to the present laws, and to the views of government, by the Rev. James Willis, Vicar of Sopley, And one of his Majesty's Justices of the Peace for the County of Southampton. London: J. Ridgway, 1808.

Woodforde, James. The Diary of a Country Parson 1758-1802 by James Woodforde. ed. John H. Beresford. London: Oxford University Press, 1963.

SECONDARY SOURCES

I. BOOKS

Brundage, Anthony. The Making of the New Poor Law. New Jersey: Rutgers, 1978.

Chadwick, Owen. The Victorian Church: Part I. London: Adam & Charles Black, 1966.

Checkland, S. G. and E.O.A. The Poor Law Report of 1834. Harmondsworth: Penguin, 1974.

Davidoff, Leonore. The Best Circles: Women and Society in Victorian England. Totowa, New Jersey: Rowman and Littlefield, 1973.

Digby, Anne. The Poor Law in Nineteenth Century England and Wales. London: Historical Association, 1972.

Driver, Cecil. Tory Radical, The Life of Richard Oastler. New York: Oxford University Press, 1946.

Dunkley, Peter. The Crisis of the Old Poor Law in England 1795-1834; An Interpretive Essay. New York: Garland Publishing, 1982.

Edsall, Nicholas. The anti-Poor law movement 1834-44. Manchester: Manchester University Press, 1971.

Finer, S.E. The Life and Times of Edwin Chadwick. London: Methuen, 1952.

Hammond, J.L. & Barbara. The Village Labourer, 1760-1832; A Study in the Government of England before the Reform Bill. New York: Kelley, 1967.

Himmelfarb, Gertrude. The Idea of Poverty: England in the Early Industrial Age. New York: Alfred A. Knopf, 1984.

Kerr, D.G.G. Sir Edmund Head: A Scholarly Governor.
Toronto: University of Toronto Press, 1954.

Kitson-Clark, G. Churchmen and the Condition of England: 1832-1885: A Study in the Development of Social Ideas and Practice from the Old Regime to the Modern State. London: Methuen, 1973.

Laslett, Peter, Oosterveen, Karla and Smith, Richard M. Bastardy and its Comparative History. London: Edward Arnold, 1980.

Laslett, Peter. Family Life and Illicit Love in Earlier Generations. London: Cambridge University Press, 1977.

Lewis, R.A. Edwin Chadwick and the Public Health Movement; 1832-1854. London: Longmans Green, 1932.

McLaren, Angus. Birth Control in Nineteenth-Century England. New York: Holmes and Meier, 1978.

Prest, John. Lord John Russell. Columbia, South Carolina: University of South Carolina Press, 1972.

Webb, S. & B. English Local Government; English Poor Law History: Part II: The Last Hundred Years. Vol. I. np.: Private Subscription Edition printed by the authors for their friends and supporters, March, 1929.

Williams, David. The Rebecca Riots: A Study in Agrarian Discontent. Cardiff: University of Wales Press, 1955.

II. ARTICLES

Blaug, Mark. "Myth of the Old Poor Law". Journal of Economic History, XXIII (1963), 151-184.

Dunkley, Peter. "Whigs and Paupers: The Reform of the English Poor Laws, 1830-1834." Journal of British Studies, XX:2 (1981), 124-49.

Gillis, John. "Servants, Sexual Relations and the Risk of Pregnancy in London: 1801-1901." Feminist Studies, V: 1 (Spring, 1979), 142-73.

Hair, P.E.H. "Bridal Pregnancy in Rural England in Earlier Centuries". Population Studies, XX: 2 (1966), 233-43.

Heinemann, Helen. "Frances Trollope's Jessie Phillips: Sexual Politics and the New Poor Law." International Journal of Women's Studies, 1: 1 (January-February, 1978), pp. 96-106.

Henriques, Ursula Ruth Quixote. "Bastardy and the New Poor Law". Past and Present, XXXVII (1967), 103-29.

_____. "How Cruel was the Victorian Poor Law?" Historical Journal, XI: 2 (1968), 365-71.

Laslett, Peter and Karla Oosterveen. "Long Term Trends in Bastardy in England: A Study of the Illegitimacy Figures in the Parish Registers and in the Reports of the Registrar General, 1561-1960." Population Studies: A Journal of Demography, XXVII: 2 (July, 1973), pp. 255-86.

Lewis, R.A. "William Day and the Poor Law Commissioners." University of Birmingham Historical Journal, IX (1964), 163-96.

Pearce, Carol G. "Some Aspects of Fertility in a Mid-Victorian Community". Local Population Studies Magazine and Newsletter, X (1973), 25-35.

Rose, Michael. "The Anti-Poor Law Movement in the North of England." Northern History, I (1966), 70-91.

_____. "The Anti-Poor Law Agitation", in J.T. Ward (ed.) Popular Movements, c. 1830-1850. London: MacMillan, 1970.

III. THESES AND REFERENCE MATERIALS

Ashforth, David. "The Poor Law in Bradford c. 1834-71. A study of relief of poverty in mid-nineteenth century Bradford". Dissertation: University of Bradford, 1979.

British Museum General Catalogue of Printed Books, photolithographic edition to 1955. London: Trustees of the British Museum, 1961.

Buchanan, C.A. "The introduction of the New Poor Law of 1834 into the various unions of Bridgwater, Taunton Wells and Williton in the county of Somerset". Bristol: Unpublished M.Sc. thesis, 1978.

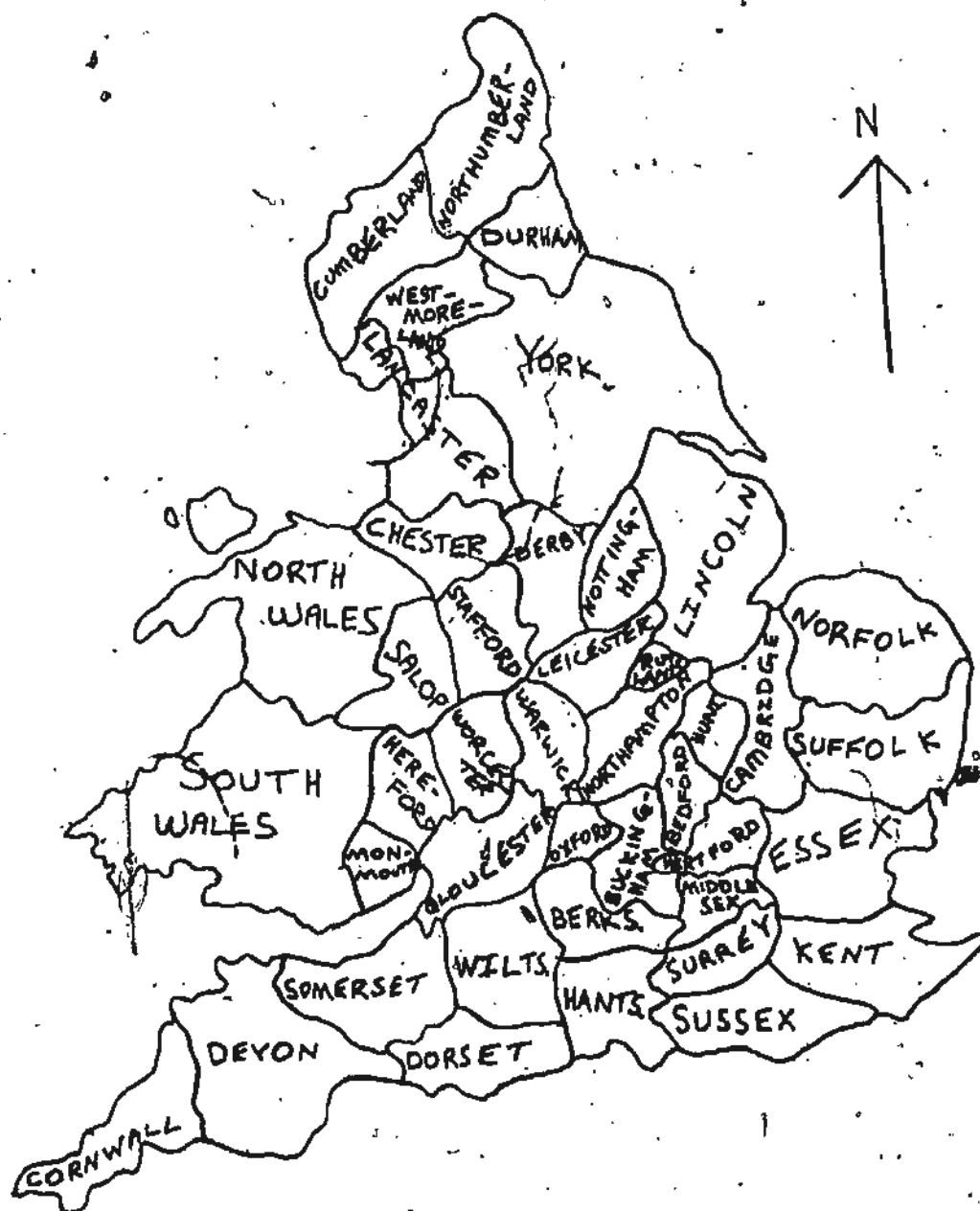
Dictionary of National Biography. eds. Sir Leslie Stephen and Sir Sidney Lee. All Volumes. London: Oxford University Press, 1917.

The National Union Catalog pre-1956 Imprints. Chicago:
Mansell, 1968.

Stenton, Michael. Who's Who of British Members of
Parliament: vol. I, 1832-1885. Atlantic Highland,
N.J.: Humanities Press, 1976.

Appendix A - I

Districts in England and Wales: 1832-1834



Scale: 60 miles to the inch

0 60 120

APPENDIX A-II

The Assistant Commissioners that investigated each district:
1832-1834

DISTRICT	Assistant Commissioner(s) Surveying that district
BEDFORD	
BERKS.	EDWIN CHADWICK
BUCKINGHAM	CH. CAMERON
"	REV. W. CARMALT
"	JOHN WROTTESELY
CAMBRIDGE	J.H. COWELL
"	ALFRED POWER
CHESTER	D.C. MOYLAN
CORNWALL	CAPT. CHAPMAN
CUMBERLAND	CAPT. PRINGLE
DERBY	REDMOND PILKINGTON
DEVON	CAPT. CHAPMAN
"	C.P. VILLIERS
DORSET	D.O.P. OKEDEN
DURHAM	JOHN WILSON
ESSEX	ASHURST MAJENDIE
GLOUCESTER	REV. H. BISHOP
"	CAPT. CHAPMAN
"	C.P. VILLIERS
HANTS	-
HEREFORD	A.J. LEWIS
HERTFORD	REV. W. CARMALT
"	J.W. COWELL
HUNTINGDON	HENRY EVERETT
KENT	REV. H. BISHOP
LANCASTER	GILBERT HENDERSON
LEICESTER	HENRY PILKINGTON
LINCOLN	MAJ. WM. WYLDE
MIDDLESEX	C.H. MACLEAN
MONMOUTH	A.J. LEWIS
NORFOLK	HENRY STUART
NORTHAMPTON	I.J. RICHARDSON
NORTHUMBERLAND	JOHN WILSON
NOTTINGHAM	J.W. COWELL
"	MAJ. WM. WYLDE
OXFORD	REV. H. BISHOP
"	D.O.P. OKEDEN
RUTLAND	-
SALOP	A.J. LEWIS
SOMERSET	CAPT. CHAPMAN
STAFFORD	D.C. MOYLAN
SUFFOLK	HENRY STUART
SURREY	H.G. CODD

APPENDIX A - II

The Assistant Commissioners that investigated each district:
1832-1834 (cont'd)

SURREY	C.H. MACLEAN
SUSSEX	REV. H. BISHOP
"	EDWIN CHADWICK
"	C.H. MACLEAN
"	ASHURST MAJENDIE
WALES, NORTH	STEPHEN WALCOTT
WALES, SOUTH	-
WARWICK	C.P. VILLIERS
WESTMORELAND	CAPT. PRINGLE
WILTS.	D.O.P. OKEDEN
WORCHESTER	C.P. VILLIERS
YORKS	JOHN TWEEDY

Note: Some districts were not examined by the Assistant Commissioners. The 1834 Report explains that "...different accidents, which prevented several persons who had undertaken the business from proceeding in it, in some cases forced us to confide to one person districts which had been intended for two, and to leave some altogether unvisited. One of these was South Wales to which two persons were successively appointed, each of whom was subsequently prevented from acting." See 1834 Report, p. 2.

APPENDIX A - III

The views of Assistant Commissioners on Bastardy,
1832-1834

Assistant Commissioner	Number of parts or whole districts surveyed by the Assistant(s)	Recommendations on the bastardy clauses of the Old Poor Law
Rev. H. Bishop	4	None; but cites evidence favouring abolition
C.H. Cameron	1	No discussion of bastardy whatsoever
Rev. W. Carmalt	2	No discussion of bastardy whatsoever
Edwin Chadwick	2 districts & London	None; but cites evidence against the operation of the old bastardy clauses
Capt. Chapman	4	Give woman relief only in necessity; charge a fine on the man
H.G. Codd	1	Maintain old law with a uniform rate for the weekly maintenance
J.W. Cowell	3	Do not allow affiliation, and impose stricter penalties on the woman
Henry Everett	1	wants tougher provisions based on the old law

APPENDIX A - III

The views of Assistant Commissioners on Bastardy:
1832-1834 (cont'd.)

Gilbert Henderson	1	Allow Magistrates to adopt a low, standard maintenance and therefore reduce perjury
P.F. Johnston and E.C. Tuffnell	1	Both Assistants investigated Scotland but had absolutely no observations about bastardy. They are not included on the previous map or table, because the inquiry was limited to enacting legislation for only England and Wales. See 1834 Rpt., p. 2.
A. J. Lewis	3	wants tougher provisions based on the Old Law
C. H. MacLean	3	Abolition
Ashurst Majendie	4	None; cites evidence both for and against the operation of the Old Law
D.C. Moylan	2	Favours compounding
D.O.P. Okeden	3	Abolition
Henry Pilkington	1	None; but cites evidence that suggested reforming the Old Law

APPENDIX A - III

The views of Assistant Commissioners on Bastardy:
1832-1834 (cont'd)

Redmond Pilkington	1	No discussion of bastardy whatsoever
Alfred Power	1	Abolition
Capt. Pringle	2	Abolition
I.J. Richardson	1	No discussion of bastardy whatsoever
Henry Stuart	2	Abolish Old Law and allow the woman to pursue the man herself
John Tweedy	1	Remove bastardy from purview of Poor Law; Allow woman to pursue man in court.
C.P. Villiers	4	Abolition
Stephen Walcott	1	None; but appears to favour abolition
John Wilson	2	None; but suggests the law was too easy on the woman
John Wrottesley	1	No discussion of bastardy whatsoever.
Major William Wylde	2	None; but cites evidence against the operation of the Old Poor Law.

APPENDIX B

Summary of the clauses enacted by 4 and 5
William IV, c. 76 (1834), involving bastardy:

LVII) a man who married a woman was responsible for both her legitimate and illegitimate children until they were sixteen.

LXIX) Acts regarding liability of the man, affiliation, the seizing of goods, and the man's imprisonment for failing to produce sufficient security prior to affiliation, and the female's imprisonment for bastardy were repealed.

LXX) Recognizances or sureties agreed to before the new Act were void, and males imprisoned for lack of security were freed.

LXXI) Bastard children followed their settlement until they were sixteen, unless they either obtained their own settlement, or, if female, were married.

LXXII-LXXVI) "On application of the overseers, the court of quarter-sessions [could]... make an order on the putative father for the maintenance of a bastard child, if satisfied that he [was]... really the father, and if the child [had]... become chargeable; but no such order [was]... to be made, unless the evidence of the mother [was]... corroborated by other testimony, and no part of the money [was]... to be applicable to the mother's support. Fourteen days' notice of such application [was]... to be given, and if it [was] ...rejected, the costs [were] ... to be paid by the overseers. If the person charged [did]... not appear, the court [could]... nevertheless decide in the case; and if he [was]... suspected of intending to abscond, he [could]... be required to enter into recognizances, failing in which he [could]... be committed; and if the payments ordered by the court of quarter sessions [were]... not made, but [got]... into arrear, the putative father [could]... be proceeded against by distress, or the attachment of wages." For this summary, see Nicholls, History of the English Poor Law, vol. II, p. 279. Affiliations ordered before 1834 were still enforced, but the new Poor Law Commissioners later said that continuing outdoor relief to mothers of bastards was not necessary. See SP., 1837-8, vol. XVIII, pt. 3, pp. 408-10.

