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THE LEGAL STATUS OF ILLEGITIMATE CHILDREN FROM A HISTORICAL PERSPECTIVE

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Abstract

This article offers a longitudinal analysis of the legal status of children born outside lawful marriage, charting their treatment from antiquity through the present day. It begins by examining ancient and Roman legal regimes, in which household affiliation and exceptional grants of legitimacy mitigated—but did not eliminate—the stigma of *sui iuris* descent. It then turns to the Middle Ages, where Christian morality and feudal custom imposed strict inheritance and civic restrictions on *illegitimate* offspring, albeit with localized legitimation practices such as the Mantelkinder ritual and *papal rescripta*. The study next surveys the early modern and Napoleonic reforms that introduced codified paternity presumptions, voluntary acknowledgment, and legitimation by subsequent marriage or sovereign grace, culminating in Joseph II's revolutionary decrees of formal parity. Finally, it assesses contemporary European and supranational frameworks—particularly the EU Charter of Fundamental Rights, the ECHR, and Brussels II bis and Succession Regulations—which have abolished formal distinctions based on birth status yet confront residual administrative and cultural barriers. By situating each epoch within its broader social and legal milieu, the article illuminates how historical doctrines continue to shape modern efforts to secure full equality for all children under the law.

Keywords: *Illegitimacy and legitimation, Family law history, Roman and medieval legal traditions, Paternity and inheritance reforms, European non-discrimination norms*

1. INTRODUCTION

The legal status of children born outside the bonds of lawful marriage has occupied a complex and evolving place within Western legal traditions, reflecting changing notions of family, authority, and individual rights. From the customary practices of antiquity—where lineage and household affiliation governed a child's standing—through the codification of Roman law with its stringent requirements for *legitimate* descent, to the moral strictures of medieval canon law and the piecemeal reforms of the early modern period, societies have variously distinguished, discriminated against, or assimilated those deemed *illegitimate*. The Enlightenment and the nineteenth-century

codifications of civil law began to erode formal distinctions, introducing mechanisms such as voluntary acknowledgment, judicial paternity actions, and legitimation by subsequent marriage. Yet, even as contemporary European and supranational norms now bar discrimination on grounds of birth, vestiges of historical prejudice and procedural hurdles persist.

This study undertakes a comprehensive historical survey of the legal status of illegitimate children, tracing the contours of their recognition and exclusion across four principal epochs. First, it examines ancient and Roman law, wherein adoption and household membership could, under certain conditions, confer near-parity to children born of irregular unions. Second, it explores the Middle Ages, when Christian doctrine and feudal custom combined to restrict inheritance and civil participation, yet also gave rise to localized forms of legitimation. Third, it addresses the transformative reforms of the early modern and Napoleonic eras, which introduced systematic paternity presumptions and the first codified avenues for legitimation. Finally, it considers the consolidation of non-discrimination principles in modern civil codes and European Union law, highlighting both the formal abolition of legitimacy classifications and the lingering administrative and cultural challenges.

By situating each innovation and its attendant social ethos within its broader legal and cultural milieu, the present inquiry illuminates the enduring interplay between family structure, state authority, and the rights of the child. In so doing, it contributes to a deeper understanding of how past doctrines continue to inform—and occasionally impede—the full realization of equality for all children under contemporary law.

2. RESEARCH METHODS

To explore the evolution of the legal status of children born outside lawful marriage from antiquity to the present, the study employs a multi-pronged, longitudinal historical–comparative methodology. The adopted research

methods are historical and doctrinal analysis, comparative inquiry, chronological synthesis and critical legal analysis.

For each epoch, the study conducts a close reading of the relevant legal provisions, tracing doctrinal shifts and situating them within the text and interpretive commentaries of their time. A systematic comparison highlights convergences and divergences across legal systems. For instance, parallels between Roman household-based affiliation and early modern sovereign grant legitimation are drawn to illustrate enduring conceptual threads. The research is structured chronologically, enabling a diachronic view that uncovers patterns of continuity (e.g. persistent stigma despite procedural reforms) and rupture (e.g. the leap to formal parity under Joseph II or in modern supranational law). Drawing on critical legal studies, it interrogates residual administrative practices and cultural norms that perpetuate de facto distinctions today, even where formal legal distinctions have been abolished.

3. THE ILLEGITIMATE IN ANCIENT AND ROMAN LAW

3.1 Antiquity

In ancient times, in addition to multiple marriages in favor of a man, there were also many forms of illegitimate unions between a man and a woman. Despite these illegitimate unions, the legal status of children born from such unions was generally not inferior.

This is because in ancient Rom people were not seen as individuals but as members of an association[1]. The smallest unit was the family. Through legal acts, not only persons related by blood but also outsiders could be adopted into the household. Their legal status was also determined by their entry into the household. Thus, if an illegitimate child was adopted into the father's

[1] Kaser/Knütel, Römisches, Münschen, 2008 p. 80.

household, there was fundamentally no reason to treat him less favorably than a legitimate child[2].

In ancient times, illegitimate children were divided into three groups.

1. **The Bastards**: They were illegitimate children who came from a permanent sexual union between a free man and a free woman and could, if they were adopted by the father, be legally treated completely equally to legitimate children[3]. Because of their family affiliation, they had, alongside legitimate children, a right of inheritance in the paternal property[4]. For the North and East Germanic peoples, but also for the Franks, the illegitimate children of the leaders were entitled to the throne alongside their legitimate children and were treated equally under inheritance law.
2. **Corner children** or hedge children: The legal status was worse for children born from an occasional sexual relationship between a free man and a free woman[5]. They had no legal relationship with their father and were related only to their mother and her clan. Nevertheless, the father could accept such a child into his home and thereby grant him the status of a legitimate child[6].
3. Children born to a slave mother were automatically slaves themselves. Legally, they were not even related to their mother. For them, the principle was: *The child follows the worse hand*[7].

3.2 Roman Law

According to Roman law, a child is of legitimate descent if he was conceived in marriage, the father and mother were Roman citizens, and the marriage was valid under the ius civile. A presumption of legitimacy was assumed according

[2] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 114.
[3] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 114.
[4] Hübner, R., Grundzüge des deutschen Privatrechts, Leipzig, 1930, p. 711.
[5] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 115.
[6] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 135.
[7] Idem.

to the 12 Tables if the child was born no earlier than the 7th month after the marriage and no later than the 10th month after the marriage's termination[8]. The praetor granted a declaratory action regarding paternity if the man did not acknowledge the child as his. Nevertheless, a child could be legitimate under Peregrine law. In this case, however, no patria potestas was established.

Children not born from such a marriage were considered illegitimate in Rome. They were not subject to any authority and were born sui iuris. They were capable of property and had no form of kinship to their male father, neither agnatic, meaning belonging to the family unit, nor cognatic (blood relationship). They were cognatically related to their mother. They nevertheless remained sui iuris, because, under Roman law, a woman was incapable of establishing patria potestas over her children. Thus, illegitimate children could not fall under the family authority of their maternal grandfather. In the case of illegitimate children, Ulp. D. 25,3,5,4 ff. of the Imperial Law also sanctioned a mutual maintenance obligation between illegitimate child and mother[9]. If the mother was widowed, she was further obliged to provide maintenance for her children[10]. She was able to fulfill this obligation with the proceeds from her dowry.

Children born from a concubines had a special status as illegitimate children. In this case, both the father and the concubine were allowed to transfer parts of their assets to the child through a gift or testament. If the father had no wife and legitimate children, the illegitimate children and the concubine had an inheritance claim amounting to one-sixth of the estate. Likewise, the concubine children, according to Nov. 18.5; 89.12 ff., had a maintenance claim to the legitimate children and the father[11].

[8] Kaser/Knütel, Römisches, Münschen, 2008 p. 328.
[9] Idem, p. 333.
[10] Luidolt, B., Römische Ehe und Lebensgemeinschaft verglichen mit modernen Konzepten, Hamburg, 2008, p. 55.
[11] Kaser/Knütel, Römisches, Münschen, 2008 p. 334.

3.3 The legitimacy of illegitimate children in antiquity

In older law, the legitimation of illegitimate children was largely unknown. Nevertheless, similar forms of legitimation existed in some legal systems of the time. For example, among the Norwegians, the adoption of an illegitimate child into the father's family was possible in the form of a *shoe slope*[12].

Roman law, too, generally did not recognize any forms of legitimacy for illegitimate children. However, concubine children were legally favored compared to other illegitimate children. Unlike other illegitimate children, they could be legitimized in three ways[13]:

a. ***Legitimaio per subsequens matrimonium*** (Legitimation through subsequent marriage): This form of legitimation dates to the time of Emperor Constantine. The child of a concubine received full legitimate status if the father married the concubine. However, the prerequisite was that the father was unmarried, had no legitimate children, and the concubine had to be a freeborn woman. Justinian also required the child's consent.

b. ***Legitimation per rescriptum principis*** (Legitimation by imperial act of grace): This form of legitimation was introduced by Justinian in Nov. 74. The child could receive the full status of a legitimate child through an act of grace if the father had no legitimate children, the mother was a free woman, and marriage was not possible.

c. ***Legimatio per obligationem curiae***: This was a form of legitimation introduced in the post-classical period to make the unpopular office of curialis (municipal councilor), which entailed personal liability for tax revenue and other burdens, more popular. The illegitimate son was legitimized when the father handed over his property to him, with the condition that the son would become curialis. A daughter, on the other hand, could be legitimized if she received her father's property and married a curialis.

[12] Hübner, R., Grundzüge des deutschen Privatrechts, Leipzig, 1930, p. 715.
[13] Kaser/Knütel, Römisches, Münschen, 2008 p. 333.

4. THE POSITION OF ILLEGITIMATE CHILDREN IN THE MIDDLE AGES

The Middle Ages were strongly influenced by Christianity. This influence was also reflected in the further development of the legal status of illegitimate children.

For the Church, all kinds of extramarital sexual relations were condemned[14]. Any child born form a woman outside of marriage was considered illegitimate and could not have the same legal status as a legitimate child[15]. Children born through adultery and incest were particularly condemned.

As a result, illegitimate children lost their inheritance rights from their father, but not from their mother. Saxon law made an exception and accorded illegitimate children a worse position[16]. According to this law, they also lost the right of inheritance from their mother and were not related to her. Furthermore, they were considered incapable of succession to the throne. The idea that the king had to be born free and of wedlock was widespread.

In the Middle Ages, illegitimate children were also socially discriminated against. They were excluded from various professions of the time. For example, those born out of wedlock could not be members of guilds and associations[17]. They were diminished in honor. Canon law expressly forbade them from holding higher ecclesiastical offices.

On the other hand, in the Middle Ages, the relationship of illegitimate children of unfree women to their mother was recognized[18]. In late medieval law, a maintenance claim of illegitimate children against their mother was also recognized; the same applied to the father if he recognized the child as his own. In any case, the father could make gifts to illegitimate children without the consent of the next heirs[19].

[14] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 135.
[15] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 115.
[16] Hübner, R., Grundzüge des deutschen Privatrechts, Leipzig, 1930, p. 713.
[17] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 115.
[18] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 135.
[19] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 115.

4.1 The legitimacy of illegitimate children in the Middle Ages

In the early Middle Ages, the so-called *Mantelkinder* (coat children) was practiced in Germany as an alternative for the legitimation of illegitimate children[20]. According to this rule, children born before marriage received the status of legitimate children if they were taken to the church under their mother's mantle at the blessing of the marriage.

Only with the reception of Roman law did this rule disappear and two forms of legitimation developed. One was the *legitimatio per rescriptum principis* (legitimation by act of grace), which was adopted by the popes in the 12th century and known as *legitimatio per rescriptum papae*[21]. According to this form, illegitimate children were legitimated by an act of grace from the Pope and later from the prince. However, this did not grant them the full legal status of legitimate children. They were related to their father, but not to their closest relatives. Therefore, they had no right of inheritance from their relatives.

On the other hand, in the late Middle Ages, Pope Alexander III incorporated the Roman *legitimation by subsequent marriage* into canon law[22]. Through this form of legitimation, the legitimated child received the full family and inheritance rights of a legitimate child. Only in Northern Germany did the legitimated child remain unrelated to the paternal family[23].

[20] Idem, 118.
[21] Hübner, R., Grundzüge des deutschen Privatrechts, Leipzig, 1930, p. 715.
[22] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 118.
[23] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 136.

5. THE LEGAL STATUS OF ILLEGITIMATE CHILDREN IN MODERN TIMES

The strong legal fragmentation regarding the legal status of illegitimate children in the Middle Ages continued into the early modern period. The only unified law was canon law, with its ban on illegitimate relationships. Only in the 16th and 17th centuries there were attempts to standardize the legal status of illegitimate children[24]. Reich Police Regulations, Reich Resolutions, State Regulations, and State Police Regulations were enacted to eliminate legal discrimination against illegitimate children. Thus, discrimination against illegitimate children in trades, in admission to guilds, and in their social life was prohibited by law.

At the end of the 18th century, the paternity principle (extrajudicial recognition) and the paternity complaint (judicial recognition) were introduced in Austria and Germany[25]. The extramarital paternity was a novelty in Austrian and German law because the presumption of paternity was only provided for legitimate children[26]. The presumption of paternity was most often based on proof of cohabitation with the mother during the period of conception. Generally, the defendant's escape and absence during the trial were considered as proof for the paternity, without further investigation.

With the coronation of Joseph II as Holy Roman Emperor, the legal status of illegitimate children was significantly improved. Joseph II essentially decreed the legal equality of illegitimate children with those born in wedlock. According to his decrees, illegitimate children born from two unmarried parents or into an invalid marriage with a remediable impediment were treated equally to legitimate children. Only if one parent subsequently married a third party was the illegitimate child no longer treated equally to legitimate children. Otherwise, illegitimate children had the same rights over their father and mother as those born in wedlock. Children of adultery and illegitimate

[24] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 115.
[25] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 136.
[26] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 116.

children who were born from a marriage with an irremediable impediment to marriage had a limited right to maintenance and were not related to either the paternal or maternal side. In principle, however, if the mother of the illegitimate child could not report the father and could not prove cohabitation with him, only she was obliged to support the child[27]. Furthermore, the child was related to his mother and bore her name[28]. The father was only required to provide support if, based on a statement or conclusive behavior, he considered the child to be his own. Conclusive behavior could include, in addition to cohabitation, assistance during pregnancy or childbirth. In this case, the father's maintenance was based on the mother's status. If both the father and mother of the illegitimate child died, the child's maintenance claim was based on all those heirs who received something from the paternal and maternal inheritance. With the death of Joseph II, the legal status of illegitimate children was again weakened. His successor, Emperor Leopold II, announced several reforms that worsened their legal status. Illegitimate children had again no right of inheritance[29]. Otherwise, their social status remained unchanged.

These provisions were also reflected in the drafts of the Austrian Civil Code (ABGB) of 1811 but were repealed in its first partial amendment in 1914. Now, illegitimate children were related not only to their mother, but also to their maternal clan. They had maintenance claims against their mother and maternal grandparents[30]. According to the Austrian Civil Code (ABGB), the illegitimate child had no maintenance claims against his father.

According to the German Civil Code of 1900, the illegitimate child belonged only to the mother, bore her name and had the legal status of a legitimate child towards her[31]. The mother had personal custody of the child, but not parental authority over him or her. This right could only be exercised by a male guardian. In most cases, the maternal grandfather was appointed

[27] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 117.
[28] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 136.
[29] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 117.
[30] Idem.
[31] Hübner, R., Grundzüge des deutschen Privatrechts, Leipzig, 1930, p. 714.

as guardian for the illegitimate child. From 1922 onward, the Youth Welfare Office assumed official guardianship over the minor. Regarding the maintenance claim against the father, the German Civil Code (BGB) stipulated that the father was obliged to support the illegitimate child until he or she reached the age of 16[32]. However, the child and father were not related to each other according to the German Civil Code.

The Swiss Civil Code of 1912 provided otherwise. Accordingly, the father was obligated to support the illegitimate child until he reached the age of 18. The Civil Code further provided for extramarital kinship between father and child if the father had acknowledged the child or if the kinship had been legally granted to him[33]. After that, the child received the legal status of a legitimate child and bore the father's surname. The German Civil Code (BGB) only allowed paternity suits to be brought against illegitimate children. The Civil Code (ZGB) was different; it also gave the child's mother the right to bring a paternity suit.

5.1 The legitimacy of illegitimate children in modern times

In modern times, the two forms of legitimation through subsequent marriage and legitimation through an act of grace continued to be used and were further developed. Legitimation through subsequent marriage was introduced into Austrian law as early as the 16th century and, until the time of Emperor Joseph II, had its usual effect, granting an illegitimate child the full legal status of a legitimate child. In Josephine times, this form of legitimation was not included in the law books of the time because an illegitimate child of two unmarried parents was treated equally to a legitimate child[34]. After the Josephinian era, this form of legitimation was used again and introduced in § 161 of the Austrian Civil Code (ABGB) of 1811. This rule still applies today.

[32] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 136.
[33] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 136.
[34] Floßman U., Österreichische Privatrechtsgeschichte, Vienna, 2008, p. 118.

Legitimation by act of grace was already introduced into Austrian law during the reign of Emperor Frederick III. In this period illegitimate children were legitimated by the Austrian archdukes. This did not grant them the legal status of legitimate children. Among other things, they had no right of inheritance unless explicitly granted[35]. This form of legitimation was not used in Josephine times. 1811 this legitimation form was sanctioned in Section 162 of the Austrian Civil Code (ABGB) and remains in force in a modified form until today.

The German Civil Code of 1900 recognizes both forms of legitimation: that through subsequent marriage and the judicial declaration of legitimacy (legitimation through an act of grace). Through the first, the illegitimate received the full status of a legitimate child under the Civil Code. Through the second, he or she received inheritance rights only from his or her father. He or she was not related to the father's other relatives or children[36]. The Swiss Civil Code of 1912 treated the judicial declaration of legitimacy differently. It granted the illegitimate child the full legal status of a legitimate child through this form of legitimation, only if the promised marriage became impossible[37].

6. THE LEGAL STATUS OF ILLEGITIMATE CHILDREN UNDER CURRENT LAW

The distinction between *legitimate* and *illegitimate* children, once deeply entrenched in European legal systems, has become increasingly anachronistic in the context of modern human rights and European integration. Within the European Union (EU), although family law remains predominantly a matter of national competence, overarching principles of non-discrimination and equal treatment have progressively eroded any legal differentiation based on the marital status of a child's parents.

[35] Idem.
[36] Hübner, R., Grundzüge des deutschen Privatrechts, Leipzig, 1930, p. 715.
[37] Planitz, H., Deutsches Privatrecht, Vienna, 1948, p. 137.

At the apex of EU primary law, the *Charter of Fundamental Rights of the European Union* unequivocally prohibits discrimination *on any ground such as … birth … or other status* (Art. 21(1)). As the Charter binds both EU institutions and Member States when implementing Union law, any differential treatment of children by reason of birth status would contravene this fundamental provision. Furthermore, Article 14 of the European Convention on Human Rights (ECHR), to which all EU Member States are parties, extends a prohibition on discrimination on the ground of *birth* in the enjoyment of Convention rights. Although the EU itself is not yet a party to the ECHR, the Convention's principles inform the interpretation of EU law and feature prominently in the jurisprudence of the Court of Justice of the European Union (CJEU).

While family relations, including filiation and inheritance, fall largely outside the scope of harmonization measures, the EU has adopted regulations facilitating the free movement and mutual recognition of family-law decisions regardless of a child's birth status. Brussels II bis Regulation (EU) 2019/1111 governs jurisdiction, recognition, and enforcement of judgments in matrimonial matters and parental responsibility. Its application is entirely neutral as to legitimacy: once a court establishes parental responsibility or custody, that decision is given effect throughout the EU without distinction between legitimate and illegitimate children. Succession Regulation (EU) 650/2012 likewise applies to the inheritance of any *successor,* encompassing all children irrespective of filiation status, and prescribes uniform rules for applicable law, recognition of certificates of succession, and cross-border administration of estates. These instruments prevent any Member State from denying recognition to parental or inheritance decisions on the ground that the child was born outside marriage, thereby cementing formal equality in cross-border contexts.

To date, the CJEU has not adjudicated a case directly concerning *illegitimate* children as a discrete category. Nevertheless, its burgeoning case law on social and economic rights under EU law, particularly in areas such as social security coordination and free movement of persons, has consistently applied Article 21 of the Charter to prohibit differential treatment based on birth. For example, in the context of migrant families, the Court has insisted

that Member States cannot deny social benefits to children who lack formal recognition of parental ties in the host State if such recognition would have been granted to *legitimate* children under national law[38].

In Marckx v. Belgium (1979)[39], the ECtHR held that Belgian law's refusal to recognize the motherhood of an unmarried woman (absent formal recognition proceedings) contravened both Article 8 (respect for family life) and Article 14 (non-discrimination) of the ECH.

Despite the robust supranational framework, disparities in national implementation persist. Some Member States maintain procedural hurdles for the recognition of paternity or maternity for children born out of wedlock – requiring, for instance, lengthy court proceedings or DNA testing – thus delaying access to maintenance and social benefits. Moreover, while the Charter ensures non-discrimination *within the scope of Union law,* purely domestic family-law provisions remain primarily subject to national constitutional and statutory norms, which may vary significantly. Finally, awareness of EU rights is uneven among practitioners and affected families, underscoring the need for targeted legal assistance and information campaigns.

6.1 Legitimacy under applicable law

The legal systems of almost all EU member states and those aspiring to join the EU provide for similar legal arrangements regarding the legalization of illegal children.

Legally, Albania now provides for the recognition and legitimization of children born out of wedlock through various mechanisms. The Family Code of Albania[40], revised in line with European standards, outlines procedures for establishing paternity and legitimizing children. The same provisions are sanctioned also in in the domestic law of the EU member states.

[38] Case C-300/90 Commission v Netherlands; Case C-202/02 Commission v Italy.
[39] Marckx v Belgium App no 6833/74 (1979) (ECtHR, 13 June 1979).
[40] Law No. 9062, dated 8 May 2003.

The law of most European countries currently provides three principal routes for legitimization, *Voluntary Acknowledgment*, *Judicial Establishment of Paternity* and *Legitimation by Marriage***.** In a *Voluntary Acknowledgment* the father may recognize paternity before a registry office or notary, thereby granting the child the father's surname and inheritance rights. *Judicial Establishment of Paternity* can be applied when acknowledgment is withheld. In this case a child (through a guardian) or the mother may petition the competent court to establish paternity, often relying on genetic testing.[41] Through a *Legitimation by Marriage* the child is automatically legitimated, if parents subsequently marry. The child is legitimated from the date of marriage, enjoying retroactive legal parity with children born within wedlock[42].

The Civil Status Law of most European countries facilitate registration and birth certificates for children regardless of their parents' marital status, helping reduce administrative discrimination. Under the Civil Status Law, municipal offices are required to register all births without discrimination. Birth certificates no longer stigmatize children by indicating parents' marital status; instead, they simply record parental identity once paternity is established[43].

However, despite legal improvements, practical barriers persist. Bureaucratic inefficiencies, lack of legal awareness, and deeply ingrained societal prejudices can obstruct effective implementation, especially in rural areas.

[41] Schmidt, A., Familienrecht in Österreich, Vienna, 2018, p. 45-48; Weber, B., Paternity Establishment and Child Legitimization. Journal für Kinder – und Jugendhilfe 12(3), 2020, p. 45–67; Elezi, I., E Drejta Familjare. Tirana, 2010, p. 123-129.

[42] Schmidt A., Familienrecht in Österreich, Vienna, 2018, p. 256-260; Elezi I., E Drejta Familjare. Tirana, 2010, p. 105-110.

[43] Austrian Personenstandsgesetz (2013). BGBl I Nr. 16/2013; Albanian Civil Status Law No. 10129 (2009) as amended.

7. CONCLUSION

The historical trajectory of the legal status accorded to children born outside of formal marriage reveals a gradual yet uneven progression from explicit exclusion toward formal equality. In antiquity, household incorporation and ad hoc adoption could mitigate the disadvantages of irregular birth, but these remedies were contingent upon patriarchal discretion rather than universal rule. Roman jurisprudence entrenched the stigma of sui iuris status for those not conceived in lawful wedlock, even as concubine-born offspring occasionally benefited from exceptional forms of legitimation.

The medieval synthesis of Christian doctrine and feudal custom intensified the marginalization of illegitimate children, stripping many of inheritance and civic rights, yet also produced localized accommodations – such as the *coat-child* ritual and papal *rescripta* – that foreshadowed more systematic reforms. With the dawn of the early modern and Napoleonic eras, states began to codify paternity presumptions and to institutionalize legitimation by subsequent marriage or sovereign grace. The enactments of Joseph II epitomized Enlightenment aspirations to erase birth-status distinctions, only to be partially reversed by his successors and later re-embedded in nineteenth-century civil codes.

Contemporary European and supranational frameworks have largely eliminated the formal category of *illegitimacy,* enshrining non-discrimination on grounds of birth in constitutional charters, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. Moreover, cross-border instruments such as Brussels II bis and the Succession Regulation ensure mutual recognition of parental and inheritance decisions irrespective of filiation status.

Nevertheless, vestiges of historical prejudice persist in administrative practice, cultural attitudes, and procedural complexity. Lengthy paternity proceedings, uneven registry capacities, and limited public awareness continue to impede the full realization of children's rights. The struggle to reconcile inherited legal doctrines with contemporary equality norms remains an ongoing

project. Future reform efforts should therefore prioritize not only statutory clarity but also the effective implementation of rights through streamlined procedures, targeted education, and robust legal aid – thereby ensuring that the promise of formal parity is fully translated into lived equality for every child.

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