

Bearing the Burden
The Great Toronto Stork Derby
1926-1938

by

Elizabeth Marjorie Wilton

Submitted in partial fulfilment of the requirements
for the degree of Master of Arts
at
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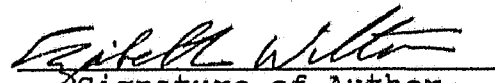
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ABSTRACT

The Great Toronto Stork Derby was a bizarre incident in Canadian history sparked by the death of a wealthy Toronto lawyer, Charles Vance Millar. In his will, Millar outlined the terms of a contest in which the woman in Toronto bearing the most children in the ten years following his death was to receive the bulk of his fortune. Millar died on October 31, 1926 and so began a competition that captivated the attention of the public in Canada for twelve years. In this competition poor, working class families participated in a high stakes gamble for Millar's \$500,000 estate.

Bearing the Burden attempts to dispel the popular perception of the event as humorous. It will demonstrate how the Derby became a crucible for many social and moral concerns of the day. The Derby will be used as a vehicle to explore attitudes towards reproduction, class, race and gender in Depression era Canada.

The introduction will provide an overview of the story as well as the structure of the paper. Chapter One sets the theoretical and temporal boundaries for the discussion and suggests why the Derby became the subject of a "moral panic". Chapter Two explores the Ontario government's failed escheat attempt in 1932. At that time the conservative government attempted to curtail the competition by giving the money to the University of Toronto. Chapter Three looks at the theme of newspaper voyeurism and the general circus-like atmosphere that developed around the event. Chapters Four and Five focus on the court hearings of 1936 through 1938. These hearings focused on the validity of the will and on what type of children could be included in the count. Much debate surrounded the possible inclusion of stillborn or illegitimate children. The conclusion shows how the Derby reflected contemporary social concerns and also that class was one of the most important factors in determining the outcome of the competition.

Acknowledgements

I wish to thank Professor Michael Cross for his encouragement and guidance throughout this project. Thanks goes as well to the staff and faculty at the Dalhousie History Department. Also to Jack Choules at the Archives of Ontario who was a wonderful resource person for me as I tried to locate many elusive court records. To my parents, I would like to express my gratitude for their advice and support throughout this process and of course, for the conversation with them that led to my discovery of this topic. Lastly, I wish to thank Lawrence Lee for helping to keep me on track and, in the initial stages of writing, for his computer!

INTRODUCTION

The Joker Starts a Fire

In the midst of heated legal debate, after a three flight climb to his office in a downtown Toronto building, Charles Vance Millar was struck down by a heart attack. The year was 1926, Canada was in an era of seeming prosperity, Mackenzie King and Arthur Meighen vied for power on the national level and Howard Ferguson was in his last years as Premier of Ontario. Few could foresee the future, the economic crash and depression that would soon weigh heavy upon the shoulders of the country. Similarly, there was no one who could foresee the repercussions of the death of this previously innocuous Toronto lawyer.

Ironically it was Millar's death, and not the achievements of his lifetime, that brought him fame. He graduated from the University of Toronto in 1878 and then went on to law school.¹ After graduating he practised corporate and contract law in Toronto. Millar, however, made his money largely from real estate and business investments and not from his law practice.² In 1905 he obtained a sizeable interest in a silver mine in Cobalt, Ontario, which developed into a very lucrative investment due to the discovery of a long fourteen-inch wide strip of silver. This strip of silver became known as the "silver sidewalk" and helped to make Millar a wealthy man.³ A

bachelor all his life, Millar's wealth simply accumulated. Millar's estate was also augmented substantially after his death, when his stocks in the O'Keefe Brewery and the Windsor-Detroit Tunnel increased tremendously in value.⁴

The enigmatic and "capricious" will (as Millar himself called it) that Millar left behind became the centre of a controversy that lasted throughout the nineteen thirties. This legal and social fiasco was dubbed "The Great Toronto Stork Derby" by the reporters who so zealously followed the story. Millar's will was of a curious nature and so inspired a great deal of interest. Some of the bequests were jocular in nature; others were the denouement of long standing rivalries between Millar and his acquaintances. There were stocks in breweries and race tracks left to Toronto clergymen, money left to an old housekeeper already deceased and several other strange bequests. The most bizarre bequest, however, was number nine which became known as the famous "Stork Derby" clause.

The Stork Derby clause established a competition amongst Toronto women, in which the mother having the most children in the ten years following Millar's death would receive the residue of his estate. In 1926, the estate was valued at \$500,000. The exact wording of this clause was as follows:

All the rest and residue of my property
wheresoever situate I give, devise and bequest
unto my executors and trustees named below in
Trust to convert into money as they deem advisable

and invest all the money until the expiration of nine years from my death and then call in and convert it all into money and at that time give it and its accumulations to the Mother who has since my death given birth to the greatest number of children as shown by the Registrations under the Vital Statistics Act. If one or more mothers have equal highest numbers of registrations under the said Act to divide the said moneys and accumulations between them.⁵

The "Derby" turned into a circus, of sorts, feasted on by Toronto newspapers, and garnering national and even international attention. Newspaper reporters doggedly followed the Derby contenders who were, for the most part, poor, immigrant and working-class people. The mothers were the centre of attention as reporters delved into their private lives, writing candidly about personal histories, child-rearing and house-keeping abilities, hopes and aspirations. At every turn these families were subject to judgement from myriad sources, the press, the public, politicians and reformers. Reporters also kept a watchful eye on the growing families, noting the births and deaths of children and how this might affect the outcome of the competition. Lawyers, too, took an active interest in the event, wooing competitors as it became clear that a great deal of litigation would be involved in reaching a settlement. It is perhaps no coincidence that the Canadian estate case involving the largest sum of money in the 1930's also drew the ministrations of the largest number of lawyers.

The Stork Derby developed into a crucible for social concerns in the 1930s especially for issues related to reproduction. The discourse surrounding the Derby came to include much broader concerns than the moral merits of this particular situation. The Derby concentrated fears of what was perceived to be the changing role of women in society, that is the concern that women of the upper classes were not reproducing enough to stay ahead of the rapidly multiplying masses. This perceived situation and its predicted result was often referred to as "race genocide" or "race suicide".⁶ It was from these sentiments that eugenically oriented government policies and organizations emerged in Canada. These fears were also part of the impetus behind the growing birth control movement in Canada and elsewhere.

This was also the era of the Dionne Quintuplets and the enduring fascination with their lives and development. The incredible interest in the Dionnes would suggest a widespread acceptance, if not promotion of large families in Canada regardless of class or race as does the interest in the Stork Derby. It is, however, important to note that the Dionne parents were marginalized by the government and by child care professionals. Their "lower class" and rural background was disguised and they were presented to the public as near-royalty. This elevation of the Dionne girls was done in such a way as to encourage the reproduction of middle and upper class families. This is suggested by

Veronica Strong-Boag in her book, The New Day Recalled when she discusses what she calls "a postwar celebration of maternalism that challenged the declining birth rates, especially among the middle-class..."⁷ This celebration included such promotions as that of the Dionne Quintuplets and also that of the Princesses Elizabeth and Margaret Rose. It was not, however, a carte blanche endorsement of reproduction. The celebration of motherhood had a definite target. The truth of this is clearly seen through the manner in which the discussion surrounding the Stork Derby developed.

It is in this context that the Stork Derby must be situated. These somewhat ambiguous attitudes regarding reproduction are evident in the discussions of this event that took place during the court hearings and in the newspapers. The public was fascinated by these families that were seemingly oblivious to the growing consensus that people should limit their rate of reproduction. This fascination was a mixture of approval and disgust. Some saw the competitors as abhorrent because of their over-indulgence in procreation (and the action involved to achieve this) and their clearly working-class backgrounds. Others cheered their efforts to win the money and to further populate the country. The Stork Derby provides an excellent way in which to examine attitudes about these issues. The unusual nature of this event provoked the expression of

opinion on a variety of topics, that under normal circumstances, would not have been articulated. The Derby allows for a glimpse at some private, but no doubt, pervasive attitudes about gender, class, and ethnicity that existed in Canada in the 1930s.

There is only one book that deals directly with the subject of the Toronto Stork Derby. The book entitled, The Great Stork Derby, was written by Mark Orkin in 1981 and serves as a useful starting point for anyone exploring the subject. Orkin essentially gives the Derby a popular history treatment as he highlights the main events but makes very little attempt at analysis. Orkin, perhaps because of his own legal background, was interested in the legal aspects of the event over its social implications. The biggest downfall of the book is the humorous angle he takes on the Stork Derby which somewhat belittles the trials undergone by the participating families.

In exploring the subject, this paper has drawn primarily on the work of Mariana Valverde and Angus McLaren for a theoretical context and on various general works for context. Valverde's book, The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925, deals with a period of Canadian history just prior to that of the Stork Derby but still contains many applicable concepts. Valverde's book explores the ideas of moral reformers in many professions in Canada and demonstrates how their ideas

were linked to concepts of class, race and gender. Her book, through extrapolation, provides some interesting clues as to why the Stork Derby became the focus of attention for many social reformers. These reformers sparked a sort of moral panic around the Derby similar to that surrounding many issues, such as white slavery, explored by Valverde.

The Bedroom and the State by Angus McLaren and Arlene Tigar McLaren and Our Own Master Race: Eugenics in Canada 1885-1945 by Angus McLaren provide a basic understanding of the issues surrounding reproduction in Canada. These issues are central to this study of the Stork Derby. In Our Own Master Race, McLaren lays out convincing evidence that ideas of racial superiority were widespread in Canada prior to World War Two and were subscribed to by many respected professionals across the country. McLaren demonstrates that these ideas of the superiority of certain individuals were based largely on notions of class, gender and race and were put into practice in many government policies and social services. This book is useful when examining the Stork Derby because it becomes clear, as the event progresses, that sentiments similar to those explored by McLaren were also pivotal in determining public and media attitudes towards the Stork Derby. They also influenced the outcome of the court hearings. Pierre Berton's books about the Dionne Quintuplets and the Great Depression are useful for setting the context as well as Veronica Strong-Boag's book,

The New Day Recalled: Lives of Girls and Women in English
Canada 1919-1939.

Newspapers have served as the major source of primary evidence in this paper. Using newspapers in this way has both benefits and pitfalls. Newspapers can be unreliable sources because they often tell all stories with a particular political slant and because their news gathering is influenced by more than a desire to tell a story. Newspapers are affected by advertising, by editorial staff and by public opinion. However, in the case of the Stork Derby, which was in many respects a media created event, the papers and all their biases are an essential part of this story. We do not look to the papers for the definitive answer about the Stork Derby but rather as a vehicle into the event and into the way it was portrayed to the public. Chapter three explicitly discusses the role the newspapers played in shaping the story.

The role that the newspapers played in promoting the Derby, and often in exploiting the contestants, is interesting also in that it is indicative of the type of newspaper reporting that was carried out in the 1930s. In Toronto, the battle raging between the local newspapers fuelled stories like the Stork Derby as each paper tried to outdo the other in coverage. The Toronto Daily Star and The Evening Telegram, in particular, placed great emphasis on human interest stories.⁸ This approach often distorted a

story as reporters brought out the most dramatic angle. One must bear this sort of distortion in mind when using newspapers as a primary source and remember that the word of the newspaper is not always representative of public opinion. However, the letters to the editor do provide a degree of insight into the public opinion of the literate.

In order to examine this event, it is important at the outset to have an understanding of the complete story as it became quite complicated by governmental and legal tangles over the years. For this reason, the first chapter will provide an encapsulated version of the Stork Derby covering the years 1926 to 1938. The second part of the chapter will place the event firmly in its theoretical and temporal context. In so doing, it will demonstrate how factors such as class and gender had an effect upon the development of the Stork Derby.

Chapter Two will examine the government's attempt, in March of 1932, to escheat the Millar estate and give the money to the University of Toronto (as Millar had specified in an earlier draft of his will). This event marked the beginning of the tremendous public interest in the story that lasted over the following six years. The validity of the will, at this time, was explored in a very particular context. The debate focused on whether or not the government had the right to tamper with the Last Will and Testament of a given individual. The discourse was notably

not concerned with any of the potential moral ramifications of allowing such a competition to run. Yet, it was these issues that later formed the heart of the controversy surrounding the Stork Derby. By beginning with an exploration of the escheat attempt it later becomes possible to see the dramatic shift in the parameters of the Stork Derby debate. After the failure of the escheat attempt, one can detect movement in the discussion about the Stork Derby, from a specific concern about property rights, to a much broader concern about morality, including fears that the Millar will would promote sexual licentiousness and the birth of illegitimate children. Once it was clear that the competition would in fact continue, the issue of who should receive the money became of utmost importance.

Chapter Three will explore the Stork Derby as "circus" or "carnival". The chapter will briefly delve into the theoretical meaning of "carnival" as developed in the French Annalist tradition and determine to what extent this theory applies to the case of the Stork Derby. With this theoretical model in place, the paper will turn to an analysis of some of the more bizarre events that took place in relation to the competition. These sensational events included: kidnapping threats, solicitations of vaudeville agents, a Broadway play based on the Stork Derby, and fights over photographic contracts. These events demonstrate vividly the treatment the Derby families received at the

hands of the press and elucidate the exploitation that many of them underwent. The families were forced to suffer the indignities of loss of privacy and public scorn. The role the newspapers played in promoting and distorting this event will be continuously explored. Through this exercise, it will be possible to see the growing penchant for voyeurism in popular culture. The emerging theme of voyeurism will figure in the remainder of the paper. The final section of the paper will focus on the specific experiences of several Derby families which further demonstrate the way that the press exploited this event.

Chapter Four will build on the discussions of the previous chapters and will explore the court cases of 1936 and 1937. The chapter will chart some of the broader social issues of the thesis. The social importance of the Stork Derby reaches its zenith during these hearings. Social reformers (such as Reverend Silcox, Dr. Hendry, Margaret Sanger, Lady Astor and Alfred Tyrer) stepped forward to voice opinions. Judges and lawyers openly revealed their racial and class biases. It was also the occasion when the greatest number of editorials and "letters to the editor" appeared in the newspapers. This rich source of public opinion will be drawn on extensively in this section.

The 1938 court hearings in which the whole affair was finally settled will be the focus of Chapter Five. The aftermath of the competition will also be briefly discussed.

In 1938 some of the most sensational testimony and news coverage, surrounding this case, occurred. The race, by this time had narrowed to six mothers, four of whom were pronounced winners, and two others (Mrs. Kenny and Mrs. Clarke) who were contesting this proclamation. The hearings of 1938 saw the final denouement of the story. This round of hearings provides an excellent means to examine how the Derby mothers were treated by the legal system and also uncovers some of the hidden social forces that influenced the outcome of the competition. The chapter will unearth these "external" forces while exploring the intricacies of who got the money, how much they received and how this reflected certain class, gender and ethnic biases.

It is significant that the four winning families were, for the most part, families who had kept a low profile during the competition and who conformed most to white, protestant middle-class standards. Of the winning families, all were white and three of the four were protestant. Two of the winning fathers had maintained steady employment throughout the Depression and the other two had previously worked in skilled labour. None of the French nor the Italian families appeared in the winner's circle.

Justice Middleton was harsh in disqualifying contestants on technicalities despite the undeniable leeway that he had, due to the unusual nature of the case. It is also interesting that lawyers had discouraged the families

from reaching an out-of-court agreement to share the money. This was obviously in the best interest of the lawyers but not so obviously in the interest of the Derby families. If the families had reached such an agreement, the lawyers would not have made such great financial profits from the case but all the contestants would have received some share of the money.

The conclusion will draw together the various parts of the paper, further discussing how the Derby served as the focus for a wide range of social concerns and the manner in which various class, race and gender dynamics were evident throughout this event. It will also challenge the conclusion to Mark Orkin's book, The Great Stork Derby, in which he asserts in explaining the competition that "it seems perfectly clear that they had large families because they loved and wanted children."⁹ Despite the fact that the mothers often publicly asserted that this was the reason for their large families, the subtext of the story leads us to other motivations. This assertion was the only way these families could avoid public scorn. It is revealing that one of the mothers who publicly declared that she had no genuine interest in the money, wrote to Premier Hepburn and pleaded with him to devise a settlement that would give some money to all large families in the competition. Love was, no doubt, a part of the equation, but so were certain limiting

social realities and a slim and dangerous chance at a better standard of living.

ENDNOTES

Introduction

1. "Millar Remembered As Shrewd Lawyer, Miserly Eccentric," Toronto Globe, 28 October, 1936.
2. "Cowardly to Attack Dead Declares Friend of Millar", Toronto Daily Star, 29 October, 1936.
3. "Baby Derby: Ontario Mothers Compete for Prize Left by Bachelor Lawyer," The Literary Digest, 29 August, 1936.
4. "Cowardly to Attack Dead Declares Friend of Millar," Toronto Daily Star, 29 October, 1936.
5. Last Will and Testament of Charles Millar, Archives of Ontario, RG 22, Surrogate Court, York County, No. 55697/1926.
6. The concept of race genocide (or race suicide) began to take hold in the western world towards the end of the nineteenth century. Basically, the term "race genocide" denoted the baseless belief that the middle and upper classes were not reproducing at a rate sufficient to keep their numbers higher than those of the working "masses". For more on this issue and eugenics in general see: Angus McLaren, Our Own Master Race: Eugenics in Canada 1880-1945 (Toronto: McClelland and Stewart, 1990).
7. Veronica Strong-Boag. The New Day Recalled: Lives of Girls and Women in Canada 1919-1939 (Markham, Ontario: Copp Clark Pitman, 1988), 150.
8. See for example Roy Greenaway, The News Game (Toronto: Clarke, Irwin and Company Limited, 1966) and Frederick Griffin, Variety Show: Twenty Years of Watching the News Parade (Toronto: The MacMillan Company of Canada Limited, 1936) and Ross Harkness, J.E Atkinson of the Star, (Toronto: University of Toronto Press, 1963).
9. Mark Orkin, The Great Stork Derby, (Don Mills , Ontario: General Publishing Co, Ltd., 1981), 317.

CHAPTER I

Theory in Context

The story of the Stork Derby is a lively, entertaining, but often confusing tale. The narrative alone provides interesting insight into the strange atmosphere that existed during the Great Depression in Canada. The devastating economic conditions created a society in flux, where moral, social and political alliances were fluid and where excesses in belief and action abounded. Cultists and eccentrics of many persuasions received consideration. In Ontario, the charismatic but somewhat unpredictable Mitchell Hepburn was placed in the seat of power. Hepburn, an onion farmer from South-Western Ontario, managed to gain wide popular and party support with his pledge to bleed the rich in favour of the poor. On the national level Mackenzie King was once again put into power, his eccentricities and inadequacies a secret to no one.

The unexpected became commonplace, labour strikes and riots, long lines of impoverished people waiting for hand-outs from the House of Industry, swarms of men riding the rails seeking employment. There were those who claimed the sky was falling. Financiers leaped from skyscrapers, marathon dancers and swimmers persevered beyond exhaustion, and men perched atop flag poles for days, in the hopes of receiving prize-money. The daily newspapers, eager for

"scoops" to further sales by amusing and distracting readers in difficult times, followed these strange events closely. Kidnappings and multiple births became front page news vying for space alongside news of Hitler's rise to power in Germany and the Spanish Civil War. It is easier to comprehend, with this understanding, why the Stork Derby garnered so much attention in the press and in the public imagination across North America and particularly in Toronto, Canada. It was a diversion, as were the other occurrences just mentioned, but as time progressed it became much more than that. The Stork Derby, and the issues that were discussed in relation to it, exposed many social tensions that existed in Canada in the nineteen thirties. The Derby focused concerns about the issue of reproduction especially in relation to the categories of class, ethnicity and gender.

The Stork Derby was not only at the centre of immense public interest and a wide-ranging moral discourse, but it also sparked the largest legal battle in Canada in the thirties. It was a complicated event, because of the number of people and issues involved. Because of these complications, it is useful to have a basic understanding of the course of events before delving into a theoretical analysis.

After the death of Charles Vance Millar on October 31, 1926, several small and laudatory obituaries appeared in the

Toronto daily newspapers.¹ A few days later, more articles appeared noting the curious nature of Millar's will. Despite its eccentricities, the will passed easily through probate on December 9, 1926. The only change to the will was the dropping of a clause which had left money for prayers to be said "for the soul" of a Protestant acquaintance of Millar's (probably of questionable moral standing) by the Roman Catholic Archbishop of Toronto. The Stork Derby clause was left untouched and over the next few years went relatively unnoticed by the press and the public. The occasional article about the Stork Derby focused on legal tangles surrounding Millar's stake in the Detroit\Windsor Tunnel and on his shares of brewery stock. The eventual resolution of these problems caused the estate to grow, mid-race, from \$500,000 to \$750,000 dollars. However, by 1936, after various settlements the amount was back down to \$500,000.

The Stork Derby was essentially a media created event, the newspapers turned it into a "race" in the public imagination, and in the early days actively sought out mothers of large families. Under the terms of the will it was not necessary for the mothers to identify themselves until the day the ten-year period expired and the money was ready to be distributed. This, in fact, was the route that several of the winning families took. Some did not step forward until three weeks before the competition was to be

over. Others waited until the last day. Families were either discovered by the various Toronto newspapers or identified themselves to the papers. The publicity had both positive and negative affects on the families. On the more positive side, some families were able to supplement their meagre incomes with photograph contracts and advertisement agreements. These benefits, however, were clouded by the invasion of privacy that happens to those in the public eye. These families became the object of public scorn and ridicule and, less often, praise. They faced kidnapping threats, the solicitations of vaudeville agents, and swarms of reporters eager to learn of the births and deaths of their babies. Later, several mothers would pay dearly for their time in the limelight. Justice Middleton, the judge who presided over most of the Stork Derby hearings, did not view this behaviour with approval and was perhaps not as generous to these mothers as he might otherwise have been.

The first newspaper article to identify and feature Stork Derby contenders appeared in the Toronto Daily Star on October 8, 1930 and was written by Gordon Sinclair, one of the Star's most popular journalists. It would appear that Sinclair went out and looked for the mothers of large families to write this article. In this quest he discovered Mrs. Bagnato, the mother of twenty children and Mrs. Brown, mother of twenty-six children, with thirteen living. Mrs. Bagnato would remain in the public eye for the next six

years, but Mrs. Brown soon fell from grace as her babies simply did not arrive quickly enough. This article was inadvertently prophetic because it revealed some of the issues that would later become central to the discussion of the Stork Derby; issues that, apart from this article, did not surface until 1934 and then continued to gain in importance until the resolution of the race.

The article focused on a discussion with Mr. and Mrs. Brown as they were seen as the "challengers" to Mrs. Bagnato who had just given birth to her 20th child, five of whom were eligible for the Millar money. Mrs. Brown claimed six of her children had been born since Millar's death. Mrs. Brown, in asserting her right to the money proclaimed:

"I can't let any Italian get away with that 'leadership stuff'. I'm a Canadian and so is my husband. We're honest to gosh dyed in the wool native born Canadians of the fifth generation and think six babies in five years ought to lead."²

Mr. Brown added to his wife's comments saying that "if a few more Canadians would be themselves and produce a decent sized family the country would not be overrun by "foreigners".³ This sort of racism and in particular the way in which it was linked to reproduction was later a feature of the discussion about the Stork Derby. The families, especially those that were not of a white, protestant background faced a great deal of public criticism because of their unchecked reproduction. The intra-family rivalry indicated by the Brown's statements was also common

in the early years of the Derby but as time passed and the families felt more harassed than hallowed, they banded together to help one another.

In Mr. Brown's rambles, he also touched on the issue of birth control which was one of the most hotly contested areas of public discussion in the 1930's. He said that he certainly did not believe in birth control, once again for racially based reasons "'What this country needs is people of her own native stock not flocks of immigrants.'" When queried by Gordon Sinclair as to whether he thought that if everyone had large families there would be more unemployment Mr. Brown responded:

"Not a chance. All the wiseguys say the world is glutted with an oversupply of everything . Your paper says it everyday. If there were more people they'd eat the wheat and the sugar and all the rest and there wouldn't be an over supply of stuff they couldn't sell. Do you get that?"⁵

It is apparent that Mr. Brown saw the reproduction of his family in the context of a wide range of social and economic conditions in a similar manner to those citizens who later became involved in, and were generally critical of the event.

From 1926 until 1932 articles appeared periodically about other clauses of the Millar Will, but it was not until the Provincial Government of Ontario attempted to escheat the money in March of 1932 that the constant coverage of the Derby began and tremendous public interest was spawned. At

that time, the Attorney- General, William Price, introduced a bill to escheat the estate and give the money to the University of Toronto. This disposition of the money had been suggested in an earlier draft of Millar's will. This bill created a fury of discussion about the Stork Derby. In this context, the first interviews with "competitors" took place. The debate, however, primarily centred on the issue of the government's right to interfere in the affairs of the individual. The bill was introduced on March 23, 1932 and due to public outcry, did not survive second reading. The escheat attempt did, however, have a long lasting effect because a number of Stork Derby "mothers" were rocketed into the public eye where they would remain for the following six years.

After 1932, there was no further direct government intervention in the Millar will affair. The sorting out of the Derby clause was left in the hands of lawyers and judges. And sort it out they did - at the first Derby hearing in November of 1936, thirty-two lawyers were present representing the claims of seventeen mothers.⁶ Justice Middleton's first act was to pare this number down to six lawyers.⁷

The legal complications surrounding the will fell into two broad categories. The first category consisted of a debate about whether the will should be invalidated because the Stork Derby clause was against the "public policy" or

the "public good".⁸ This was the argument advanced by several of Millar's distant relatives, who hoped, by ending the Derby, to get a share in the estate money. Arabella West and Alexander Butcher eventually carried this argument to the Supreme Court of Canada - where their appeal was dismissed in November of 1938. An earlier appeal by James Noell, who was the executor of the estate of a supposed half-aunt of Millar (and who had been left an interest in her estate when she died) also failed in December of 1937.

The second main area of litigation had to do with the claims of the mothers who were competing for the money. In November of 1936, when the claimants officially stepped forward, it was clear that the division of the money would be no easy matter. The complications arose because of two of the conditions laid out in the will. First, the children, to be eligible, had to be registered under the Vital Statistics Act, and not all of them were. It therefore had to be decided if late registration would be allowed. A further question was whether stillborn children were to be included in the count. As well, there was the issue of legitimacy. This arose because one of the mothers had five children by her husband and after separation from him, had five children by another man. Great scandal and a tremendous amount of legal debate surrounded this issue. Had Millar meant to count all children in his bequest or only legitimate children? These questions opened the way for a great deal

discussion about the morality of the will - did it encourage promiscuity and general immoral behaviour? Was it dangerous to the health of the mothers to encourage such rapid child-bearing? Was it therefore against the public good? These questions were contentious enough to land the discussion in the Supreme Court of Ontario and ultimately in the Ontario Supreme Court of Appeal.

Judge Middleton stuck closely to rigid rules of middle-class decorum, and traditional legal precedent, in rendering his decision. The mother of the illegitimate children, Mrs. Clarke, was disqualified. Other mothers with questionable birth registrations for their children and stillborn children were also disqualified. Only those with completely proper records were awarded a slice of the Millar pie. When Mrs. Clarke and another contender, Mrs. Kenny, filed for an appeal to the Supreme Court in March of 1938 they were given a consolation prize to prevent further litigation. At the end of the competition four families, the Nagles, the Tinglecks, the Macleans and the Smiths shared in the money. Each family received approximately \$100,000 dollars (reports ranged from \$75,000 to \$125,000) for their efforts which had produced nine registered children in the ten year period. Mrs. Clarke and the Kennys received \$12,500 each. The government received \$137,000 dollars in succession duties⁹, and the lawyers walked away with a healthy sum of money (approximately \$25,000 dollars) in their pockets. Many of

the families who had competed for the prize received nothing for their efforts and were, no doubt, left in crippling economic circumstances. After several follow up interviews the families finally receded from the public eye.

This bizarre story, a supposedly humorous blip in history, actually provides vivid insight into commonly held fears and attitudes about reproduction in Depression era Canada and more specifically about reproduction in relation to issues of race, class and gender. On the surface it would appear that the Stork Derby would be a likely candidate for a gender-based analysis. Surprisingly, this is not the case. Although this type of analysis is integral to the paper, the Stork Derby reveals more about class and ethnicity issues than it does about gender roles. This supports the notion that the categories of race, gender, and class identities are not mutually exclusive but exist alongside one another varying in importance according to the situation. To focus on only one identity ignores the complex nature of living, and the conditions under which individuals shape their lives. In addressing this particular issue Mariana Valverde, in her book on moral reform in late nineteenth century Canada, claims that readers may be disappointed with her analysis because for her "class, and more often race, was in many instances a more important social contradiction than gender, even when women and

sexuality are overtly the topic of concern." ¹⁰ This is also the case with this exploration of the Stork Derby.

The Derby presents a difficult quandary for those interested in employing a single category of analysis; that is, using gender, class or ethnicity, in isolation as a theoretical tool to explain the unravelling of certain events. It is important to examine the elements in society that allowed such a contest to take place but the key does not necessarily lie solely in gendered issues. A feminist analysis might focus on the type of society that would create such a creature as Charles Vance Millar who thought it a joke to start this competition. It might perform a sort of psycho-biography that explored the patriarchal society in which he grew and the views of which were expressed in his will. The Stork Derby, of course, affected the lives of the mothers who competed and in several instances ultimately took a severe toll on their health. In certain respects this approach is valid but, in other respects, it is utterly useless.

The important issue in any analysis of the Stork Derby should not be why Charles Millar made this will, as it could have been one isolated act of an unbalanced personality, but what happened after he had made the will. Why was the competition allowed to continue, why was it of such interest and concern to the populace of North America, what does it reveal about attitudes towards reproduction in Canada in the

1930s ? It is true that gender figures in this discussion. The Stork Derby would likely not be allowed in the 1990s primarily because of its violation of women's rights through the juxtaposition of reproductive capabilities with the chance at a large sum of money. In the 1930s, however, reproductive issues were viewed in a completely different context. In accordance with maternal feminist principles and a long tradition of motherhood as the prime calling of women, a woman using her reproductive capabilities to produce many children was not necessarily seen as exploitation. Linda Gordon in her history of the birth control movement in the United States suggests that during the Depression working class women did not view birth control as a means to escape motherhood. Rather, they saw it as a way to aid them in achieving better performance in the tasks of motherhood.

the interest of working-class women, even Catholics, in birth control did not represent a rebellion against traditional family roles....For working class as opposed to more prosperous women, reducing family size and extending the gaps between children was not just a matter of the budget but of working a little less hard and in a little less alienated fashion: having more control over the conditions of housework and child care, being able to do good, skilled housework and child care."¹¹

In this respect, it could be argued that the Stork Derby mothers took control of their lives in trying to use the tools they had available to them (child-bearing) to gain a better standard of living. Because of the possibility of

winning the Millar money, the employment of birth control was not necessarily the best way to help these women in their pursuit of good skilled mothering and housework.

To the press, the women were the central figures in the contest. They were responsible for signing contracts, and it would appear, for doing much of the long term financial family planning. This is, of course, carrying the argument to the extreme but this is done to illustrate that it is not a straight case of the oppression of women.

As it is difficult to get at the personal side of this story it is impossible to ascertain the family dynamics. Certain important facts are left uncovered, such as whether or not the women were being forced by their husbands to continue bearing children or whether or not the competition at all influenced the number of children these families had. Without these facts, it is impossible to gauge just how exploited these women were or if they viewed themselves as victims of exploitation.

It is clear however, that although the women bore the physical burden of child birth, their husbands shared in the difficulties of trying to support the families. It is apparent that class was a major category of identity in the denouement of this story. It was primarily poor families that participated in the competition and it was only the families that conformed closest to middle class standards (or were in fact middle-class) that won the money.

Ethnicity also played a part in both the dynamics between the competing families and in the final division of the money (i.e. non-Protestant families did not conform to middle-class standards). Only one out of the four winning families was Catholic.

The Derby became the focus of a moral panic largely as a result of class and gender issues as the two were quite inextricably linked in the discussion of reproduction even in the 1930's. Angus McLaren and Arlene McLaren certainly found this to be the case in their study of birth control and reproduction in Canada and their findings are borne out in this study. The McLarens asserted that:

In the politics of contraception, the class interests were never absent and often quite transparent. Middle-class figures called for an increase in the numbers of their own kind and a decrease in those of the working-class. Working-class commentators who had an opinion on contraception saw it as either coercive or liberating, depending on the role they assumed it would play in the class struggle.¹²

As the years of the competition passed and as more and more contenders stepped forward the public became increasingly focused on moral issues connected to the competition. The discourse surrounding the Derby moved from a specific concern about the right of individuals to control their Last Will and Testament (and therefore supporting the competition) to a wide-ranging fear about the over-reproduction of the working-classes. Social anxieties regarding immigration and reproduction (broadly who was

reproducing, when, how many children) became focused in the image of the poor families competing for the Millar money.

The apprehension that developed about the Stork Derby (alongside the voyeuristic interest) was similar to earlier "moral panics" such as the case of the white slave trade. Mariana Valverde's critique of this phenomenon in her book The Age of Light, Soap and Water is equally applicable, though at a later date and in a slightly different context, to the Stork Derby. To quote once again from Valverde, she asserts in relation to these moral panics that they were "by definition multidimensional, and the social anxiety associated with them is probably rooted in the unconscious coming together or condensation of different discourses, different fears, in a single image".¹³

The 1930s in Canada was a period particularly ripe for the growth of this type of panic. The mass immigration to Canada over the previous decade had dramatically increased the numbers of "foreign" born in the country. The birthrate, that had begun to drop in the latter half of the nineteenth century, was continuing to drop at what was to some an alarming rate. Eugenicists and birth control advocates focused people's attention on the growth in numbers of individuals deemed as "feeble-minded". These situations coupled with the grave economic depression of the thirties raised the spectre of race suicide: that is, the eventual demise of the white, protestant middle-class.

Veronica Strong-Boag commented on this in her book, The New Day Recalled, writing that "the resumption in the decline of the Canadian birthrate that had begun in the mid-nineteenth and only briefly halted in the twentieth century worried English-speaking nationalist who feared the 'best' elements in society (i.e. the white Protestant middle class) were failing to reproduce themselves."¹⁴ Evidence of this fear of race suicide can certainly be found in the Stork Derby debate. The Stork Derby, in fact, is an enlightening means by which to explore these fears and the confused attitudes about reproduction.

Before delving into the heart of the analysis, we will turn briefly to a series of thumbnail sketches of the Stork Derby contestants. As mentioned, the contestants made themselves known to the media as the years of the competition progressed. They appeared at different times and their fame lasted for varying amounts of time. The women that remained in the spotlight for the longest period of time, that is identified themselves early, were for the most part poor, working class women who desperately needed the Millar money. Ironically, most of the mothers who were long considered winners did not ultimately share in the Millar money. Several of the families that made fleeting appearances in the press were living in abject poverty. Their stories and the way the press treated them will be explored in the "circus" chapter.

The Bagnato Family:

Mrs. Bagnato was one of the first identified competitors in the Stork Derby. She was featured in an article that appeared in the Star in 1930. In this article, Mrs. Bagnato already had the extraordinary number of twenty children, ten of whom were living. By August 1936, Mrs. Bagnato had given birth to twenty-three children and was expecting her twenty fourth. Nine of the children had been born within the ten year period.

Mrs. Bagnato was born in Canada of Italian immigrants. Grace's husband immigrated to Canada to marry her, by arrangement. Grace was twelve years old at the time. The Bagnatos were Roman Catholics. She worked as a court interpreter in Toronto and the papers most often referred to her as "the still comely mother of 24 children".

In August of 1936 a portrait of the family was done in the Toronto Star. The reporter described the activity level in the home as "amazing", with thirteen of the eighteen living children residing at home. Mrs. Bagnato not only prepared all the meals but worked full time as a court interpreter. She drove a car and in her spare time acted as a legal advisor within the Italian community. The Bagnato family was the only home, of Stork Derby contenders, to possess a phone.¹⁵

The Bagnatos did not ultimately share in the Millar money because two of their children were not registered.

The Graziano Family:

Hilda and Gus Graziano had ten children by 1936, seven of whom were considered eligible for the competition. An eighth eligible child had been stillborn in 1929 and was unregistered, and a ninth eligible child died shortly after birth. Mr. Graziano had immigrated to Canada from Italy and Mrs. Graziano was of French-Canadian extraction. They lived in St. David's place, a slum alley in Toronto. They were Roman Catholics. In 1936, Mr. Graziano had been unemployed for four years. He had previously worked as a market gardener. They were desperately hoping for more children in order to be eligible for the Millar money. There was controversy over the unregistered child who was born prematurely and then died. The Grazianos did not ultimately share in the money.

The Timleck Family:

The Timlecks had seventeen children, thirteen of whom were living in 1936 and ten of whom they considered eligible for the competition. Mrs. Timleck was born in Ireland and came to an Ontario farm as an orphan. Mr. Timleck was born in Saskatchewan. They were living in a house on River Street, a poor part of town, in Toronto. Mr. Timleck had worked as a mechanic with the City Parks department for the past ten years. The Timlecks did not join the competition

until a few months before its end and were recipients of the Millar prize money.

The Nagle Family:

The Nagle parents were both born in Ontario. They were devout Roman Catholics of Irish extraction. They had twelve living children and two others that had died. Nine of their children were eligible for the competition. In 1936, Mr. Nagle had not had steady work for three years. Mrs. Nagle had studied diet in the hospital where she worked before she was married and was thirty-one years old in 1936. They lived in a small house on Leonard Street. In a feature article on the Nagles, Mrs. Nagle said that she would use the Millar money to educate her children. Mrs. Nagle also said that if she were to win the money she would see that other contenders got some money. Mr. Nagle was a carpenter. The Nagles were winners in the Millar Will competition.

The Kenny Family:

Mrs. Kenny was perhaps the most colourful of all the Stork Derby contestants. She first appeared in the newspapers in the autumn of 1934 and after that time was a constant focus for media attention. Both of the Kenny parents were born in Toronto, she of French Canadian extraction and he of Irish descent. They were a staunchly

Catholic family. Mrs. Kenny was the mother of sixteen children of whom eleven were living by 1936. There was a great deal of confusion surrounding how many of her children were actually eligible for the competition. She was convinced throughout the competition that she would be the sole winner of the Millar money. Mrs. Kenny believed that she had a divine connection with Charles Millar and that he had assured her that she would win. She also carved a large number of wooden statues of Charlie Millar, public dignitaries and a full replica of the Dafoe Hospital (where the Dionne Quintuplets were cared for). She was a creative, outspoken and somewhat superstitious woman who became completely marginalized by the media and the justice system. Her non-conformist attitude coupled with the fact that she was a woman made her extremely vulnerable to this sort of stigmatization. Mrs. Kenny and her family lived in abject poverty. During the competition (in 1933) Mrs. Kenny lost one of her infants due to an infection from rat bites that the child had received while sleeping in its crib. Mrs. Kenny worked caring for the children and Mr. Kenny was unemployed. He had previously worked for the Goodyear Rubber Company but had lost his job in 1932. By the fall of 1936, the Kennys had been on relief for three and a half years. Mrs. Kenny was involved in the Stork Derby until the very end of the hearings. She was ultimately disqualified because some of her children were stillborn and others were

unregistered. She did, however, share with Mrs. Clarke in an out-of-court settlement of \$12,500 dollars each.

The MacLean Family:

The MacLeans entered the competition at the last minute, on October 30, 1936. They had appeared in the Star in August of the same year but had shielded their identity calling themselves "Mr. and Mrs. A." Both parents were of Scottish descent which was received favourably by the Star. A Star reporter actually called at their home to ask them if they were going to register for the competition. Mrs. "A" said that she had been following the competition but could not get her husband interested in it. She had nine children all of whom were alive and properly registered. In this early article the MacLeans received a glowing assessment by the Star reporter. Emphasis was placed on their Scottish thrift and belief in the importance of education. They were both Protestant. The reporter was equally impressed by their home:

Their home has polished furniture and lovely colorful rugs. In the living-room is a veloured-covered chesterfield, several comfortable, easy-chairs, tables with floor lamps near them, a piano and interesting pictures around the walls. The room breathes a pleasant air of moderate prosperity and thrift.¹⁶

After they identified themselves to the executors in October, the Macleans were interviewed again by the Star. Once again they received praise from the paper, they were

portrayed as bastions of middle-class respectability. The reporter noted that the "MacLean household presents a pleasant domestic scene, and it is with pride that the mother introduces the lads and lasses."¹⁷ This description of home life is a far cry from the squalor in which some of the other contestants lived like that of Mrs. Meldrum whose home was infested with rats.

The MacLeans decided to enter the Derby when it seemed as if the top mothers were claiming nine children as opposed to earlier reports of ten or eleven. The MacLeans expressed that they were anxious to avoid publicity and that they certainly gave no thought to the Millar will when having their children. Their demeanour and middle class status, no doubt, carried public favour. Mr. MacLean was an employee of the highways department office at the parliament buildings and the family lived on Strathmore Ave. They were winners in the competition.

The Smith Family:

The Smiths were another last minute entry to the Millar Will competition. It was only when the Star contacted them because of the size of their family that they decided to notify the executors of the estate. This was on October 21, 1936. They had nine children all of whom were living and properly registered in Toronto. Mrs. Smith claimed that she had not followed the story and did not know the names of any of the other contestants. Mr. Smith was an employed

fireman. Mr. Smith was born in England as was Mrs. Smith's father. Mr. Smith fought for Canada in World War I. The Smith family was Protestant.

The personal history of the Smiths, perhaps more than the number of their children, made them ideal candidates to receive a share of the Millar money - which they ultimately did. The Star reporter gave a glowing report of this couple and their family.

It is a pleasure to visit the Smith home. Auburn-haired Mrs. Smith, only 31 years old, despite her record of 10 off-spring, nine born within the charmed period, is a pleasant young woman to talk to. With her good-looking, stockily built husband, they make an affable and courteous pair. They are thrifty, kindly, sensible folk. They are successful parents.¹⁸

The reporter also noted that they lived in a very nice, brick home with a big lawn and garden. Their street was "clean and pleasant."¹⁹ The Smiths also shared in the Millar money.

Mrs. Pauline Mae Clarke:

Mrs. Pauline Mae Clarke was the focus of a great deal of attention during the final years of the Stork Derby. She first appeared in the press as the mysterious "Mrs. X". She attempted to shield her identity in this manner because of the less than respectable circumstances surrounding the birth of her children. By 1936 Mrs. Clarke, at the age of only twenty-four, was the mother of ten children. She was "discovered" by the Telegram in August 1936 and pleaded with them to keep her identity secret because five of her ten

children had been born after she had separated from her husband. She said that she would have married the second man but did not have enough money to secure a proper divorce.²⁰ She was not aware of the competition until the birth of her twins in July of 1936 when the doctor asked her jokingly if she were trying to beat Mrs. Kenny. The first set of twins both died, one after five hours and the other after 27 days. Two of her children were adopted through the Children's Aid society and two others were being looked after by her husband's family.

Mrs. Clarke's identity soon became known and she spoke quite candidly of her life history to the newspapers. She said that when her husband left her, she fell in love with another man. She believed that her husband would divorce her promptly so began life with Harold Madill, but the divorce never materialized. Throughout her time in the spotlight, Mrs. Clarke never expressed regret for her actions but insisted that she loved her children and that there was nothing wrong with her behaviour. This caused quite a stir in Toronto. Mrs. Clarke's entry in the competition gave the Millar relatives further clout in their argument that the Will encouraged immoral behaviour. Mrs. Clarke like Mrs. Kenny received \$12,500 as a consolation prize and then disappeared from the public eye.

The Others:

A host of other families made brief appearances in the newspapers, all of whom were extremely poor and desperately hoping for the Millar money. Ironically, these very needy families, who were actively interested in the race, did not receive any money. Most of the winning families only became involved at the last minute. The predicaments of these various families will be explored throughout the paper. With these brief caricatures of some of the main players, the paper will turn to the analysis of this event.

ENDNOTES

Chapter I

1. See for example Toronto Daily Star, 1 November, 1926.
2. "Bagnato House Challenged For Record In Family Size," Toronto Daily Star, 8 October, 1930.
3. Ibid.
4. Ibid.
5. Ibid.
6. "Roebuck May Argue Millar Mother Race Defies Public Good," Toronto Daily Star, 5 November, 1936, 1.
7. "Hints Illegitimate Children May Void Millar Will Race," Toronto Telegram, 6 November, 1936, 1.
8. "Public Policy" is defined as "the principles under which the freedom of contract or private dealings is restricted by law for the good of the community. At least two conditions must be fulfilled before the court can refuse to give effect to the legal instrument or any transaction on the ground that the same offends public policy. It must find that the transaction in question is against the interest of the safety of the state or the economic or social well being of the state and its people as a whole. Secondly, it must be invoked only in very clear cases in which the harm to the public is substantially incontestable and does not depend upon the idiosyncratic inferences of a few judicial minds. Re Millar, (1938) S.C.R. 1, (1938) 1 D.L.R. 65. No evidence can be received as to what is public policy. It is a question of law to be determined by the courts. Re Millar (supra). Also see Fender vs. Mildmay, (1938) A.C. 1." from The Canadian Law Dictionary (Toronto, Ontario: Law Business Publication's Canada Inc., 1980), 302. Note that the Millar Will case is still cited as precedent for the definition of the rule of "public policy". See also for example The Encyclopedia of Words, Phrases, Legal Maxims, Canada (Don Mills, Ontario: De Boo, 1986-), 2-214 and 189-90.
9. "Editorial", Evening Telegram, 24 October, 1936.
10. Mariana Valverde, The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925 (Toronto: McClelland and Stewart, 1991), 12.

11. Linda Gordon, Woman's Body, Woman's Right: A Social History of Birth Control in America (New York: Grossman Publishers, 1976), 323.

12. Angus McLaren and Arlene Tigar McLaren, The Bedroom And the State: The Changing Practices and Politics of Contraception in Canada, 1880-1980 (Toronto: McClelland and Stewart, 1986), 141.

13. Age of Light Soap and Water, 14.

14. Veronica Strong-Boag, The New-Day Recalled: Lives of Girls and Women in English Canada, 1919-1939 (Toronto: Copp Clark Pitman Ltd. 1988; reprint, Markham, Ontario: Penguin Books, 1988), 87.

15. "Four Generations Await Result of Stork Derby," Toronto Daily Star, 24 August, 1936, 2.

16. "Mrs. 'A' Is Still Another Millar Will Contestant," Toronto Daily Star, 26 August, 1936.

17. "New Millar Will Claimant is Native of Old Scotia," Toronto Daily Star, 30 October, 1936.

18. "'I Wouldn't Take \$750,000 Says Millar Will Entrant'," Toronto Daily Star, 21 October, 1936.

19. Ibid.

20. "'Mrs. X' of Stork Derby Shields Name for Family," Evening Telegram, 25 August 1936.

CHAPTER II

The Government Steps In The People Cry Out The Escheat Attempt of 1932

Amidst cries of "shame", "disgrace" and "lost", Bill 141 passed through second reading in the Ontario Legislature on March 24, 1932.¹ By introducing this Bill, Attorney-General William Price had unknowingly walked into the heart of a controversy. Bill 141 was designed to escheat the Millar Will money to the University of Toronto. This action was the first, and last time, the Government was to be directly involved in the Millar Will affair. In response to the public outcry, the Bill was soon withdrawn from the House.

The fuss that occurred surrounding the Bill raised public interest in the Stork Derby competition and garnered a tremendous amount of media attention. This attention to the Stork Derby was sustained in the press, over the following six years. Prior to this time, there had been only a few articles about the Millar will contestants and only two mothers had been identified as serious contenders for the money.

The debate surrounding Bill 141 is of importance because the parameters of the discussion were so limited and so different from those that would later occur. In 1932, the debate centred on the right of the individual to control

their Last Will and Testament. As the race progressed, however, the debate focused on much broader moral issues.

The newspaper articles that appeared surrounding the escheat attempt covered three central issues. Firstly, the papers tried to deal with the issue of whether the government had a right to interfere in the disposition of individual estates (i.e. the sanctity of the will). Secondly, some articles discussed whether it was fair to stop the competition when it was already in its sixth year (this question was raised by some women's organizations in Toronto). Lastly, several reporters interviewed Derby mothers to determine what they thought of the proposed legislation. There was hardly a mention of the moral issues (such as, was the Millar will against public policy because it encouraged sexual promiscuity) that later became the focus of the dialogue about the Stork Derby.

A study of this particular event demonstrates how the discourse surrounding the Stork Derby shifted dramatically from the time of the escheat² attempt in 1932, to the voluminous newspaper coverage of the "race" that began in 1934. The discussion that occurred about the escheat attempt focused on whether the passage of this Bill would set a dangerous precedent regarding the legal sanctity of a Last Will and Testament. It was argued that the precedent established by over-turning this will would threaten the rights of all citizens to determine the disposition of their

personal estates. However, it was not truly the rights of all citizens that would be threatened by this action. It was rather, the specific rights of the holders of wealth and power in society that would be threatened by this action. Only this class of people, who had large estates to pass on to heirs, would even be concerned with these matters.

The action of the government to escheat the money was seemingly prompted by a concern regarding the potential expatriation of the Millar money to the United States via an American named James A. Noell. Noell, from California, had filed a claim to the Ontario Courts for the Millar money in 1932.³ He was the executor of the estate of a Mrs. Nancy Millar who was a half-aunt of Charles Millar. Nancy Millar left James Noell an interest in her estate upon her death in 1928.

It is unlikely, however, that Noell's claim was the real reason for the government's intervention as the amount of money involved did not warrant this sort of large scale action. Another reason given by several M.P.P.'s for the escheat attempt was that difficulty would be encountered in trying to determine the winner of the baby marathon. The Toronto Daily Star wrote that the government felt that "as the will applied not merely to married women but to any mother: it was held that the door to fraud and all sorts of collusion agreements was left wide open and that costly litigation must inevitably ensue."⁴ This reason, although

prophetic, was likely not the sole prompter for the government's action.

The truth about the government's involvement in this whole affair probably lay somewhere between the two reasons given in the newspapers. Members of Henry's government no doubt foresaw some of the controversy that was to surround the Stork Derby and so wished to curtail it. Also, they may have wanted to keep the money in the province and put it to whatever they saw as a better use.

The escheatment Bill was introduced on March 22, 1932 and was quickly withdrawn on March 24, 1932 because of the huge public outcry that had occurred following the Bill's introduction. The Bill was withdrawn according to Attorney-General Price because the prospective legislation had prompted many more mothers to step forward as competitors. Price stated that he was "afraid that as a government we cannot take the responsibility of settling the claims of all these people."⁵ Likely the reason for the withdrawal of Bill 141 was in fact, the sheer volume of public protest which was quite extraordinary according to the reports in the Toronto dailies. In withdrawing the Bill the government was, however, tacitly agreeing to the Stork Derby race as were all those people who supported the withdrawal of the Bill. This created a strange situation in later years when those who had urged the government to honour the will suddenly found themselves associated with an event of

questionable moral standing. Therefore, many of these same people back-tracked and either condemned the race or remained silent on the issue.

Disapproval of the government's proposed action came from women's groups, from lawyers, politicians and from ordinary citizens who suspected foul play. The Henry Government (elected in 1931), already suffering from a reputation for extravagant spending, was seen by some to be taking money from the hands of the poor and putting it in the coffers of the rich. Others were perhaps more concerned, as discussed earlier, with protecting the rights of the propertied class against the pilfering of government.

In light of the Henry government's low standing in the public esteem, it made good political sense to succumb to the pressures of public opinion. An editorial in the Toronto Globe indicated the strength of the public protest when commenting that in withdrawing the Bill, the "Attorney-General has scurried to shelter before a great wave of public indignation. Not for so many years has any proposed legislation so excited the public mind."⁶

The government was also under attack because it took action without consulting the executors of the estate or the people contesting for the money. The government planned to give the money to the University of Toronto because this had been the specification in one of Millar's earlier wills. A friend of Millar's stepped forward during this debate to

support the notion that Millar had intended to destroy this "joke" will.⁷

Honourable William Price (the Attorney General) explained that the action was taken because "the will conveyed the estate on 'hazardous principle' and because it was not along the lines of public policy."⁸ This was once again a reference to the fact that invalidating Millar's will might endanger the right of an individual to dispose of their estate as they wish. Furthermore, Price's comments pointed to the concern that the will might promote immoral behaviour. M.P.P.'s who were interviewed in the newspapers and members of the public, however, seemed far more concerned with the protection of property rights.

The dramatic cries in the Legislature coupled with the amount of coverage in the newspapers that the escheat Bill received, demonstrate the depth of feeling solicited by the Millar Will case even in its early stages. In the House, protest against the Bill cut across party lines. Mr. Seguin, a Conservative member, suggested that the escheating of the estate could institute "a dangerous precedent in which we are destroying the principle of wills and similar documents."⁹ He continued noting that the will was strange but that "All men have the right to make wills, no matter how funny or curious that will may seem."¹⁰ In conclusion he asserted:

Grant that the will seems funny, admit that it is against policy, but the principle upon which a will is based is part of our social and governmental policy. We must not strike at the base of a principle which is fundamental."

Mr. Seguin's point of view was supported by many others in the House. Mr. W.E.N. Sinclair, the leader of the Liberal Opposition, was also against escheating the estate on the grounds that it set a dangerous precedent. " 'The will is not void' said Mr. Sinclair. 'Let the Government withhold its hand. It is an alarming move [to escheat the estate], and no harm will be done if the bill is not passed this session.'"¹² Mr. Nixon, the leader of the Progressive Party, also condemned the bill because he felt that determining the validity of the will was an issue for the courts and not the government:

"Why" said he, "the courts haven't yet passed on the validity of the will, and still we have the government stepping in to seize the money and to turn it over to the University of Toronto. What could be more amazing and more disquieting? What guarantee has anyone got against similar action on behalf of the government if this measure goes through?"¹³

Despite the "fundamental" principles that many politicians argued had to be upheld in this circumstance, it was but four years later that the leader of the Liberal Party (Mitchell Hepburn) would step forward and condemn the will as "disgusting". Where had the honour gone in defending the will? What had happened to the fundamental principles

that were to be protected through the upholding of the will? Where had the concern gone for trying to ensure a fair deal for the competing families? Mr. Sinclair, in supporting the withdrawal of the Bill in 1932 wondered what the rush was to pass the bill. He said:

"There is no need to act now. The time limit on the birth competition still extends four years. Passage of the bill, of course, would suspend activities in this regard. Is it against public policy to have children born in Ontario and have them cared for after birth? I submit the bill should be withdrawn."¹⁴

By this Mr. Sinclair likely meant that he saw nothing immoral about the mothers who were competing for the money by having children and that therefore the government should not make rash decisions regarding this money. It would seem that, as time passed, the answer to Mr. Sinclair's question regarding public policy was no longer obvious. The validity of the will would be hotly debated on these very grounds, that is whether or not it was against public policy to encourage women to have babies for money when it might encourage promiscuity. The issue was not settled until a Supreme Court ruling in 1937. Mr. Sinclair's words and the sentiment expressed therein would never again be heard from political leaders in reference to the Stork Derby.

As the competition progressed, public support for (though not public interest in) the competition was lost.

It was lost because the debate came to include more than the relatively simple issue of property rights. The issue of reproduction increasingly moved to the forefront of the discussion about the Stork Derby. Consequently the discourse was more complex, because in the 1930's in Canada, the discussion of reproduction was inextricably linked to the issues of class and gender, and of nationalism and ethnicity. This situation has been elucidated by Angus McLaren and Arlene Tigar McLaren in their book, The Bedroom and the State. Their analysis of the politics of birth control and abortion in Canada delineates the tangled web of concerns that were involved in the discussion of these issues. The McLarens outline the following as the premise of their book:

The working premise of this book is that the decline in Canada in fertility was inextricably entangled in a web of social, sexual, and cultural relationships. To understand why men and women sought to turn such private concerns to political purposes it is necessary to locate the birth control debate in its social context. In so doing it becomes obvious that the doctors and priests, eugenicists and feminists, politicians and labour leaders who entered the discussion were more concerned by the broader issues of sexual and political power than by the issue of family size.¹⁵

This premise is borne out by analysis of the Stork Derby. As public concern about the Derby focused increasingly on reproduction, the discourse became more convoluted, touching on many broad social issues. Those who had supported the upholding of the will, in this instance,

were basically interested in protecting their property rights. As the competition continued they found that their previous stance dragged them into uncertain moral territory in which the sides were not so clear. Middle and upper class citizens did not want to be seen as supporting an event which encouraged the reproduction of the lower classes. Furthermore, they did not want connections with something that perhaps encouraged sexual promiscuity and the birth of illegitimate children.

In 1932, however, the issue seemed clear and unsullied by extraneous concerns. To those who opposed the Bill a principle of western democracy was at stake in which certain people stood to lose control over their rights. Many people stepped forward to express fears about the bad precedent that would be established by escheating the estate. The Toronto Star reported that in the opinion of A.R. Hansard, K.C. this move "would be a bad precedent, calculated only to make wealthy people disperse their wealth before their death in order that the government would get no succession duties."¹⁶ This comment reflects the fact that the ire raised by the Bill was in part due to the concern of wealthy people over the fate of their fortunes and not solely a concern for the fate of the Derby mothers or potential moral indiscretions.

The editorials that appeared in the four Toronto dailies were united in their condemnation of the action

taken by the Conservative Henry government to escheat the Millar estate. The editors' scorn stemmed, once again, from the idea that the government had no right to interfere with an individual's Last Will and Testament. Furthermore, they argued, an action such as this could certainly not be justified out of a fear that the money might go to the United States.

It is just another instance of the narrow nationalism which is building walls along the boundaries of nearly all the earth's peoples. If wills are to be set aside by governments because the beneficiaries may some time move to another country, where is the thing going to stop?¹⁷

The editor of The Evening Telegram wrote that "All preconceived notions of vested rights and the sanctity of property are shocked by the proposal to prohibit Mr. Millar's wealth going in the direction indicated by him..."¹⁸ The Globe's editor chimed in that should "this procedure become established no will may withstand the attack of a Government in distress."¹⁹

The editor of The Toronto Star carried this sentiment one step further when he wrote, "Mr. Price proposed to resort to communism in the raw when he contemplated, regardless of the courts, to set aside a man's last will and testament and hand over his estate to an institution which is a ward of the government."²⁰ Communism, associated with a classless society, was of course the very antithesis to the industrial capitalist society that by this time was well

established in Canada. Communism threatened the rights and possessions of the middle and upper classes. In most other editorials on this subject, this class based fear was couched in the language of a concern for the rights of every citizen of a liberal democracy. But, as has been demonstrated, this humanitarian act had a very specific impulse.

Others suggested different reasons for the government's action that gave hints of the later context of the debate:

"Maybe the government in these days of unemployment," said the manager of another prominent trust company, "think an increase in population is not to be encouraged. So they are taking the money away from the woman with the largest number as a matter of public policy. Offhand, it looks like an arbitrary and dangerous precedent."²¹

This comment once again concentrates on the issue of the possibility of the Bill setting a "dangerous precedent". It points to a relationship, which later would constantly be highlighted, between reproduction and other social issues like unemployment.

Reverend Alfred H. Tyrer, a retired Anglican Minister active in the sex education and birth control movements,²² was one of many reformers to comment on this case. He expressed concern about the competition on moral grounds similar to those in the above quotation. Tyrer did, however, ultimately support the will because his concern for

the protection of the individual's property rights, at this point, still outweighed his moral fears.

Rev. A.H. Tyrer, who recently urged the establishment in Toronto of birth control clinics said he could not understand what right the government had to revoke the will. "Charlie Millar was a joker", he said, "and his will was doubtless his idea of humor, but a man has the right to leave his money to whom he pleases but the government does break wills sometimes, I suppose." Rev. Mr. Tyrer thought offering a reward for the largest family created a "bad influence".²³

The fact that Tyrer did not express outright condemnation of the competition at this point is interesting considering his stature in the birth control movement. Tyrer had been active for many years in the birth control movement in Canada and his book Sex, Marriage and Birth Control sold more copies than any other sex education book in Canada at that time.²⁴ By 1932 Tyrer was not only an ardent birth control activist but also a strong supporter of the idea that "those who lacked character or intelligence had to be sterilized because they could not be relied upon to employ contraceptives...":²⁵ In view of these comments, it was surprising that he did not immediately condemn a competition that would no doubt spur on the reproductive activities of the very people he did not feel were fit to reproduce. His comments are particularly illustrative of the shifting of the discourse about the Derby. Even this ardent social reformer did not, in 1932, oppose the competition because the debate centred on the issue of property rights and had

not yet shifted to a discourse of broadly based moral panic.

We see further illustration of the shifting discourse in the reaction of women to the escheat attempt. According to newspaper accounts many women's groups were outraged by the government's attempt to take the money away from "deserving" women. They took a stance that supported the competition, a stance that never again would be taken by women's groups in Toronto.

The concerns of these women were based on a feeling of solidarity with other women of Toronto, feelings that overrode the divisions of various class and ethnic alliances. They were also based on maternal feminist notions, that is, a desire to "protect" the children and the mothers who stood to benefit from the will. With regards to this a prominent female worker [name not given] was quoted in the papers saying, "Why should the most deserving mother be deprived of money legally bequeathed to her?"²⁶ This solidarity was, however, short lived. The more the competition was turned into a circus (by an assortment of groups including the newspapers) and the more colourful and verbose contestants became, the more middle class women lost their sympathy with the competitors. The women's solidarity based on gender dissolved and class identities once again assumed a position of importance. Mariana Valverde points to this condition in an article in the book Gender Conflicts.

Valverde suggests that currently, reproductive issues are viewed under the rubric of the universal oppression of women, whereas, at the turn of the century reproduction and the issues of class and race were inextricably linked, a condition which arguably continued well into the 20th century. The shift in the discourse about the Derby further illustrates Valverde's point.

....at the turn of the century reproduction was generally seen, by feminists as well as anti-feminists, as inextricable from racial and imperial politics. Women did not merely have babies: they reproduced 'the race'. Women did not merely have just enough babies or too much sex: through their child-bearing, they either helped or hindered the forward march of (Anglo-Saxon) civilization. Phrases such as 'race suicide', or in a feminists context 'mothers of the race' organize sexuality and reproduction under racial categories.²⁷

They also organized reproduction and sexuality into categories of class. And it was this category that would serve most to isolate the women in the Stork Derby from other women and would also cut these families out from public and judicial support. Divisions along ethnic lines also figured prominently in the Derby, causing intra-family rivalries, and ultimately the subtle disqualification from the competition of certain families by Justice Middleton.

The President of the Ward 3 Liberal Riding Association in Toronto, Mr. Jaeger, reported that nothing in his experience " had aroused so much indignation among

Liberal women"²⁸. He went on to say that the women were going to ask Mitchell Hepburn to rectify the situation as soon as he came into power and that the women felt that "the government is not only abusing the wishes of the deceased, it is cheating the children of one or more Toronto women.... The term 'escheatment' sounds fine, but as a matter of fact it is just plain cheating' said Mrs. Zoe F. Stevens." ²⁹

The Globe reported that the women of Toronto were upset by the proposed legislation and that their protest had been a main factor in the decision to withdraw the Bill.

Womanhood-indignant, outspoken womanhood asserted itself in the political arena yesterday. And there were happenings - speedy, upsetting happenings. There was no dramatic invasion of the Legislature halls by femininity, but the women made themselves heard, in the homes, over the telephone, on the streets, in the stores -and elsewhere. They talked emphatically and persistently until the town seethed with their sizzling comment....It was indubitably the accumulation of indignation among women which forced this volte face on the part of the Attorney-General. They were the quickest and most vehement to resent the implications in the bill proposed by the Government.³⁰

This article, though rather theatrical in style, indicated that women in Toronto were quite vocal and active in expressing their opposition to Bill 141. An editorial in The Globe further noted the involvement of women in this event. The article entitled "Woman Stamps Her Foot" discussed the considerable political clout women had when they acted in unison as had been demonstrated in their protest over the escheat attempt.

Amidst the turmoil regarding this legislation, a few of the newspapers approached the mothers who had declared themselves as contenders and asked for their opinions on the matter. Thus began the tradition of soliciting opinions and personal details from these women and their families. The two families in the limelight at this point were the Bagnatos and the Browns. Mrs. Bagnato stayed in the competition until the bitter end when she was disqualified on several technical points. Mrs. Brown soon faded from the forefront of the competition as her children did not arrive fast enough.

Mrs. Bagnato was resolved that nothing could be done to prevent the government from escheating the money. The Star stated that she was "the still comely mother of 21 children,"³¹ and that six had been born since the beginning of the competition. The Globe reported that she was the mother of 11 children but from later accounts it would seem that The Star had the correct information. Although the famous phrase, "The Stork Derby" had not yet been coined, these articles do mark the beginning of the style of reporting that would be used to cover this event throughout its duration. The language of the race track was employed by all, with the mothers as the horses, and each baby a circuit of the track bringing the mother ever closer to victory. As The Star said of Mrs. Bagnato, her "hopes of

overhauling her chief rival, Mrs. Florence Brown, were increased a month ago by the arrival of a baby boy."³²

Mrs. Bagnato voiced the same concern regarding the escheatment action that had been voiced by many others in the newspapers. Furthermore, she did not profess to much disappointment regarding the loss of a chance at the Millar fortune.

"I don't see how any government can do such a thing," she protested. "Didn't Mr. Millar leave his money to the mother of the biggest family? Can't a man leave his money to whoever he wants?"³³

Mrs. Bagnato added that she had no plans to actively curtail the growth of her family. She said, " I don't know if I will have any more children or not. I never know. We'll just trust to providence for that."³⁴ Mrs. Bagnato's remark indicated that she and her husband did not use any sort of birth control. The relative merits of employing birth control was an issue that began to be discussed with greater frequency in relation to the Stork Derby. The somewhat candid discussion of this private issue was another cause for alarm by those who viewed the Derby as positively disgusting.

By March 24, 1932, Mrs. Bagnato and her family were already seeking refuge from the prying eyes of the press but refuge would be impossible to find over the next eight years. When called by a reporter from The Globe, Mrs. Bagnato was reported to have said, "We don't want any

further publicity in the matter. Perhaps it is better that the money should go to the university."³⁵

The Brown family was much more forceful in their views about the competition and their feelings that they deserved the money for their efforts. Mr. Brown's wide-ranging comments regarding why his family was more qualified to win than Mrs. Bagnato's gave a hint of the racial and class issues that were to become so much a part of this event. The Browns clearly viewed the government's proposed action as an injustice to the citizenry of Ontario. Mrs. Brown promised to fight for the Millar money at the end of the ten year period. She proclaimed that the government was taking "money from children that need it."³⁶ Mr. Brown was more verbose than his wife, in his comments on the matter. "Yes, you can expect anything these days,...The government is hungry and poverty is in the air. But we're not going to let them have it without a fight."³⁷

Mr. Brown felt convinced that whoever won the money would have a battle on their hands. "If there's a fight, we'll fight. We'll fight Mrs. Bagnato for the honor of having the largest family and we'll fight the government for the Millar money. My wife has earned that already."³⁸ The "honor" attached to having the largest family would soon disappear in the Stork Derby discussion.

Mr. Brown believed that he and his family had special claims on the money because "on both sides, the family

....is Canadian for generations back."³⁹ He also seemed to think that part of being Canadian was to have large families, "I'm out to show the world we're real Canadians" Mr. Brown said to The Star. What one may ask was a fake Canadian? The implication in Mr. Brown's statement about his long roots in Canada point to the racist undercurrent that flowed beneath this competition. For several years, racism divided the Millar will contenders. The Bagnato and Graziano families, with Italian roots, were favourite targets of this type of racist sentiment. This division among the contestants lasted until other pressures (mainly that of poverty) were so great that all but one of the families put aside racial prejudice to try to reach some sort of out of court settlement to share the money, a settlement that was scuttled by the lawyers.

Once again, the shifting territory of the categories of class, ethnicity and gender may be observed in Mr. Brown's comments. He viewed his participation in this competition in a nationalistic and racial context, categories that, to a modern commentator on this event, would not be immediately expected to figure in this competition.

The escheat attempt by the government provides an excellent means to begin this exploration of the Stork Derby because it was a contained event that drew a great deal of public comment. It has allowed a look into the social context in which the Stork Derby began which will

serve as a counterpoint to the broad moral debate that later developed surrounding the Stork Derby. The development of this discussion and the way in which the Derby became the focus of a "moral panic" to do with reproduction in Canada will be a central theme throughout the remainder of this paper.

ENDNOTES

Chapter II

1. "Millar Will Bill Faces Heavy Fire," The Mail and Empire. March 24, 1932, 1.
2. "escheat" is defined in the Oxford Dictionary as "1. n. Lapse of property to crown &c. on owner's dying intestate without heirs; property so lapsing. 2. v.t. & i. Hand over as an e.; confiscate; revert by e."
3. "Mother of Most Children Denied \$500,000 by Ontario," Toronto Daily Star, 23 March 1932, 10.
4. "Mother of Most Children Denied \$500,000 by Ontario," Toronto Daily Star, 23 March, 1932, 10.
5. "Many Fear Precedent If the Estate Is Seized," Toronto Daily Star, 24 March, 1932, 1.
6. "Public Opinion Wins," The Globe, 25 March, 1932.
7. "Millar Will Action is Scored in House," Toronto Daily Star, 24 March, 1932, 2.
8. "Millar Will Bill Faces Heavy Fire," Mail and Empire, 24 March, 1932, 1.
9. Ibid.
10. Ibid.
11. Ibid.
12. "Millar Will Bill Is Facing Much Opposition In House," Evening Telegram, 2nd ed., 24 March, 1932, 30.
13. "Opposition Battles Estate Seizure," The Globe, 24 March, 1932.
14. The Mail and Empire, Thursday, 24 March, 1932.
15. Angus McLaren and Arlene Tigar McLaren, The Bedroom and the State: The Changing Practices of Contraception and Abortion in Canada, 1880-1980 (Toronto: McClelland and Stewart, 1986), 10.
16. "Province Abandons Plan to Confiscate Estate of \$500,000," Toronto Daily Star, 24 March, 1932, 1.

17. "The Charlie Millar Will," Toronto Daily Star, 25 March, 1932, 6.
18. "Serious Principle Involved in Tampering with Millar Will," Evening Telegram, 24 March, 1932, 6.
19. "Has It Come to This?," The Globe, 25 March 25, 1932, 4.
20. "The Charlie Millar Will," Toronto Daily Star, 26 March, 1932.
21. Ibid.
22. McLaren, Angus. Our Own Master Race, 77.
23. "Many Fear Precedent If the Estate Is Seized," Toronto Daily Star, 24 March, 1932.
24. Angus McLaren and Arlene Tigar McLaren, The Bedroom and the State: The Changing Practices and Politics of Contraception and Abortion in Canada 1880-1980 (Toronto: McClelland and Stewart, 1986), 93.
25. The Bedroom and the State, 97.
26. "Legatee 'Cheated,' Say Liberal Women; Protest Planned," The Globe, 24 March, 1932.
27. Mariana Valverde, "When the Mother of the Race is Free: Race, Reproduction, and Sexuality in First-Wave Feminism," in Gender Conflicts: New Essays in Women's History ed. Franca Iacovetta and Mariana Valverde (Toronto: Women's Press, 1992), 4.
28. "Legatee 'Cheated,' Say Liberal Women; Protest Planned," The Globe, 24 March, 1932, 1.
29. Ibid.
30. Ibid.
31. "Mother of 27 Children Proposes Legal Fight For \$500,000 Bequest," Toronto Daily Star, 23 March, 1932, 1.
32. Ibid.
33. "Mother of 27 Children Proposes Legal fight For \$500,000 Bequest," The Toronto Star, 23 March, 1932, 1.
34. Ibid.

35. "Legatee 'Cheated,' Say Liberal Women; Protest Planned," The Globe, 24 March, 1932.

36. "Mother of 27 Children Proposes Legal Fight For \$500,000 Bequest," The Toronto Star, 23 March, 1932.

37. Ibid.

38. Ibid.

39. "Legatee 'Cheated,' Say Liberal Women; Protest Planned," The Globe, 24 March, 1932.

CHAPTER III

The Circus Comes to Town: Media Involvement in the Stork Derby

The circus has begun, the players dressed in the clothes of poverty will entertain thousands for years to come. They will become part of our history, the participants in a big, harmless joke started by one eccentric man. Their plight shall be viewed as humorous, their morality as questionable, and the reality of their circumstances hidden. Let the show begin....

This chapter will explore how the media turned the Stork Derby into a grand spectacle, an event that was greedily watched by the voyeuristic eyes of the press and those of the community. Underlying the examination of the media treatment of this event is an attempt to offer a more realistic account of the experience of the contestants than was given by the press.

The ethos of entertainment, with few exceptions, was at the heart of the popular coverage of the Stork Derby and was perpetuated by Mark Orkin's book written in 1981. One need only glance at the cover of Orkin's book, a caricature of a smiling mother with ten smiling children on one side of a scale and a pile of money on the other, to get the gist of his book. The book continued the tenor of the reportage that was used for its sources, jovial and sporty, glossing over the hardships these families faced. This study, unlike

Orkin's, attempts to examine the event in a more serious light, to unearth the social tensions and cultural environment that fostered the interest and type of humorous coverage that the Stork Derby received.

The Stork Derby was a focus for attention in the 1930s because of the moral reasons, explored in Chapter Two and because of the public yearning for escapism through popular culture during the Depression. The populace was desperate for release from thoughts of economic depression. People also sought a means to understand the shifting moral ground of their volatile times.

Shirley Temple stands as the best example of the type of entertainment enjoyed by the public in the 1930s. This cute child star stood, in the public imagination, for all that was sweet and unspoiled. In Shirley Temple films, the little girl's tragic circumstances were always made better by the end of the film. Her perky style and her resilience provided hope to those who felt destitute of it. Her success was made all the more possible by the fact that she came to the movies at a time when there was a widespread enthusiasm for children and all things childish in popular culture. Children were, of course, the perfect symbol of renewal, hope and innocence in a time of great difficulty. In Canada, stories about the Princesses Elizabeth and Margaret Rose abounded as did stories about the Dionne Quintuplets.¹ Pierre Berton wrote in his book about the

Quintuplets that their tremendous fame was intrinsically linked to the decade in which they were born:

It is not possible to trace the social history of the Thirties without reference to the Dionne quintuplets. The reverse is also true. It is certain that, had they been born into an earlier decade, they would have expired briefly - one-day wonders to be headlined briefly and quickly forgotten. It is equally certain that had the miracle occurred a generation later, the spotlight would have been softer and the melodrama muted.²

The same could be said of the phenomenon that surrounded the Stork Derby. It was very much a product of the time. The Stork Derby provided a focus of interest for average Canadians that was something other than the daily grind of bad news. The story provided drama and suspense, a chance to imagine what you would do with a \$500,000 dollar windfall. It had the same sort of twisted attraction as dance marathons and flagpole sitting. Onlookers were fascinated by the juxtaposition of money and sacrifice. The participants in the Stork Derby were part hero, for defying societal norms and part criminal for their licentiousness. This was likely one of the reasons the press followed the story...it was popular, welcome relief.

The word "circus" has been carefully chosen in preference to the word "carnival" to describe the Stork Derby. The concept of "carnival" has become an important area of investigation in cultural history, stemming from the Annales tradition in France and has received quite broad

application in Social History. "Carnival" is an important aspect of the Stork Derby but the definition from the Annales school is not entirely applicable. Hence, this study employs the word "circus" to denote the festive and somewhat distorted nature of the event.

In the Annales tradition, carnivals, whether a one time event or a yearly tradition, are viewed as significant symbols of a given culture's attempt to come to terms with the fundamental values of the community. All carnivals share certain similar characteristics as explained by Darnton in the following quotation from The Great Cat Massacre.

During carnival the common people suspended the normal rules of behaviour and ceremoniously reversed the social order or turned it upside down in riotous procession....Carnival was high time for hilarity, sexuality and youth run riot-a time when young people tested social boundaries by limited outbursts of deviance, before being reassimilated in the worlds of order, submission, and Lentine seriousness.³

The Stork Derby shared some of these characteristics in that it concerned sexuality and because some of the contestants (especially Mrs. Kenny) challenged the social order with their forthrightness and willingness to question authority. The social order was not, however, ceremoniously reversed. The Stork Derby was shaped by society's structure and morality but the event escalated on more of a random, than ritualistic, basis.

The inversion of social roles so closely associated with carnival did not truly occur in the case of the Stork Derby. Thus the concept of carnival can only be partially applied to the Derby. In Canada, historians like Keith Walden and Frank Abbott have experimented with the carnival theory and found some application to their studies. It is possible to see parallels with the Stork Derby in Keith Walden's article about the Hallowe'en antics of University of Toronto students.

In this article about the Hallowe'en celebrations by University of Toronto students from 1884-1910, Keith Walden finds tremendous depth of meaning in the actions of these young men during the carnival of Hallowe'en. Most importantly, in relation to this study, Walden postulates that students actively took over the celebration of Hallowe'en in 1884 as a way to come to terms with fundamental changes in society. These changes, brought on by the advent of industrial capitalism, included different attitudes towards the purpose of study, the introduction of new areas of study, changes in the composition of the student body (notably the inclusion of women) and a rapidly growing urban environment. This period of extreme change, called "liminality" by some cultural historians, is a time when carnival events take on special meaning. A carnival can be used to adjust to and sometimes challenge social orders.⁴ Liminality is a period when both the past and the

future bear no resemblance to the present moment. As Keith Walden describes it in his article on this subject:

...liminality is a period and an area of ambiguity which possesses few of the characteristics of the life which proceeds or follows. In liminal time anything might or even should happen. It allows the 'free or lucid combination in any and every possible pattern.' Permitting people to dissolve normal contexts allows them to comment upon (although not necessarily in talking codes) the major classification, categories, and contradictions of the cultural process which normally regulate their lives.⁵

This is another aspect of the study of carnival that is applicable to the Stork Derby but as previously mentioned, it is only part of a much larger theory that as a whole does not make good sense to employ in this analysis. The nineteen thirties can easily be viewed as a period of "liminality", sandwiched between two great wars, both of which changed the landscape of the world. The economic depression in the 1930s caused a perplexing examination of the modern, industrialised world as many began to question its viability. It was a time when a degree of freedom of thought and expression became possible, on a large scale, that would only last until the outbreak of the Second World War. New political movements sprung up all over the world and new social orders were dreamed of. All over the western world, as Angus McLaren discussed in his book, Our Own Master Race, governments, reformers and citizens made concerted attempts to control fertility and through these

efforts hoped to determine the inheritors of the reins of power.

The Stork Derby was definitely a part of this renegotiation of power, and in this respect very much fits into the definition of "carnival" presented by the Annalists. The world for the Derby participants was turned "topsy-turvey" as they tried to steer a course through the mire of the competition, but there was not a distinct reversal of roles or power. Furthermore, the Derby was not a yearly event following a discernable pattern, nor was it directly inspired by political, religious or social unrest. Nor was it tied to an agricultural season. On the contrary, the Derby was inspired, as we know, by the whim of a single man.

The development of the Derby took on the accoutrements of a carnival in that it provided entertainment and it was, as the theory suggests, shaped by society's struggle to come to terms with new ideas about gender, sexuality, reproduction, class, and ethnicity. The unravelling of the event, however, was not part of any ritualized tradition nor was it engineered by the participants to prove a specific point. The way in which the Derby played on the fundamental values of Canadian society has already been explored in the context of discussion about the Derby as a "moral panic" in Chapter II and will be continued to be handled in this manner. The term circus will denote the manner in which the

media and public feasted on the story, and the way that the brutal reality of the competition was shielded or largely ignored throughout the course of the event. There is an underlying assumption in this chapter, that the Stork Derby attracted large scale attention because it played on the fundamental values of Canadian society. This assumption is partially based in the annalist tradition.

The voyeuristic and sensational newspaper coverage of the Derby began in earnest with the court hearings in 1936 and lasted until the final settlement in 1938. Of course, the Derby contenders were in the limelight for much longer, but these two years were the most intense. The Derby had all the necessary elements of a headline story in the 1930s. It had human interest, suspense, and it also had encounters between the common person and the Law. As Frederick Griffin wrote of his years as a Star reporter, "Looking back, it would seem that the main theme of my newspaper writing has been, not politics or social trends, though these have been touched on constantly, but people. The demand of The Star has been for a human interest approach, and undoubtedly there is human interest in stones-if men blast them to build a Welland Canal or hurl them in a street row." ⁶

The word "circus" is used to denote the more spectacular stories that developed around the Stork Derby. These tales were sought out by reporters like Frederick Griffen. Particularly sensationalized were stories of

kidnapping threats, and special events held for Derby contenders. The reporters largely ignored the fact that the mothers were being pushed to exhaustion by continuous births and by their public notoriety. The final section of the chapter will take a closer look at the gap that developed between the reporting of the competition and the reality of the situation of the contestants, with particular focus on the case of Mrs. Kenny. The final section will make extensive use of an article from an American magazine entitled Pictorial Review. In this article, the reporter wrote the only truly serious and sensitive account of the Stork Derby.

The kidnapping of the Lindbergh child in 1932 set off a trend of kidnapping threats all over North America. In Canada, John Labatt, the Ontario brewery mogul, was kidnapped only a week after the Lindbergh child.⁷ This event shocked the country and soon the newspapers carried regular coverage of children and adults alike being kidnapped and held for ransom. The fear of this occurrence was perhaps greater than the reality of the situation but it was nevertheless a powerful image in the public imagination.

The prominence of the Derby families in Canadian newspapers and their promise of great wealth made them good candidates for the same type of kidnapping threats. Several of the families did in fact receive kidnapping threats along

with a host of other threats, differing slightly in nature. As early as 1932, the Derby families got a taste of what was to come as a result of their publicity. The publicity regarding the escheat attempt led to the first of many bribes and threats from extortionists.

The first extortion attempt to make the news illustrates the intrigue that developed around the Stork Derby. The instigator of this first ruse was apparently a "prominent Toronto lawyer" who offered " \$75,000 each to Mrs. Grace Bagnato and Mrs. Florence Brown on condition that they relinquish all further claims to the estate."⁸ Apparently the ante had been raised from an earlier offer of \$50,000 dollars. At the same time another proposition was made to Mrs. Brown and Mrs. Graziano by an anonymous figure. They were offered a deal by which they could receive \$200 dollar cash advances whenever they wanted on the condition that they agreed to pay back each \$200.00 advance with \$1000.00 once they got the Millar money. Neither family thought this was a very good deal although the Bagnato parents were momentarily tempted by the idea of receiving \$200.00 upfront.

The "prominent Toronto lawyer", supposedly responsible for both deals was a Mr. Godfrey. He, however, denied any connection with the whole affair although he had seen Mrs. Brown and Mrs. Bagnato on separate occasions in his office.⁹ The plot thickened when the Bagnatos and the Browns said

that Mr. Godfrey had led them to believe that these offers were coming from the government. Both families had decided of their own accord that it would be better to deal directly with government officials if this were the case. In his defense, Mr. Godfrey told the papers that the "government had not given up the idea of getting a large share of the money of this estate for the University of Toronto."¹⁰ Of course, it is impossible to determine if this statement was true or if Mr. Godfrey was simply trying to cover up his actions.

These offers were only two, of several, that came to the contenders after the publicity they received in the press in 1932. The Star reported that "In the last few weeks the Bagnato home has been besieged with 'strange men.'....with all kinds of cash offers for her [Mrs. Bagnato's] chances of the prize-money."¹¹

During this episode racial rivalries were established between these two families. This rivalry would develop and flourish as the competition progressed giving the papers yet another angle for their stories. The Brown family asserted that they had more right to the Millar money because they were true Canadians whereas the Bagnatos were foreigners:

"I've got my children," said Mr. Brown 'and I'm proud of them all. The Millar will or no will. But just the same, I don't think Mrs. Bagnato has a chance because if it comes to a contest between us, we intend to insist that Mrs. Bagnato isn't a Canadian in the true sense of the word. She is an Italo-Canadian,

and we are all Canadian-born for generations and can show it.'"¹²

This quotation is revealing of some of the underlying racist ideas which existed in Canadian society in the thirties. This claim has absolutely nothing to do with the conditions of the will. Millar specified that the babies had to be born in Toronto but he did not mention that the children must be of a particular race or creed. Mr. Brown's comments suggest a particular social hierarchy that existed in Toronto and perhaps the rest of Canada wherein, no matter how poor you were, if you were of British heritage, you were not at the bottom of the heap.

The two Italian Canadian families in the competition also received threatening letters. The first letter of this nature that the Grazianos received was written in Italian and "proved to be a scurrilous attack on the mother. She was also called a fascist because the new arrival was to be named Benito Mussolini."¹³ Mrs. Graziano, of French Canadian descent, was unable to read the letter and so had given it to her husband. The letter had been delivered to Mrs. Graziano in the maternity ward at St. Michael's hospital where she was lying ill after the birth of her eleventh child. The second letter to arrive was written in English as was the third - although written in a different hand. These letters threatened that unless the Grazianos

gave up the idea of sharing the Millar will money "the children would be seized on their way to school and he [Mr. Graziano] would never see them again."¹⁴ The Grazianos were left frightened. Mr. Graziano took up the burdensome task of walking his children back and forth to school each day. Both parents were emphatic that they cared more about their children than the money and would withdraw from the competition to protect the family if necessary. In the same breath Mr. Graziano said that he would "hate to give up my chances for a slice of the half million dollars, but money couldn't make me happy if anything happened to any of my children"¹⁵ Mr. Graziano gave clear indication here that he was interested in the money and that it was not just a coincidence that he had a large family. He also stated that he would not endanger the lives of his children. While this statement would make the middle class readers happy, Mr. Graziano was clearly prepared to go to great lengths in order to stay in the competition.

The Bagnato family received similar threats to those received by the Grazianos. First a letter written in Italian arrived at the household, followed by several threatening phone calls. The gist of the threat was that if Mrs. Bagnato did not share the money with "'certain unnamed parties.... she would never handle any of it herself.'"¹⁶ Mrs. Bagnato said the caller had a "non-english accent" and his voice sounded very threatening so she decided to contact

the police. The unknown man suggested that Mrs. Bagnato already had \$3000.00 to which she replied "'You're crazy....I haven't 3000 cents'". These threats demonstrate how vulnerable the Derby families were to extortion and harassment because of the publicity they received.

Mrs. Bagnato also received a letter at this time, from Philadelphia, along the lines of the slanderous one received by Mrs. Graziano. The letter called "the Bagnato children 'brats' and advised Mrs. Bagnato that 'they had better be sent back to Mussolini.'"¹⁷ It may be surmised that these two letters, which received attention in the papers, were only a sampling of the abusive letters received by these families over the course of the competition. The fact that the letter was from Philadelphia gives some indication of just how widespread interest was in the Stork Derby. Newspapers all over the States carried articles about this event.

The Kenny family was threatened more severely when a kidnap attempt was made on their five year old daughter Mary in March of 1936. Mary reported to the paper that two men and a woman had tried to force her into their car as she walked home from school. The woman had opened the car door and called to her "You're the half million dollar kid: get into the car or we'll kill you."¹⁸ The woman tore a button from Mary's coat but she managed to get away. According to another article a man had warned Mrs. Kenny that she was

going to lose one of her children half an hour before the kidnapping attempt. Mrs. Kenny had not taken his threat seriously.¹⁹

The Nagles also received threats because of their involvement with the Millar will contest. Mrs. Nagle reported to The Star in October of 1936 that a strange man had frightened her when he appeared at her door and said that she had 24 hours to get out of the competition.²⁰ This would mean that she would drop out just before the expiry of the competition. The article ascribed no motive to the actions of this man. It is difficult not to suspect that he was put up to this action by one of the other competing families as he did not make any other demands. The only people who stood to gain from the Nagles dropping out were the other leading families. The newspapers and police, however, did not pursue this idea. Of course, the action could also have been a practical joke. The previous day a man had come to the house demanding pictures of the children and "when refused, 'was so nasty that I had to put him out'"²¹ Mrs. Nagle said. It must have been exhausting for these families to deal with these frightening incidents along with the daily stress of raising large families on very little cash.

These threats were only one of the difficult repercussions Derby families faced because of the attention they received in the press. They were also subject to

public scrutiny and suspicion. In October of 1936, a child went missing from a home in Detroit. After the child had been missing for several days, the police decided to search the homes of the leading Stork Derby families. The police thought that one of the Derby families might have abducted a child to add to their family total for the race deadline on October 31. This was a ludicrous idea because the families were required to produce birth certificates for all their children. Also, the families had been so much in the public eye that they could not simply "add" another child to the family without anyone noticing. The action of the police showed the utter lack of respect with which the contestants were often treated. The families reportedly took the search "in good humor" although there was little else that they could do. If they refused the search, they would be considered all the more suspect. The police searched the homes of the Graziano, Kenny and Nagle families. Mrs. Kenny, the most outspoken of all the Millar will mothers told the papers that "she was good and mad" but that later she had "a good laugh over it".²² The police had inspected every single one of her children although they told her they did not suspect her. Why then did they examine all of her children? The police came to the door of the Nagle household at eleven o'clock in the evening when all the children were sleeping. "At first we didn't know whether to let them in or not" said Mrs Nagle, " because we thought it

might be some United States newspapermen trying to get an inside story."²³ The officer questioned the Nagles closely and then left the household. Mrs. Nagle was clearly and understandably offended by the search. She said to The Star reporter that:

The police seemed to have the idea that any mother with a lot of children in her home might be able to win the \$750,000. But we have to show proof for the birth of every child. It was foolish to think any Millar will mother could gain anything by taking anyone else's child.²⁴

There was no other occasion on which the bounds of privacy were so clearly crossed as in this case, but the invasion continued day in and day out for these families. Several events were specifically organized for the Derby contenders. The events provided a great source of stories for the Toronto newspapers and entertainment for all their avid readers. In July of 1936, a picnic at the Falcon Inn on the Rouge River was arranged for the Derby contestants. Six couples participated in the event which was likely sponsored by The Star because The Star was the only paper to cover the event. No mention of a sponsor was made in the articles. This picnic was just the sort of spectacle upon which the paper thrived. The manner of the reporting of this event was jocular and almost insulting in its insensitivity to the real hopes of these families and the difficulties brought upon them by trying to obtain this money. For The Star the event provided comical relief,

giving a tremendous boost to their popularity in the stiff competition between Toronto newspapers. In discussing the picnic the reporter wrote that:

The six couples who sat down to dinner are the parents of no fewer than 89 children, of whom 56 qualify for the half-million dollar pot of gold at the end of the fantastic maternity marathon rainbow. The stork, who has played such an important part in the matrimonial sweepstake in progress during the past ten years hovered so close over the gathering its whirling wings could almost be heard, for several of the mothers are daily expecting which they count on to give them the undisputed lead.²⁵

Here again, we see the language of the race track or the gambling house employed, the tallying of the children as if their only identity was in relation to this competition. The pregnancies of the women at the party were all portrayed as part of this big joke.

The parents seemed to enjoy the party, for many it was the first time they had been out together for years. Mr. Graziano told the paper that it was the first time in ten years he and his wife had been out in the country. This was yet another indication of how financially strapped most of these families were.

The Star covered the story in a rather condescending manner. In describing the appearance of the families, it seems that the reporter was almost surprised by their decent presentation.

The mothers all nicely and carefully attired and primed for the occasion, the fathers

neatly dressed and well brushed. The proud parents made a fine-looking group on the sweeping lawns of the inn.²⁶

Normally in reporting the appearance of people, reporters do not make comments like "well-brushed". The focus is not on fashion, that is, what the couples wore, but rather on the fact that they looked surprisingly respectable.

The fathers took part in a foot race as the evening wore on "spurred on by a decade of the competitive spirit."²⁷ Certainly, in the presentation of the Toronto Star, these people were not in this competition simply out of coincidence, but were active participants. Many statements of high hopes and of friendliness were made by those interviewed. One mother stated, "We can't all win but that is no reason for hard feelings."²⁸ This was an extremely generous comment, considering what a blow the loss of the chance at this money would be to any one of the families. Losing this competition basically meant that the family would be condemned to a life of poverty. The sentiment expressed by this mother was likely heart felt but was also somewhat forced by the circumstance. In order to meet approval of the public, the contestants had to face the subject with the convivial spirit with which it was reported and read about. To express oneself honestly was to meet with the sort of ridicule that was experienced by Mrs. Kenny.

In December of 1936, coverage in The Toronto Star was given to the Christmas celebrations of the Derby families. The Nagles and the Timlecks were to have Christmas dinner together, the Bagnatos were to be an assembly of 25 people, and Mr. Graziano had trained all his children to sing a host of Christmas carols. The Smith household was to be a party of fourteen and Mrs. Clarke would divide her time between her five children at home and her son in the hospital with chicken pox.²⁹ The interest in the actions of the Millar Will families was so great that even this rather mundane story was considered newsworthy.

Their story was of so much interest in North America that a Broadway play was written about the competition. The play ran briefly on Broadway in October of 1936 and was entitled, "Stork Mad". The New York Times gave the play a terrible review. From the review, one can guess that the play contained many smutty jokes, likely centred on the fertility of the Derby families. As the reviewer of the play wrote, "For the play itself has a single joke repeated at variation through the evening, and when he [referring to one of the better actors] isn't around to tell it, 'Stork Mad' is only a parlor car snigger."³⁰ The reviewer also remarked that the play was based on the Stork Derby in Toronto but that Millar had a better sense of humour than the writers. "'Stork Mad' traces such a race, the jokes being about what you might expect on the subject, though

perhaps not on a theatre on Forty-Ninth Street, and there are no surprises."³¹ The play was also mentioned in articles in the Toronto press, notably a detailed review appeared in the Toronto Star Weekly.³² The play and its reviews were an assault on the dignity of the Derby families and no doubt caused them some embarrassment. It was, however, no wonder that the writers of "Stork Mad" chose to utilize this popular topic as a source for their play. To them, it was sure sell. It was guaranteed to draw a crowd because of the publicity the story had received in North American newspapers.

The newspapers following the Derby were always fighting to get "scoops" on the story. This was a symptom of the highly charged competition that existed between the Toronto papers in the 1930s. It was a competition that resulted in the Toronto Globe buying out the Mail and Empire in 1936. Survival of a paper was based on getting scoops and gaining the exclusive rights to a story. The Stork Derby was a hot ticket because the public interest was so great. Several of the contenders signed contracts with newspapers although the details of the agreements were not made public.

In early November of 1936, Mr. and Mrs. Kenny got into a public scuffle that gives some indication of how difficult it was for these families to deal with the press. Mr. and Mrs. Kenny had gone to a downtown hotel in Toronto to discuss the possibility of signing a theatrical contract

with an American vaudeville agent when a newspaper photographer "lured" Mr. Kenny up to his hotel room. Mrs. Kenny became extremely worried that the photographer would take photos of Mr. Kenny, contravening the contract she had signed with another newspaper. The scene turned wild as Mrs. Kenny threw several punches to try to get access to her husband in the hotel room.

"I didn't want him to have his picture taken as he is under exclusive contract," she declared later. "When I went to the room and told Mart to come out, someone called me a dirty name and I sailed into them all. I swatted three or four of them-I don't know just how many."³³

The photographer, Tom Watson from the New York News, who had been in Toronto for ten days to cover the court proceedings said "he had orders from his employers not to talk."³⁴ Mrs. Kenny was called bad names during this event, got into a fight and did not sign any sort of deal. She was exhausted and obviously upset the next day despite the humorous manner in which the Toronto papers covered the incident. Mrs. Kenny told the Mail and Empire that she wished "she was dead and buried-all this for a half-million dollars"³⁵, a comment indicating great fatigue rather than jocularly. To the Toronto Star she said that she didn't want to see them "nor discuss the fight or anything else."³⁶

The reason that the Kennys had gone to the hotel was to discuss the possibility of signing a theatrical contract with William Foy, a vaudeville agent from New York.

According to the Star five other mothers had received similar calls but had handed the matter over to their lawyers. Mrs. Kenny said that Mr. "X" was also at the hotel when she arrived. An article in the Globe a few days later said that Will Foy was still in town but had not yet signed any mothers because he wanted to wait on the court decisions. Meanwhile the Globe had received a telegram from another agent, named Gluck, who questioned Foy's credentials:

"Buffalo mothers eager to see these wonderfully fertile Canadian women. I have high-grade spot here, with other select ones ready to put them on, but Will Foy, said to be their manager, is unknown to telephone company or any of my numerous connections and influential affiliating contacts. Will appreciate if you will have Foy or authorized representative communicate with me immediately and you will do favor to Buffalo audiences clamouring for these lovely women." But if Gluck doesn't know Foy, it's alright for Foy. He says he doesn't know Gluck.³⁷

This episode is a particularly good example of the circus-like atmosphere surrounding the Stork Derby. There was no real way of checking these agents' credentials nor the soundness of their offers which must have been difficult for the families considering the deals. More importantly, however, the quotation demonstrates, yet again, the volume of public interest in the story and the fascination held by reproduction. Vaudeville agents also made efforts to enlist the Dionne children for their shows. The intense interest in these mothers lends further evidence of the complex

manner in which the Stork Derby was viewed. It was seen as a spectacle that people were willing to pay money to follow, whether through the papers or film or theatre but the interest was also mixed with a large dose of disdain.

The light touch employed by the press when covering the Millar Will competition was even used in reporting some of its more tragic aspects. Several mothers became quite ill during the competition and both the Timleck and Graziano families lost children. These significant and difficult events were ruthlessly covered in the papers. They were always relayed in terms of how these occurrences would affect the given families' standing in the competition with little or no sensitivity shown to the family. In October of 1936, the Timleck's youngest child became seriously ill. An article in The Toronto Telegram noted the baby's illness and went on to say that:

the Timleck's chances will not be lessened if the baby dies, for Millar's will states only that a birth must be registered to count. A considerable number of claimed 'eligibles' were stillborn or died a few months or hours after birth. ³⁸

Mrs. Timleck had protested about this approach in an earlier interview when she said, "I don't care about the money- it's my baby I'm thinking about now."³⁹

The illness of the child and the unravelling of its fate was followed in the Toronto papers in true voyeuristic

style. Detailed accounts of the child's illness were given on a daily basis:

Yesterday, doctors fought for it [the baby] all afternoon. Blood received in transfusion congealed, instead of flowing naturally, and stimulants were injected directly into the heart of the three-months-old baby. Nurses rolled the child back and forth in blankets in an effort to maintain circulation.⁴⁰

Much was made of the fact that several of the Derby mothers offered sympathy and aid to Mrs. Timleck during this difficult time. Mrs. Graziano had said that her husband's cousin was available if the Timeleck child needed another blood transfusion. The Star commented that "apart from its humane motives, the visit illustrates the spirit of camaraderie which has lately grown up among the maternity contest mothers. A few months ago there was suspicion. Now...the mothers are the best of friends, visiting back and forth like neighbours."⁴¹

The truth of the matter was that several of the families had already come together to try and reach an agreement over the division of the money. It was really only Mrs. Kenny who did not want to take part in any agreement to share the purse. A note of surprise may be detected in the article as if the writer had thought the contestants would be unable to overcome feelings of greed and jealousy. This is just another part of the caricature-

like portraits of these people the press presented to the public.

The illness of the Timleck child drew a sizeable amount of public concern, in the same manner as did illnesses of the Dionne quintuplets. Despite the general public condemnation of the contest, people were still fascinated by these large families. Many citizens volunteered to be donors for the Timleck baby's blood transfusions and the hospital received many calls inquiring after the baby's health.⁴²

At the end of the month when the Timleck child died, an article in The Globe acted as if this was just desserts for the Timlecks who had attempted to capitalize on the publicity they received because of the competition.

Meanwhile, this afternoon a mother pays the price of publicity that has been incurred by the Millar will. Mr. and Mrs. Arthur Timleck find themselves still in the limelight when they most want peace. Contenders in the will case, the Timlecks have been before the public in photographs and on the talking screen. Once they made a public appearance at Sunnyside. But now, with their baby Blanche dead from influenza, they would be alone in their grief - and are not.⁴³

The Grazianos received similar treatment by the newspapers when their youngest child Benito Mussolini took sick and died. Once again the reporter focused on how the death of the child would affect the Graziano's chances in

the competition, with little thought to the grief of the parents.

The Graziano's chances in the maternity race would not be lessened in the event of the baby's death, since the Charles Vance Millar will does not state that children must live to be eligible for the bequest. However, Mr. and Mrs. Graziano repeatedly have said that they love their children 'for themselves and not because they may bring us riches,' and are extremely worried about little Benito's condition. The child apparently was well until three days ago, when its digestive processes failed.⁴⁴

Once again, it is possible to detect a note of surprise in the article, surprise that the family was bereaved by their child's illness, and that the Grazianos were not simply concerned about the money. There was also no thought given to how harmful the portrayal of the child's death, as in this article, would have been for the Graziano family. By the time her child died, later in the month, Mrs. Graziano was absolutely exhausted. She had to go to the hospital for a "blood-count" and "the result was not encouraging." Her husband said that she might have to go into the hospital for a long rest.⁴⁵

The toll of the competition on the mothers was high. By 1936, several of the mothers were going in and out of the hospital for operations and blood transfusions. Mrs. Bagnato joined the ranks of the failing mothers when "she suffered a haemorrhage and was given a blood transfusion"⁴⁶ Mrs. Bagnato quickly reassured the press that her condition

was not serious but one has to wonder. It is clear that these women were pushing themselves, beyond the limitations of good health, to produce as many children as they could. There is little doubt that these mothers loved their children, but when their poor physical condition is considered, it is difficult not to suspect that the Millar money was part of the impetus behind their large families. The insistence that they were not competing was likely an attempt to maintain their dignity and avoid middle class scorn. Mrs. Graziano was perhaps in the worst condition of all the mothers. Her husband was extremely worried about her health but also quite desperate to get some of the Millar money. This was the cruel irony of the competition, that the poorest families were encouraged to have large families on the off chance of winning this huge fortune. The losers, like the Grazianos, would be left to struggle to bring up their children on very little money. In October 1936, Gus Graziano discussed his family's dire predicament.

Vowing to "fight to the last" to establish his claim that he has had nine children born in Toronto since the death of Charles Vance Millar, Gus Graziano said to-day he needed \$100 in a hurry to pay for blood treatments for his wife. "She must have treatments now, they'll be no good to her later," Mr. Graziano declared.⁴⁷

The same attitude with which the papers covered the deaths of Derby babies was employed when covering their births. As the race neared its end, some mothers who were at that time expecting babies, hoped for twins. The Evening

Telegram reported that Mrs. Graziano lay in her hospital bed saying, "I hope it is twins" over and over. When her single child arrived, one of the attendant doctors said Mrs. Graziano was disappointed but "took it like a good sport."⁴⁸ Mr. Graziano was reported to be elated about the birth of the child despite the fact that he had been unemployed for over four years.⁴⁹ The Romas family, in a similar situation with an unemployed father also hoped for the arrival of twins.

In the meantime the patient old stork is said to be fluttering over Toronto homes where his arrival may upset the present ranking of mothers. He is expected any moment at 24 Brock Avenue, where Mrs. Peter Romas, 29-year-old Irish-Canadian, wife of an unemployed chef, is hoping twins may arrive before 4:30 p.m. to-day to bring her total of seven children born since 1926 to nine.⁵⁰

This is, undeniably, a sad picture of impoverished families hoping for more children in order to improve their standard of living. The disappointment of the arrival of only a single child must have been devastating for this family. It meant that they no longer stood a chance to win the Millar prize but were left with eight small children who needed care. The mothers have their whole lives focused on the goal of rapid reproduction. A reader, however, hardly thinks of this tragedy because of the manner in which the newspapers reported on the Stork Derby. The style of reporting and the carnival atmosphere illustrate some of the moral contradictions in the 1930s which were highlighted by

this competition. The penchant for voyeurism in popular culture is seen here to be growing in tandem with a new moralism surrounding reproductive issues. The Derby families were at once villains and heroes, the victors and victims. The public could not get enough of them although they did not consider them as model citizens. As the Derby families moved into the public eye they became vulnerable to moral attack and to a series of threats on their mental and physical well-being. The contestants became objects of entertainment and were stripped of the consideration and humanity normally accorded to the average citizen. Their lives became entertainment for others and their actions provided fuel and financial gain for the newspapers and later on, for lawyers.

Perhaps some of the clearest insight into the very real trauma that some of the Stork Derby contestants underwent was provided by the several families that briefly believed that they had a chance at the Millar money. Their lives and hopes moved like the light of a flickering candle through the pages of the Toronto papers. Their appearances were fleeting, lasting only as long as their chances for winning the money. The reporters often inadvertently mentioned the poverty but never openly addressed the cruel irony of the situation that will become so apparent in this study. The reporters never, save one, remarked that the families that could the least afford to have children were having them.

The gap between the reporting, public perception and the truth was ever-widening.

In late October of 1936 a single article appeared in the Toronto Star about the Waters family. Their story was typical of many of the Derby contestants. John Waters the father had been on relief for three years and Mrs. Waters looked after the children. The Waters expressed a desire to buy a home with the Millar money, if they were to win it, because they had been forced to move several times over the past few years. The Waters had eight living children all registered under the Vital Statistics Act. Unfortunately, they were soon to discover, this was not enough offspring to secure a share of the Millar money. Mr. Waters openly stated that they had their eye on the Millar money for several years now and one can not help but wonder if this was the truth of the situation for most of the contestants.

"I'd be foolish to pretend, with our family that we weren't interested in the Millar contest," Mr. Waters said, "because for the past three or four years we've been following it closely."⁵¹

Then there was the Carter family, of West Indian descent, the only black family to enter the competition. Mr. Carter was adamant in his intent to share the Millar money with all large Toronto families, if he were to win it. The Carters had twelve children, nine of whom were still living. They had eight children born within the ten year period and a ninth that had been born just months prior to

the start of the competition. It soon became clear that they would be disqualified as no bending of the rules would be allowed.

Mr. Carter told the paper that he was an iron-moulder who had been out of work for five years. Earlier in his life, he had been a coal miner in Nova Scotia. Mr. Carter ardently hoped to win some of the money and so buy a house in the country. Mr. Carter wanted to get off relief as he hated receiving it. He would walk eight miles several times a week to the employment office to check if his old foundry needed anyone for one day of work. In the article, Mr. Carter also discussed the insidious type of discrimination that he had experienced in Canada. He, of course, reiterated several times that he appreciated the full rights of citizenship he received in Canada but that he still faced many problems especially in finding employment. He complained that Canada accepted black immigrants but then would not give them work. He said that he preferred the American system that was at least honest about discrimination.

No matter what education, what capabilities, the average Negro has he can't get work in Toronto. In the United States, he is told he can come only so far in mixing with white folk but he can get a job working with his own people. There is no conscious prejudice against us, I admit, but I would rather be told 'don't come in' than be told, 'come on in-but I have nothing for you'.⁵²

Mr. Carter and his family did not win any money along with all the other eight-children families. Another family to be featured in an article was the Enrights. Mrs. Enright had given birth to seven children over the ten year period and had ten children in total. The large family was living on a Mother's Allowance cheque of \$70 a month because Mr. Enright suffered from a heart condition that prevented him from working.

"I'd almost rather be on relief," said Mrs. Enright, a big tired-looking woman. "The only consolation is that this way you don't have to keep moving, but \$70 isn't much for all of us. By the time we pay \$23 rent for this seven-roomed house, there isn't much left. If we have enough to eat, we can't clothe the children properly. If we buy them clothes, we have to go short on food."⁵³

Mr. Enright had not worked at all in the previous four years and only occasionally in the two years earlier. From the way that the "tired" Mrs. Enright spoke it was clear that the family was living in abject poverty yet the article makes no comment upon the fact. The article simply covered this family in relation to their chances at the Millar money. The Enrights told the reporter that they had a large family because they loved children, a familiar refrain from many of the Derby contenders. One has to wonder at its truth. No doubt it was a part of the reason but there were surely other factors like religion, lack of birth control knowledge or a hope for the Millar money. A love of children was by far the easiest answer to give the reporter

and also the most palatable for the reporter to give in the story.

The final family that will be discussed in this context are the Meldrums. Mrs. Meldrum's case was quite pitiful and a clear indication of the dire circumstances in which many of the contestants lived but no one seemed to care about. Mrs. Meldrum was a last minute entry in the Derby, discovered by the Evening Telegram on October 22, 1936. She lived on Eastern Ave in the slums of Toronto. She claimed nine children for the competition, six of whom were living; she had a total of twelve living children. Mrs. Meldrum's husband was an unemployed paper-hanger. She feared that one of her children that was stillborn would not be counted because she had a death certificate but no birth certificate. Later, during the initial hearings it would become clear that a person in her situation need not vie for the money, the courts allowed no room for negotiation. There was little sympathy for the plight of these people.

Mrs. Meldrum had not registered her child because at the time of its birth in 1928, she did not think that she had a chance at the Millar money. Mrs. Meldrum said that she hated receiving relief and that the first thing she would do with the Millar money was to pay the government back. The Meldrums had registered their children but did not have birth certificates because they could not afford to pay the 50 cents that each one cost. Perhaps the most

horrific picture of the Meldrum family was given by the mother when she talked about the rats in her house.

As it is, we are living in a house overrun by rats that come from the dump across Eastern ave. When I get up at three o'clock to warm the baby's food I'm scared to death. Rats are jumping all over the kitchen. Last night my two oldest girls got their lunch ready to take to school and when they went for it in the morning the rats had eaten every scrap of it. It was in a kitchen cabinet but the rats had chewed right through the back of it.⁵⁴

She continued to say that the rats were getting bolder and running through the house in the daytime. The Meldrums did not have the money to move to another dwelling and the landlord would not help them because they did not always meet their \$20 a month rent on time. Mrs. Meldrum's husband would not speak to the reporter because he did not like the publicity associated with the Stork Derby. Mrs. Meldrum said that "he would rather have work than bother about this money, no matter how much it is, ...but I don't want to pass up a chance for it because it would mean so much to us."⁵⁵ Mrs. Meldrum here articulated the dilemma of many Stork Derby contestants, they were well aware of the indignity of being associated with the competition but felt that they had no real choice. It was easy for people with middle or high incomes not to compete, but for those with little or no money, it was their only hope for a better standard of living.

In all the articles discovered during the course of this research only one was truly critical of the Stork

Derby. This article, ironically, was written by an American reporter. The writer was one of the few female reporters to comment on the event. She was sent to Toronto to cover the Derby. At the beginning of the article the magazine editor gave a brief history of the Stork Derby and wrote that he left the readers to judge the reporter's findings. Sylvia Grace, the Pictorial Review reporter, took a very serious look at the Stork Derby, she did not treat it as a humorous event. Grace wrote of the terrible poverty suffered by the Millar contestants in a satiric article addressed to the deceased Charles Millar. Her article was written after she had toured several of the Millar Will households. She painted a very dark picture of the Derby, describing the pain and poverty of each household and then asking Millar if this was what he had hoped to achieve.

Hilda and Gus Graziano, eight living children and the memory of one who died, live in St. David's Place, a slum alley. But Mrs. Graziano does not want to move. She has moved six times in the past year, she says, and that is enough. She is twenty-six years old, and expecting her tenth child. She is thin and stooped. She must have been handsome ten years ago, when she earned her living doing housework. She would be handsome now if she had even a little time and strength to spend on herself, and if her expression was less exhausted, less bitter.⁵⁶

The writer went on to describe some of the children, the dirt, the hardship and also the few joys of the family like their radio and their puppy. Mrs. Graziano put the baby, George, down into his stroller, drawing the following

comment from Sylvia Grace. "A swarm of flies rises from the dirty carriage sheet and settles again on George. You never saw so many flies. There is no money for screens."

Grace informed the reader that the Grazianos had been on relief for four years and had to feed the family of ten on \$4.45 a week. Mrs. Graziano told the reporter that she did not want so many children and that she never would have married if she had known what it would be like. Mrs. Graziano certainly never said anything like this to any of the other reporters, or perhaps the reporters chose not to print it because it would not be palatable for the readers. In fact, it may be that the mothers of the family felt more comfortable telling the real story to a female reporter.

Mrs. Graziano said that if she won the money she would like to build good houses for working people because she knew how terrible it was to always be forced to move. Unfortunately, she was never allowed to make this public gesture because her stillborn child was not counted in the total of children. She therefore, did not have enough children to be eligible for the prize money. In closing her section on the Grazianos, the reporter made this acrid comment to Millar. "The Grazianos are going to have more children: they want desperately to win your million dollars. The joke if it was a joke, is not funny to them."⁵⁷

She also spoke to the Darrigo family, who were in despair because they had lost their fruit and vegetable store along with their truck and now had to sell their goods from a stand. Mr. Darrigo told the reporter how he had lost his business and then went on to say,

"One law for the educated man, not that law for the poor working man. No fair, no fair, What can I do? Five years I look for prospect, worse and worse. All my work, my kids' work, fifteen hundred dollars, borrowed here and there, all gone. I don't break the law, but people with the education do. I look like a fly against those people."⁵⁸

Clearly, Mr. Darrigo felt that he and his family were subject to discrimination in Canada. His words point to discrimination based both on class and ethnicity. Here again, our study of this competition reveals the intimate connection between reproduction, class and ethnicity in the Canadian context. People like the Darrigos participated in this competition because of their poverty which resulted partially from their ethnicity and financial standing. They then received criticism for this participation. The final distribution of the money was also informed by similar prejudice.

Mr. Darrigo did not want any photos taken of his children until he could get them into decent clothes. Mr. Darrigo said that the store was all they had and now they had pinned their hopes on the Millar money. "'We got to live. We got to get more kids.'" ⁵⁹ The Darrigos were featured in one article in the Star and never had a chance

at the money. They had six living children, three dead and one expected in February of 1936.

The reporter said of Grace Bagnato that "she had not slept too much. You never saw a face more tired than hers, or more marked with character."⁶⁰ Mrs. Bagnato lived with nine of their twenty three children, the others had either moved on or were dead. She expressed to Sylvia Grace that more than ever what she wanted to do was to quit her work as a court interpreter and to be able to give her children a good education.

The only mother that the reporter spoke to who actually received a sizeable share of the prize was Mrs. Nagle. They seem to have been the only people truly happy with their family although they were still struggling terribly to support them. Mr. Nagle had not worked steadily in the past three years. They, too, had been forced to move several times because they could not afford the rent. They were ardently hoping to receive the money and, in the end, were one of the few lucky winners.

In closing this section of the study, we will turn to the case of Mrs. Lillian Kenny who is now familiar to us. Her importance lies in the fact that she was a main player in the Derby and because she was, arguably, the individual most marginalized at every level throughout the competition.

As noted earlier, she entered the competition in 1934 but her first foray into public notoriety came in 1933 when

she challenged public health officials on their slowness in coming to the aid of her dying infant. The three month old child died as a result of infection from rat bites. In 1934, when she entered the competition the American periodical, News-Week wrote this of her:

Last week a dark horse came to light. Mrs. Matthew Kenny, who made news last year when she demanded compensation from city relief officers after rats had killed one of her babies, claimed first place with a progeny record of eleven, and two more on the way.⁶¹

The Toronto Daily Star was a little more thorough in their account of her entrance into the race. They discovered that she had not entered the race until 1934 because she did not read English and did not know about the competition until she bumped into Mrs. Bagnato in the street one day. This article also mentioned the death of the baby, Patrick as a result of rat bites.

Three months old Patrick died last week when rats attacked the family. Three of the children were badly bitten, and a civic investigation followed charges that there had been a delay in the visit of the health officials to the Kenny home.⁶²

It is obvious that the Kennys were living in abject poverty, undergoing all the trials that accompany this condition. There was, however, no commentary on this nightmarish tale. No thought was given to what it was like to live in a rat-infested home and to lose a child as a result of it. Mrs. Kenny's filing a complaint signalled that she was a fighter. Throughout the competition she

demonstrated that she had a fierce sense of justice and felt that she deserved a better way of life just as much as anyone else. Her resilience and unwieldiness did not find favour in the press, when it came to the time of the hearings. She did not fit the mould of any sort of propriety, even that of the dignified working poor. And so, Mrs. Kenny was trivialized which is, of course, an effective way to sap an individual's power.

The articles about the death of Mrs. Kenny's infant, Patrick, is yet another example of the press's general insensitivity to the conditions of the contestants. Just as when the Timleck child died, there was not even a casual remark about how devastating a death like this would be to a family. Only Sylvia Grace caught this angle when she wrote about Mrs. Kenny.

"I lost a twin baby two years ago", she says, "and my hair come white." She begins to cry, and with bright tears streaming down her face, wringing her hands, she tells you how her baby died. She had brought it home from the hospital, still very sick-"but I wanted my baby home with me" - but it had been bitten by rats, bitten badly in the face. All day she had tried, and the neighbours had tried, to get the Department of Health to send a doctor. But through some misunderstanding no one came until late afternoon, and the baby had died just before in convulsions."⁶³

Mrs. Kenny worked hard with her children and she also worked carving wooden statues. Most articles noted this and some were quite impressed by her artistic abilities. The

same article in Toronto Star wrote quite extensively about her models.

Her little house on Peter St. was literally crowded with hand-made models of log cabins, and other buildings as they were in Toronto 100 years ago. Eleven years ago an elderly woman who had been a servant in the home of William Lyon Mackenzie gave her a book in which there were drawings of these buildings. As her contribution to the centennial program of 1934, Mrs. Kenny worked an entire year, using a saw without a handle, and wood she has picked up in the St. Lawrence market, and has built more than a 100 model buildings.⁶⁴

Mrs. Kenny hoped, if she won the money, to have a house large enough to properly display her models.

Mrs. Kenny is possessed of decided artistic ability that finds outlet in literally scores of carved wooden figures of remarkable likeness to the best known Canadian and American figures....Not only are the facial resemblances good but they stand in characteristic garb, pose and expression, which is little short of amazing considering the quantity of the artist's output.⁶⁵

Mrs. Kenny also claimed to have the power of second sight and to be in a sort of divine communication with Charles Vance Millar. Through her communication with Millar she had learned that the winner was going to be "Canadian born"⁶⁶. She told the Star reporter that she had discovered this power as a young girl. In another article she claimed that if she won the Millar fortune she would use part of the money to have masses said at Millar's grave. She would do this because as she said, "'I have dreamed of Mr. Millar every night for two weeks, and he is half way to heaven, and

wants the mother who wins the money to pray for his entry into heaven."⁶⁷ It is difficult to gauge whether or not Mrs. Kenny was serious in all that she said but no matter whether she believed or did not, statements like these did not work in her favour. They made her a media spectacle but not respectable.

The picture Sylvia Grace drew of Mrs. Kenny's life was one of great hardship and a tremendous amount of work. At the end of the interview Grace went to take Mrs. Kenny's picture. Mrs. Kenny got into position and said "'Shut-up'" to the world as the camera snapped.⁶⁸

Examples of the circus-like nature of the Stork Derby could fill a book in itself. It is clearly one of the strongest characteristics of the whole event. The way the competition was treated in the media and the fact that it garnered so much attention points to the fact that the competition struck a significant chord in Canadian society. The competition was at once hallowed and loathed. This ambiguity in attitude made the path of contestants difficult to tread. Some managed to do it successfully and others fell tragically by the wayside.

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CHAPTER IV

Everyone Has Something To Say: The Hearings Begin, 1936/1937

The previous chapter highlighted some of the more dramatic elements of the Stork Derby and demonstrated how these events were made into a popular spectacle. As illustrated in Chapter III, the perception of the Derby as a public spectacle was widespread and lasted until the very end of the competition. It became particularly apparent with the court proceedings that began in 1936 and dragged on until the Spring of 1938.

As the closing date of the competition drew nearer more and more articles about the Stork Derby appeared in the Toronto newspapers. Through these reports it became clear that many of the families wanted to reach an agreement to share the money before the competition was actually over. This was the first issue in which lawyers became actively involved, even before the court hearings had begun. All of the leading families, except the Kennys, felt that an out-of-court agreement to share the purse was a good idea. The lawyers, however, disagreed, arguing that an arrangement of this sort could invalidate the whole will. A source close to the executors of the will (according to the newspapers) compared the Derby to a horse race saying: "What would happen if race horse owners got together before a race and decided to split the purse?" The implication was that the

idea of dividing the money was against the principles of competition and sportsmanship. This simile was ludicrous. No valid legal comparison could be made between the Stork Derby and horse-racing primarily because the Stork Derby concerned human lives. Furthermore, because there was no direct legal precedent for the case, an agreement such as this likely could have been reached without causing harm to anyone. Such a solution, in fact, would have brought the benefit of the Millar Will to several needy families and saved more of the money from going to the lawyers.

Other lawyers contended that splitting the money before the competition was over could "open the way to others, the Government or relatives or some other interested party to break the will."² This argument was again questionable as the will was already under scrutiny by these very sources, despite the talk about possible agreement between the families. If anything, an early agreement between the families might have weakened the claims of the relatives and the government to the money. A demonstration of cooperation from the contestants would have contradicted the relatives' assertion that the will (the race) encouraged immorality (i.e. bad behaviour from bad people). An agreement of this sort moreover, may have allowed the government to stay out of the whole affair when assured that this arrangement would properly provide for the families involved.

All of the mothers, except Mrs. Kenny (who wanted all the money for herself and her family) felt that there was enough money to share between all the large families that were claiming the money. Mrs. Timleck said:

"An agreement is far the simplest way to do things, and we will all have a good-sized fortune," said Mrs. Arthur Timleck, one of whose ten children is also unregistered. "If we all demand registration of every child we ever had perhaps I could claim eleven, others will claim more, and by the time we get it settled we'll all be dead and buried."³

Mrs. Timleck's statement was representative of the feelings of many of the competing families. Likely, with this sort of willingness, an agreement could have been reached that would have been legally viable and protected the will from attack on other fronts. Even the Premier of Ontario, Mitchell Hepburn who called the Derby "revolting" and "disgusting"⁴, was concerned that the lawyers, if unrestrained, would grab a large part of the Millar fortune. It is not surprising, given his record, that Hepburn distrusted the establishment figures of lawyers but it is interesting that despite his condemnation of the contest he wanted to see that the families got the fairest deal possible. Even in the 1930s the behaviour of these lawyers was not above suspicion. The Premier "promised that the government would not let a host of lawyers get the money in preference to the mothers."⁵ Hepburn was, however, unable to prevent lengthy litigation and the steady mounting of lawyers' fees. Public interest began to heat up as the race

drew to a close and the first hearing on November 6th approached.

Once the hearings regarding the Millar Will began in 1936, there seemed to be no end to them. The remainder of this chapter will follow the proceedings step by step and examine the implications of their unravelling. The legal issues attached to the division of the Millar money fell into two broad categories. In the first hearing, Judge Middleton decided to deal separately with these categories. Firstly, he elected to decide on the issue of whether or not the will was valid and only then would he determine the second issue of which mothers were eligible to receive the money.

The issue of the validity of the will took months to be resolved. The distant Millar relatives argued that the will should be declared invalid because it was against the "public good". They said it was contrary to the "public good" because it promoted immoral behaviour because, for instance, there was no provision that illegitimate children would not be included in the competition.

The "public good" was a rather nebulous legal term which received a great deal of exercise in Canada in the 1930s. It was a legal clause that could be employed on occasion to either acquit people who had transgressed the law for "higher purposes", or conversely, employed to convict someone who it was deemed had acted against the

"public good." In the Stork Derby case, as mentioned, the term was employed in an attempt to invalidate the will. The case progressed through the Supreme Court of Ontario, the Ontario Supreme Court of Appeal and eventually reached the Supreme Court of Canada where the will was, beyond dispute, declared valid. The series of Judges involved with this case felt, with the exception of one, that the legal system was not supposed to determine what was in the best interest of the public (i.e. the public good), but rather, should ensure the public good was adhered to according to the laws established by the Legislature.

With this issue finally resolved, the table was turned over once again to Judge Middleton and he was faced with the task of determining the eligible mothers. It was not until February of 1938 that this process began and soon after it commenced, many complexities arose. The most serious problems surrounded the claims of Mrs. Lillian Kenny and Mrs. Pauline Mae Clarke. This latter case once again went to higher courts and was eventually decided upon by the Judges of the Ontario Supreme Court of Appeal.

The period just prior to the closing of the Derby inspired a large number of editorials, and letters to the editor also flooded in for publication. Opinions on the relative merits of the Millar Will were diverse and based on a variety of evidence. A sampling of these letters will be explored here because they demonstrate the wide range of

public opinion and the diversity of issues caught up in this affair. The discourse was convoluted, a sort of moral hodge podge of opinion, quite unlike that surrounding the escheat attempt in 1932.

One person wrote to the Star expressing strong criticism of the competition because it encouraged the reproduction of poverty stricken people. The writer felt that the money would have been better used to support the dissemination of birth control information. He supported his opinion with a quotation from the well-known social reformer Reverend Silcox's appearance at the Eastview Birth Control Trial.

In the Fascist countries of Europe, where human beings are bred largely for cannon fodder, one could understand the encouragement of maternity marathons, but in the new world democracies, where citizens are exhorted to live peaceably together in the true Christian spirit, to respect their own souls and bodies and those of their fellows, and to aim at as high a standard of living as possible, such revolting spectacles have no place.⁶

Another letter, in a similar vein, praised Hepburn's condemnation of the contest and reproached the newspapers for turning the event into such a spectacle:

I agree with Premier Hepburn that this is the most disgusting display that has been acted in Canada, and I am sure that no other country in the world, excepting that to the south of us, would tolerate such an exhibition. The press of Toronto are to blame for encouraging this competition by publishing details. I admire large families, but not when they have been produced under such conditions. Had the conditions of the

will be kept from the public until last June, then the mother of the largest family would have won the esteem of the public.⁷

It is interesting to note that both letters saw this competition in a national context, and both expressed the opinion that the Derby was not acceptable in Canada. This behaviour was thought only appropriate for the more "vulgar" populations of the world found in such places as the "Fascist countries of Europe" or the United States. The above letter implied that the Derby mothers were not worthy of public esteem because they had partaken in the spectacle of the Derby. The inference was that they had violated the norms of decent behaviour.

Another letter expressed a positive opinion about the Stork Derby and saw the mothers as making a contribution to society worthy of praise. This letter, intriguingly, was based in the same national context and drew upon the same fears as the more negative letters.

It requires some explanation as to why some people call the Millar will disgusting. If large families are taboo our beloved Canada is to suffer in comparison to Germany and Italy, who encourage them. Canada needs sons for her defence as they do.... The shade of Theodore Roosevelt would delight in the pictures of healthy large families, rather than race suicide. Is Ontario to suffer in comparison with Quebec? There large families are very common.⁸

This letter was rare in its support of the competition and praise of the Derby mothers. While these citizens chose the Toronto newspapers in which to vent their opinions about the

Stork Derby, other people chose to write directly to Premier Hepburn. Only a sampling of the letters written to Hepburn have survived, but there can be no doubt that many were written. Most of the letters to Hepburn urged him to step in to help settle the problems of distributing the Millar money. The letters came from as far afield as Preston, England, North Battleford, Saskatchewan and Rochester, New York. Several of the letters suggested that the money be invested in a Trust of some sort and then given out gradually to the winning families. All the writers were concerned that the children should be properly cared for despite the "unfortunate" circumstances of their birth.

A female lawyer from the Toronto area wrote to Premier Hepburn and suggested that because the contest was essentially a lottery, the gift was void under the criminal code and should therefore be forfeited to the Crown. She went on to say that she did not want to have anything to do with the affair but she thought this point was worth considering. Her criticism of the competition ran deep and she expressed this to Hepburn. "My only reason for writing is the hope that something may be done to divert this disgusting gift to some useful purpose, though I should think that these women bearing more children than their strength could stand would receive some consideration."⁹ This writer showed sympathy for the families involved despite her strong disapproval of the contest. In contrast,

the following letter to Hepburn, from a woman in Preston, England, showed utter contempt for the Derby contestants.

Can't a body of men like you, who, by virtue of your "positions", have been voted steady, reliable, arbiters, outwit the poor thing, who left £ 80,000, to such a degrading cause, and so, turn the joke, to some extent on him? Won't you divide the money equally between all the misguided competitors?- Only for the sake of the unfortunate children- before any of it can be swallowed up in the courts. Again, only for the poor little babies, for whom, my heart aches. If-as I hope you will-, you do so, would you like to tell the women from me, that they are fools, and the men, that there is no epithet, foul or strong enough, to describe them, and I hope that they will have to pace the bedroom floors, persistently, for months to come, so that the babies get their own back, for being the victims of avarice. I would also like to think, that, as such a will is an insult to God, who gave life, you would invest it for the children to divide evenly, when they became twenty-one, and let the mothers use the interest until then?....¹⁰

This woman's diatribe against the Stork Derby shows a lack of understanding for the predicament of the participating families. This lack of understanding was common to most of the critical voices. Few people criticized the social conditions that made participation in the competition a worthwhile gamble for these families, rather they pointed to greed or avarice as the motivation. This concept was perpetuated by the newspaper coverage which never truly focused on the issue of poverty. Even the articles about Mrs. Meldrum's rat infested home and the death of one of Mrs. Kenny's infants, as the result of a rat bite, never addressed the dire circumstances in which these

people lived. The articles did not consider the difficult choices these families were having to make.

The writer of the previous letter also insinuated that the fathers were over-sexed. This was another common theme in much of the criticism of the Derby. This belief was part of a widespread perception that the fathers of large families had voracious sexual appetites. The shame and soul-destroying criticism faced by the Stork Derby families was similar to that encountered by Oliva Dionne, at the same time, over the birth of the Quintuplets. As Pierre Berton discussed this in his book, The Dionne Years, "in the eyes of many, Dionne was a kind of freak, a superstud." Berton cited an occasion in Chicago in 1935 when Oliva was followed into the men's room by the curious who hoped to catch a glimpse of his penis, "which was widely believed to be of legendary size." Many members of the public were unsympathetic to Dionne and thought him a brute for "what he had done to his wife".¹¹ In the popular imagination, the number of children was not equated with such mundane things as the fertility level of a given couple or the use (or non-use) of birth control. Rather, it had to do with things in the realm of the fantastical and the grotesque.

The comparison between the Dionne children and the Stork Derby children cannot, however, be pushed any further. The Dionne children remained the darlings of the public eye throughout the 1930s, a status never achieved by the Stork

Derby children. The Derby children, and the way that they were brought into the world, struck at the heart of the ambiguous attitudes people held about sexuality and reproduction. The criticism of the Stork Derby, as shown by these letters, was extremely unfocused, a reflection of the confused public mind. By 1936, many people seemed to have forgotten the earlier support they had given to the Derby in 1932.

Tucked in amongst the letters to Hepburn was one letter from Hilda Graziano, one of the well-known Stork Derby contestants. Her letter provides insight into the real predicament of these families, not their world as created by newspapers or the beliefs of reformers. Mrs. Graziano's letter is one of the few surviving personal testimonies about the Derby and stands in stark contrast to the letter, just quoted, and to the body of criticism this letter represented. Mrs. Graziano began by explaining to Hepburn that she had given birth to a stillborn child that was not registered because, at the time, she was unaware of the Millar will competition. The ruling of the Provincial Secretary that he would not allow late registration meant that she had no chance at the money despite the fact that she had given birth to nine children in the ten year period. She pleaded, with Hepburn, asking him to use his authority to set up a fund from the money to be distributed to families who did not win. She suggested that the winning

mothers could make a pool of \$5000 each. She described her circumstances to Hepburn writing in the following way.

We are in drastic straits been on relief for sometime. Particularly [sic] the children not been brought up in the proper manner and very poor possibilities of future education. Bearing in mind the health and moral of the said children this scheme I have in mind might sound selfish but it is not for myself but for the children that I am thinking about.¹²

Unfortunately, Mrs. Graziano's plea fell on deaf ears. She and her family did not share in the Millar will money, but were left alone in their struggle to support their large family. Her letter suggests that she wanted the money to ensure the well-being of her family and not that she was making a greedy grab for money. Her letter remains as a heartfelt testimony to the real situation of these people and reveals the lack of sensitivity to it by many of the social reformers, the justice system and members of the public.

Along with the letters to the editor, editorials damning of the Stork Derby also appeared in all the Toronto newspapers. These letters of condemnation appeared despite the tremendous amount of coverage devoted to the event. Here again the hypocrisy of popular journalism was apparent, the clash of voyeurism and moral superiority. The editorial in the Toronto Star on October 26, 1936 spoke of the grave and terrible effects of the will and criticized the government for not interfering in its dispensation in

earlier years. This was a far cry from the editorials of 1932 that beseeched the government not to escheat the estate. This particular editorial took pity on the mothers suggesting that the interests of society dictated that they get some money to educate and support their children.

For ten years the government and the courts did nothing to question the validity of the Millar will on which many mothers were managing their lives. This will, which has done its worst should now be allowed to do its best by compensating on a ratio basis all its victims.¹³

An editorial in the Evening Telegram was similar in tenor but pushed the point further, touching on many of the issues of social concern that became so intimately linked with the Stork Derby. The writer suggested that had Millar truly been interested in relieving the distress of poor, large families he could have found another more direct means of doing it. The editor employed the language of eugenics in saying that "it is difficult to believe that a sane testator would start a competition in baby production that might be expected to attract those whose progeny would be of little use to the state."¹⁴ These sentiments were largely echoed in the letters to the editor that addressed the Stork Derby.

One further article, worth mentioning, appeared just prior to the end of the competition. This article, in the Daily Star, reported that the Derby contestants had received postcards stating that no Catholic mothers would be allowed

to share in the money. The cards were supposedly from the executors of the will but G.R. Sproatt, an executor of the will, told the paper that he knew nothing of the postcards. He said that the executors disagreed absolutely with the statements contained in the cards.¹⁵ These postcards, however, contained an eerie portent of things to come. Regardless of whether or not the cards were written by the executors or by a maverick, someone was aware that more than simply the number of children would be involved in deciding the final distribution of the money.

In light of the widespread criticism of the Stork Derby, as seen in this collection of letters and in the newspaper comment, it might be expected that people would stay away from the hearings. This, however, was not to be the case. In fact, anyone trying to get inside Osgoode Hall on the morning of November 6th, 1936 was met by a barrage of photographers and a thick crowd of spectators. Everyone standing at the gates to the Hall hoped to catch a glimpse of one of the famous Millar will contestants. It was a scene of mayhem according to the newspaper reports.

They were shooting first and asking questions afterward on the green front of Osgoode Hall today. The court hearing in connection with the Millar will \$500,000 bassinet derby drew dozens of photographers and reporters from Canada and the United States and as far away as London, England. Anyone-stork derby-minded or not- who entered the law building premises was photographed from a dozen different angles in news reels, after which efforts were made to learn who the victim was.¹⁶

Another paper suggested that there were approximately one hundred photographers waiting outside of Osgoode Hall that morning.¹⁷ The Mail and Empire's description of the scene made it sound like a circus, as lawyers and contestants dodged photographers on their way into the building. "American photographers had not the slightest idea as to who was who. They were out to get pictures and they got them...Flash bulbs popped with the regularity of rifle fire...."¹⁸ This article announced itself with the playful and catchy headline of, "Toronto Lawyers Shot on Sight: Hundred Are Innocent Victims of Millar Will Battle." The headline, yet again, captures the vaudevillian spirit surrounding this event.

Two of the leading mothers attended the hearing, Mrs. Kenny and Mrs. Graziano, accompanied by her husband. The Timlecks, Nagles and Smiths were represented only by the husband. Several other families who thought they had a chance at the money were also in attendance. The newspapers were hot on the trail of the Derby families throughout the build-up to the closing date of the competition and during the initial hearing. So much so, that several mothers stayed home on the day of the first hearing in order to get a little peace and quiet. Mrs. Kathleen Nagle told a Star reporter that she had stayed home because she thought she could get some work done:

All the photographers and American newspapermen who have been bothering me should be down at the court. Two days ago I had to call the police to get New York cameramen out of my backyard. To-day I expect to have to myself for a change.¹⁹

Other mothers stayed home because they had no interest in receiving further publicity. Mrs. Smith, one of the last minute entrants to the race, said to the same reporter, "'I've had all the publicity I want, I'm not an exhibit. I suppose there will be plenty of others there to fill the court.'"²⁰ Mrs. Smith also had nothing to contest, her nine children were all properly registered. Her modesty and adherence to middle class decorum stood her in good stead for the prize. Mrs. Clarke stayed home because she did not see a purpose in attending that particular hearing. Mrs. Kenny, in typically flamboyant fashion, which made her an object of much ridicule, was determined to go to court. She told the reporter that she was going to court "and no one can stop me. If I meet up with the New York photographer I scrapped with at the hotel the other night, I don't know what will happen. Wait and see."²¹ Mrs. Kenny obviously had a flare for the dramatic and a notion of the sort of comments reported by the more sensational of the Toronto newspapers. But she also felt justified in defending her right to the Millar money and was, no doubt, in desperate need of it.

At the first hearing on November 6, 1936 , thirty-two lawyers turned up to represent various claimants to the money, making this one of the biggest legal cases in Canada in the 1930s. In the initial hearing Justice Middleton quickly pared down the number of lawyers involved in the case leaving C.R. McKeown, G.T. Walsh, and T.R.J. Wray as counsel for the Stork Derby mothers; I.F. Hellmuth and Waldon Lawr as counsel for the next of kin; and W.N. Tilley for the executors.²² In total the counsel represented fifteen mothers and two sets of relatives. Justice Middleton attempted to deal with several of the importunate issues in the first hearing. These issues had been publicized in an article in the Toronto Daily Star on October 28, 1936. The article detailed a notice that had appeared advising Millar will claimants and all those who thought the baby clause invalid, to file a claim with their solicitors. The notice stated that Justice Middleton would be the presiding Judge and that there were three main issues to sort out at this hearing. The issues were delineated as follows:

1. Is clause 9 of the said will valid.
2. If it is valid, to ascertain the beneficiaries entitled thereunder.
3. If it is invalid, to ascertain the person or persons entitled to intestacy.²³

Mr. Justice Middleton was given this as his first step towards cracking the problems of the will by the Chief Justice of Ontario and the Chief Justice of the High Court.

It was hoped that dealing with all the contentious issues in the first hearing would ensure that these problems would be "determined as inexpensively and expeditiously as possible."²⁴ This was, unfortunately, not to be the case. A settlement was not reached until two and a half years after the initial hearing.

Mark Orkin claimed in his book about the Stork Derby that this first hearing was a singularly dull event, disappointing to those seeking the thrill of a trial.

To the disappointment of spectators at the first hearing there would be no live witnesses in Re Millar, no dazzling feats of cross-examination, no flamboyant contest of wits; no masterly summing-up of evidence; no stirring addresses to the jury -indeed no jury.... In fact Re Millar produced no theatre, not even of the absurd....²⁵

Perhaps from a legal point of view the initial hearing was not spectacular, the dialogue fairly restrained and no earth-shattering conclusions reached. It certainly could not compare in drama to something like the Scopes Monkey Trial, but to say the hearing produced no theatre, no drama was a sorry oversight. The very evidence of the huge public and media interest in the story suggests the unravelling of a drama. A drama with the lawyers and the mothers as the characters, the public as the audience, Middleton as the Director and Millar as the ghost writer....

The discussion that day was by no means dull and the court room hush was often broken by laughter, as jokes about children and reproduction were made. As one lawyer got

muddled in trying to demonstrate the relationship between his client and Charles Millar, the Telegram reported, "the courtroom rocked with laughter".²⁶ The scene itself must have been quite lively with every seat in the house taken and thirty-two lawyers and their assistants bustling about. All of the issues that would be responsible for the dragging out of this case were posited at this hearing.

The lawyers representing the various relatives asserted that the will should be deemed invalid because it was against the "public good". They claimed that it was against the "public good" because the clause "caused much unnecessary harm to mothers by reason of too frequent childbirth, that it encouraged illegitimacy and that it causes a high rate of infant deaths and still-births."²⁷ The counsel, on this point, made a call for oral evidence, but Justice Middleton thought it unnecessary. He said that "no one is likely to dispute that motherhood is injured by such a 'race', as you put it, and I'm sure any medical man will agree that it caused a greater number of deaths among the babies."²⁸ I.F. Hellmuth as counsel for the relative also stated that he wanted to "contend that children coming along so fast are not so healthy and that morals and general home surroundings are not so good."²⁹ Despite Middleton's assertion that "no one" would dispute this point, this issue was carried by appeal to the Supreme Court of Canada where it was finally dropped.

This case was contentious because it dealt broadly with the issue of reproduction. This issue always provoked (and still does) strong opinion, and this was particularly true in the 1930s. During the hearings, fears surfaced that the contest encouraged the lower classes to breed. Mr. Hellmuth's statement, as quoted above, could have been taken straight out of one of the books by Margaret Sanger, the famous American birth control advocate and social reformer. In her treatise on birth control, Woman and the New Race, Sanger asserts:

The probability of a child handicapped by a weak constitution, an overcrowded home, inadequate food and care, and possibly a deficient mental equipment, winding up in prison or an almhouse, is too evident for comment. Every jail, hospital for the insane, or reformatory for the feeble-minded cries out against the evils of too prolific breeding among wage-workers.³⁰

Thus, it is possible to see that this argument about the Millar Will being against the public good carried a tremendous amount of weight in the public conscience and preyed on deep-seated fears among the middle class. Even if Hellmuth only pursued this line of argument to win his case, and not out of conviction, this tactic reveals an awareness of the weight these concerns carried. He did not choose, for instance, to argue that Millar's statement that he had no near relatives was incorrect and therefore the will invalid. Rather, he chose to harp on these moral concerns that were so pressing in the public mind. Mr. Hellmuth

demanded the submission of oral evidence to prove his point. Eventually, a compromise was reached wherein Justice Middleton agreed to the submission of three affidavits on the basis of which he could decide if the hearing of oral evidence was necessary.³¹

Mr. Magone, representing the Attorney-General, who was out of the country at the time, asked for a five week adjournment. Magone requested the delay out of similar concerns to those of Hellmuth. Magone felt that the Attorney-General had a vested interest in the case and so should be in the country while it proceeded. In response to Magone's opening statement in which he said that he was representing the Attorney-General, Judge Middleton quipped, "How many children has he ?".³² Middleton's remark demonstrated once again, the rather raucous atmosphere in the courtroom.

Magone stated that the Attorney-General as "guardian of public morals," might take the position that the motherhood-marathon clause is against public policy.³³ Alternatively, Magone asserted, if the courts declare the will invalid the Ontario Government might escheat the estate and turn it over to the Province. Judge Middleton did not grant Magone's request for extended time, because he wanted to have the matter dealt with as expeditiously as possible.³⁴ The government was obviously quite concerned about the outcome of the Millar Will Case. Several letters went back and

forth between Magone and the Acting Attorney-General, Paul Leduc, while these hearings were taking place. Mr. Leduc, in turn, forwarded the information to the Premier.³⁵ Mr. Leduc wrote to the Premier on November 6, 1936 after the first hearing that "the position of the Government would be much better if we were not called upon to ask the Legislature practically to amend a judgement of the High Court or the Court of Appeal."³⁶ He closed by suggesting that he and the Premier meet to discuss this matter further. This indicated that the Millar case was considered to have serious ramifications for the government. The government was likely fearful that if they did not act in the correct fashion, public opinion would once again turn against them as it had done in 1932. In response to his report, Magone was advised by the Acting Attorney-General Leduc to attend the hearing on November 16, 1936 but to "take no further action without further instruction from me [Leduc]."³⁷ These were obviously the orders followed by Magone as he did not speak at the November 16th hearings.

Mr. Tilley, lawyer for the executors of the estate, stated that the executors were anxious to see that the issue of the validity of the will be decided and also whether or not illegitimate children were to be considered in the competition.³⁸

The lawyers representing the various mothers were the other major group to make a presentation at this hearing.

Middleton determined that only mothers with nine children would be considered as serious contenders for the money. This immediately disqualified several mothers who had shown up at the hearing. Five mothers were knocked out of the competition because not all of their children were born within the limits of the City of Toronto. Mrs. Meldrum, the mother famous for the Star's accounts of her rat-infested house, had given birth to nine children in the allowed time but two had been born in York county. Although the parents were domiciled in Toronto, Middleton dismissed consideration of this claim. Another mother, Mrs. Carter, had given birth to nine children but one child had been born just prior to the opening date of the competition so she, too, was ruled out. Several other mothers who had given birth to six to eight children, hopefully put forth a claim for the money but met with complete dismissal.

Mrs. Thomas Mays, a thin, clear spoken woman who had a back seat, said: "I am the mother of twelve children and six of them were born on the last ten years." "I'm afraid six isn't enough to qualify." The justice commented. "Well, I just thought I'd try," said Mrs. Mays. "You never can tell about these things."³⁹

The claims of three mothers who had been in the limelight over the years of the Millar contest were also brought forward at this hearing. Each mother, Mrs. Bagnato, Mrs. Kenny and Mrs. Clarke had a particular problem with their claim which jeopardized their chance for the money.

Mrs. Kenny's claim was represented by Mr. Walsh and Mr. Weldon. Mr. Weldon said that his client made claim to the entire prize because she had nine fully registered children and two more unregistered children whose birth he could prove. Justice Middleton questioned why the children were not registered within thirty days of their birth. He also said that "No doubt the question will also arise as to the proof that the children she claims were actually Mrs. Kenny's." ⁴⁰ This statement foreshadows the suspicion and indignity that Mrs. Lilly Kenny suffered throughout all the hearings.

Mrs. Pauline Clarke, who had by now abandoned the assumed name of "Mrs. X", had her claim stated by her counsel, Mr. C.R. McKeown. He asserted that his client had given birth to eleven children within the ten year time period. He was, however, going to drop the claim to one child who was born outside the city limits. The complication with Mrs. Clarke's case was that five of her children were fathered by her husband and five by a subsequent mate to whom she was not married. Mrs. Clarke had never obtained a legal divorce from her husband.⁴¹ This claim would later go to the Supreme Court of Ontario where it was finally dismissed. Mrs. Clarke, like Mrs. Kenny, eventually reached an out-of-court settlement to avoid further litigation.

Mrs. Bagnato's lawyer simply stated that his client was claiming eight children and just wanted to ensure that all those claiming nine had legally registered the birth of each child.⁴² Mrs. Bagnato had long been considered a sure winner in the Millar Will contest. She was one of the mothers interviewed as far back as the escheatment attempt in 1932. Mrs. Bagnato had two children that were born but were not registered at the Vital Statistics Bureau. One infant was "stillborn prematurely at the Toronto General Hospital on November 9, 1929 and the other lived for two or three hours after being baptized by Father Ausd."⁴³ Mrs. Bagnato had thought the hospital had registered the stillborn child and she claimed to have registered the other child herself at the Parliament Buildings. "If they can't find the record", she exclaimed to a Telegram reporter, "It'll be just too bad for them up there. I'll fight this to the end."⁴⁴ In this particular article, Mrs. Bagnato, understandably, expressed a great deal of anger at the thought that she might be disqualified.

"I will tear the Parliament Buildings apart before I give up," said Mrs. Bagnato vehemently, "I'll go see Premier Hepburn, I'm supposed to be in the hospital now with another baby coming but I'll stay on my feet until I drop, or this is cleared up."⁴⁵

Mrs. Bagnato did fight but eventually gave up, leaving she and her family empty handed.

The day closed with Justice Middleton setting the next Millar Will hearing for November 16, 1936. At this hearing

the issue of the validity of the will was to be decided and also whether or not illegitimate children could be counted. Middleton felt that the issue of the validity of the will should be decided upon before any attempt was made to determine the eligible mothers. The brief adjournment would allow time for the submission of affidavits but would still hurry the process along.

The hearing of November 16th, 1936 made clear links between the issues at stake in the Stork Derby and other broad social concerns. This was so, both because of the matters discussed in the hearing, and because of the people involved in the discussion. As it was agreed to in the hearing of November 6th, 1936, Samuel Factor (council for the relatives from Port Burwell Ontario, Arabella West and Alexander Butcher) submitted four affidavits, including his own, to support his contention that the Millar will should be invalidated as against the public good. Samuel Factor noted in his statement that he was submitting the affidavits of Reverend Claris Silcox, and Dr. William B. Hendry and "in addition thereto the said claimants intend to submit and tender the evidence of a large number of persons including leading doctors, psychologists, social workers, sociologists, scientists and clergymen as to the tendency of the clause in question in these proceedings."⁴⁶

Factor wanted to bring these specialists to the defence of his clients because their opinions on the matter of

reproduction were rapidly gaining public support. By making this sort of testimony a part of the hearing, Factor knew he could raise the spectre of "race suicide". He could demonstrate that the rapid reproduction of people, such as those in the Stork Derby, could only lead to the production of more "feeble-minded" citizens. Thus, the will would be invalidated as against the public good. Factor succeeded in getting Judge Middleton to accept the submission of three affidavits upon which he would decide whether or not oral testimony should be heard. After viewing the contents of the affidavits, Judge Middleton ruled that oral testimony, as suggested by Factor, was neither wise nor necessary.

Factor stated in his affidavit to the Supreme Court that he wanted to tender oral evidence to demonstrate six ways in which the clause had detrimental effects on society. His points were:

- a) the effect on mothers who are claiming the bequest and the effect on their children from a medical and economic point of view,
- (b) the tendency to illegitimacy,
- (c) the high mortality rate among the children of the mothers who are claimants,
- (d) the moral and physical effect on mothers and children,
- (e) the injury and detriment to the welfare of this community,
- (f) the disgusting and revolting nature of the competition among the mothers to obtain the bequest. ⁴⁷

From this list of points, it is easily discerned that his arguments were based on much more than the merits of this particular case. Factor suggested that upholding the will would have long-term and severely detrimental effects on society. Because the will was now bound up with moral issues, and not just property concerns, reformers took an about face from their 1932 positions. Factor was counting on the fact that his arguments would carry such moral weight that he would gain widespread public support for his position and so secure the Millar money for his clients.

Factor chose Reverend Silcox and Dr. Hendry to submit affidavits for very specific reasons. These two professionals, like many others in the 1930s, believed that there were benefits to eugenically-based public policy. Angus McLaren has pointed out that doctors were one of the first groups to embrace the concept of eugenics in Canada, the U.S.A. and Britain. Their belief was based on the idea that eugenics could improve public health which was, of course, their profession's main concern.⁴⁸ Later McLaren writes that, "Many psychologists, social workers, and teachers would also be ultimately drawn to eugenics, in part because by embracing what they took to be a scientific approach to social problems they could enhance their professional standing."⁴⁹ Reverend Claris Silcox fits into this category as did Dr. Hendry.

Silcox was a well-known social reformer in Toronto and the head of the Social Service Council of Canada. The Social Service Council was an organization of the protestant churches in Canada including the Church of England, the United Church, the Baptist Church, the Salvation Army, the Y.M.C.A. and the Y.W.C.A.⁵⁰ The organization's quarterly magazine, entitled Social Welfare, was a forum for discussion of social problems. Frequently the advocated solutions to these problems were grounded in eugenic theory.

Silcox filed his affidavit for the Stork Derby proceedings soon after returning from the Eastview Birth Control Trial where he had testified for three days. At Eastview, Silcox had suggested that it was detrimental to both society and to mothers if children in one family were born in quick succession.⁵¹ Silcox and others made several references to the Stork Derby when testifying at Eastview.

The Eastview Birth Control Trial centred on the arrest of Dorothea Palmer. Ms. Palmer was working for the well-known birth control advocate and manufacturer A.R. Kaufman when she was arrested for distributing birth control literature and devices. Her action was against the statute in the Canadian Criminal Code that prohibited the promotion or use of birth control devices. Dorothea Palmer was ultimately acquitted by way of the "public good" clause, the very same clause that the Millar relatives were attempting to use to invalidate the will. There have been several good

accounts written about this Trial and therefore this paper will not explore it in depth.⁵²

At Eastview the Crown Attorney, Raoul Mercier, protested that Silcox's projected recitation of the history of social work and birth control would turn the trial into "another Stork Derby". Silcox, in an attempt to defend the use of birth control made negative reference to "what some termed competitive breeding for manpower in some European countries, and the declaration by some that sections of the Canadian population sought to outbreed other sections."⁵³ Silcox said that the employment of birth control "would tend to eliminate national and international stork derbies."⁵⁴

The important issue here, is the connection between Eastview and the Stork Derby. The fact that the two hearings occurred at roughly the same time, and that many of the issues and the people overlapped demonstrated that the Stork Derby hearings were dealing with the issue of reproduction, not simply with the matter of who should receive the Millar money.

Dr. Silcox's affidavit for the Stork Derby contained much of the same sentiment that existed in his testimony at the Eastview hearings. In his affidavit, Silcox presented seven points that outlined why he and many other professionals agreed that the rapid bearing of children was detrimental to the health of mothers and to the well-being

of the community. His last point gave the gist of his whole statement:

It is common knowledge and recognized amongst sociologists and social workers that in families which are not economically self sufficient the birth of children in rapid succession imposes a tremendous load and burden on the father, which, if he is unable to carry, is transferred to the state. The effect of having children in rapid succession and thereby having large families would necessitate that the children be forced out into gainful occupations before they have had the necessary preparation for the demands made by modern life and has the same effect on the labour markets as child labour pulling wages down and thereby reducing the levels of wages and lowering the standard of living.⁵⁵

The essence of Silcox's scientific posturing was that the rapid reproduction of the working class and the poor put a heavy financial burden on the middle classes who paid the taxes. Moreover, he linked rapid reproduction to a negative effect on the capitalist system and a potential lowering of the standard of living. It is clear from issues addressed by Silcox in his affidavit that the Stork Derby was coming to represent many of the worst fears of white middle-class Canada.

Dianne Dodd in her article about the Eastview Trial noted the wide-ranging nature of Silcox's testimony at those hearings. The Eastview Trial fostered the same sort of moral panic that became so much a part of the Stork Derby proceedings. The following quotation from Dodd's article lists the many topics covered by Silcox in his testimony at Eastview.

Reverend Dr. C.E. Silcox of Toronto, the General Secretary of the Social Service Council of Canada, was perhaps the most comprehensive of all, suggesting that birth control could reduce infant and maternal mortality, promote infant and maternal health, prevent abortions, reduce prostitution, reduce the spread of venereal disease, promote mental and physical health, marital happiness and economic equality, reduce taxation, improve the quality of the race, reduce inter-cultural friction, improve the standard of living and reduce unemployment.⁵⁶

Silcox had, previous to his appearance at Eastview and to the filing of his affidavit, made a comment about the Stork Derby in an editorial in Social Welfare which had outraged a number of the Derby families. The editorial was, on the surface, about the recent release of a report on maternal mortality compiled by the Canadian Welfare Council. Silcox, however, used this discussion as a platform to promote the use of birth control, contending that it was largely mothers of illegitimate children who died in child birth. The report had recommended the establishment of more clinics for pre and post natal care. In his article, Silcox questioned who would pay for these clinics. It was in this context that he made reference to the Stork Derby. Silcox suggested that the middle classes were already denying themselves proper medical care because "they have too much pride and self-dependence not to pay their taxes and other obligations incurred to maintain the increasing burden of relief and social services."⁵⁷ He continued:

Why talk about more clinics for the unfortunate when we are witnessing a race in this fair province between a set of unspeakable women to win a large sum of money left in the will of a bachelor some years ago to the woman who bore the largest number of children by a given date, and this in a province which spends one way or the other approximately \$100 a child annually in public schools? This utterly disgusting will should long since have been set aside and disallowed as contrary to public policy.⁵⁸

It is interesting to note that Reverend Silcox's scorn only fell on the "unspeakable women" in the competition absolving the men from any "blame". This is evidence that gender did play a very real part in the Stork Derby incident. It was the women who most often bore the brunt of the social criticism directed at the families. Silcox suggested that the will should have been invalidated long ago. He ignored the fact that when the government tried to escheat the estate in 1932, it was people like Silcox who protested the loudest.

Several of the mothers responded to Silcox's comments in the newspapers. They were appalled at the treatment they had received in Silcox's article. Mrs. Kenny, who was described as irate at the comments of Silcox, said that "If every mother looked after her children and loved them as much as I do, this world would be a better place."⁵⁹ Stephano Darrigo, whose wife was in the competition, stated that:

I do not intend to let any man insult my wife. God gave us all our children and we love them all. We had a big family long before Charles Millar died. Ministers of the gospel should not speak like that about women. My wife and I are very respectable people. It is not up to a minister to criticize us.⁶⁰

Mr. Graziano echoed this sentiment stating that he and his family were "respectable people."⁶¹ The contestants' behaviour, however, contravened middle class standards. They were publicly disobeying the remedy for their condition that had been prescribed by middle class reformers. The families were, however, not necessarily acting out of a rebellious spirit. Instead, they might simply have been grasping at an opportunity to improve their standard of living. This was the cruel reality of what winning the baby race meant to these families, a reality that the detractors of the competition chose to ignore.

Silcox, both in his testimony at Eastview and at the Stork Derby, echoed the concerns of many social reformers of his day. In Canada, Dr. Helen MacMurchy was vigorously promoting ideas such as those mentioned by Silcox. McLaren writes of MacMurchy in Our Own Master Race, that she was:

The one person most responsible for winning for hereditarian concerns a central place on the agenda of the public health movement. Her writings on infant mortality, maternal mortality, and feeble-mindedness were all pervaded to a lesser or greater extent with the belief that personal inadequacies underlay much of the ill health of the nation.⁶²

Silcox's statements, as quoted earlier, are almost identical to those made by MacMurchy in her influential book, Sterilization? Birth Control?: A Book for Family Welfare and Safety. One need only look at the following quotation from MacMurchy's book and compare it with the words of Silcox to see the similarity in thought.

The good, self-respecting, successful citizens-happy men and women, good fathers and mothers-those who make the country, who pay the taxes, who have never caused their country one moment's anxiety-are beginning to see that their taxes are being steadily increased by the immense burden of lawlessness, dependency, ill-health and incapacity. And they see, further, that the progeny of these ten troublers out of every thousand of our nation is increasing much faster than the progeny of the nine hundred and ninety good and capable citizens.⁶³

It is clear that Silcox's assertions stemmed from a growing concern of middle class people about the rapid reproduction of the lower classes. His articulation of these ideas was an outgrowth of the developing panic about this perceived condition. In the newspapers Premier Hepburn labelled the competition as "the most disgusting, revolting exhibition ever put on in a civilized country."⁶⁴ This condemnation was heard again a month later in Toronto from the visiting British social reformer, Lady Astor. She was quoted as saying that the Stork Derby was "'horrible'"⁶⁵. She continued:

Think of what good that money would have done if it had been left to open-air nurseries....What we want today in children is quality not quantity. If we wanted the

latter we might go to China to find it, but I wouldn't think of Canada.⁶⁶

A similar comment was made about the Stork Derby by the noted American birth control activist, Margaret Sanger during her visit to Toronto. She called the Stork Derby "utterly revolting" and went on to say that, "there has been no consideration of the quality of the children."⁶⁷ Silcox was clearly not alone in his view of the Derby, his voice was rather representative of a large body of thought across Canada.

The only other affidavit submitted to the November 1936 hearing consisted of a number of newspaper clippings that detailed some of the more theatrical moments of the Stork Derby. They were compiled by a young lawyer named Benjamin Grossberg and it can only be assumed the intention was to further demonstrate the immoral nature of the competition. Judge Middleton wrote in his judgement that some of the clippings contained facts but most the opinion of the writer and that he "was at a complete loss to understand the motive for filing this affidavit."⁶⁸

Dr. Hendry was a Professor of Obstetrics and Gynaecology at the University of Toronto and was also interested in eugenics. He too, was carefully selected to submit an affidavit. McLaren writes that Hendry was one of the "progressives" in the medical profession and so was apt to ascribe to modern eugenic thought. He often wrote for Social Welfare and so had a connection with Silcox and

shared many of the same views. Hendry's affidavit covered much of the same ground as that of Silcox but his medical qualifications added an air of authority to his writing. He stated that it was his professional opinion that pregnancies in rapid succession had a detrimental effect on the health of the mothers. His closing statement was as follows:

It has further been my experience that rapid births following one after the other have a markedly injurious effect on the nervous system of women, leaving them less able to deal with ordinary domestic cares and duties and the up-bringing of their children....it is my impression, based upon such cases as I have observed, that such children are inclined to be weaker and of declining physical resistance, particularly amongst those born during the later period of such rapid successions.⁶⁹

Samuel Factor hoped to turn the hearing into a sort of trial with the submission of volumes of oral evidence in much the same way that the trial of Dorothea Palmer was proceeding in Eastview. He was thwarted in his attempt to do this by Justice Middleton, who felt that there were no legal grounds on which to hear oral testimony on what he considered a matter of opinion. After three and a half hours of debate on the question of the validity of the will, Justice Middleton closed the hearing and reserved his decision.⁷⁰ According to one newspaper report, at this point the cost of litigation had already reached \$7,500.⁷¹

As the testimony continued, so too did the discussion of the event in the letters to the editor of the local newspapers. Many letters supported the opinions of Silcox

and the body of social reformers he represented. One particularly interesting letter, however, challenged these views and the eugenically-based assumptions upon which these opinions were based. The letter was, however, a single cry in the wilderness and few listened to it. The writer signed the letter "Ex-Social Worker" and in it took issue with the opinions expressed by these "self-styled experts that the conduct of claimants under the Millar will in having so many children is a menace to the public good."⁷²

The writer continued that these "experts" were basically saying that because these women had not practised abortion or "other similar methods they are working against the best interests of the community." The writer, furthermore, took issue with the fear of feeble-mindedness and of race genocide which lingered as an undercurrent to the Stork Derby discussions. He/She said that there was absolutely no basis for the assumption that the so-called "feeble-minded" produced children of like ability.

I have seen children take a leading place in mentality whose, mothers were, according to report, feeble-minded. Dr. Harold I. Goslin of Bellvue hospital, New York, told the convention of American Psychiatric Association at St. Louis last May that the idea that the children of mental defectives would soon overrun the world was unfounded because mothers of this class did not have large numbers of children.⁷³

On November 20, 1936, Middleton gave his judgement regarding the validity of the Millar will and regarding the illegitimacy issue. He stated that he would not consider the

information contained in the affidavits because "The question of public policy is one for the Court and the Court alone, and the Court is not entitled to act upon the views of witnesses or the opinions of laymen."⁷⁴ He stated, furthermore, with regards to the hearing of oral evidence that if he had accepted Mr. Hellmuth's suggestion of hearing such testimony:

I should be hearing all kinds of evidence leading nowhere, from those who advocate uncontrolled reproduction and from those who advocate restriction in the production of off-spring in favour of contraceptive methods.⁷⁵

Justice Middleton was astute in his judgement on this matter. He managed to avoid some of the sensational aspects of the case by curtailing this sort of evidence which could have hinged on much broader issues than the case of the Stork Derby. Middleton likely did this to avoid too much publicity for the case, out of concern for the mothers, and also perhaps to protect his reputation as this was his last case before retiring from a long and respected career.

Middleton wrote an unusually lengthy judgement, running to roughly 5000 words, in which he upheld the will and also wrote that only legitimate children would be considered eligible for the competition. Middleton felt primarily that the decision of what was for and against the "public good" was not an issue to be decided on by the courts but by the Legislature through the enactment of law. A judge, he believed, should administer the law, not create it. He went

to great lengths to illustrate this point in his reasons for judgement. Middleton declared that he felt that the contention of the next-of-kin in this case failed because he knew of no ground of public policy that recognized birth at frequent intervals as undesirable. He furthermore stated that:

Public policy is not what a Judge thinks is best for the community. It is something far more than that. It is that which for many years has been recognized as for the public weal and the common law, and the principle must be found to be embedded in the authorities. No Judge has the right to declare that which he does not himself believe in to be against public policy simply because it is against his opinion and his idea of that which is for the welfare of the community.⁷⁶

Judge Middleton would have put anyone with doubts about the morality of the race at ease when he further stated that the bequest was to go only to legitimate children. He dismissed both the argument that it did not matter if the children were illegitimate because the gift was to the mother and the idea that the word "children" included illegitimate children. Justice Middleton cited many cases to support his claim that there was no strong legal precedent to confirm the idea that the word "children" included illegitimate children.

"'Children', when used in any testamentary document, always means legitimate children and I can find no foundation for the contention that this is only in gifts to children. I think it applies equally,

perhaps a fortiori, to gifts to the mother of the children."⁷⁷

In further response to the contention that the illegitimacy issue was not relevant because the gift was made specifically to the mother Middleton wrote, "This argument possesses much force, but I do not think it is entitled to prevail. If the word 'children' is taken as I think it must be taken, to mean legitimate children, then the will would read as benefitting the mother who has given birth to the greatest number of legitimate children as shown by the registrations under The Vital Statistics Act."⁷⁸

As this was the case, it could not be argued that the will encouraged immoral behaviour. The only problem remaining for Middleton in this respect was that McKeown, in defence of Mrs. Clarke, had suggested that illegitimate children should be included, but if they were not, he could also prove that Mrs. Clarke's children were in fact legitimate; legitimate because she had never been properly divorced and therefore all the children were born within wedlock. He argued this, despite the fact that Mrs. Clarke had repeatedly stated that her five youngest children were fathered by someone other than her husband. Middleton left this point for further discussion because of the problem that under section 24 of the Vital Statistics Act, there was a provision that no child born in wedlock shall be registered as illegitimate.

In his final remark Middleton noted what he thought to be the most likely reason for the relatives' testation of the will. He suggested greed as the motive rather than a lofty concern for the public good.

The arguments of the next-of-kin purport to be based on high motives of public policy and not mere greed, but the next-of-kin have waited until all the harm possible has been done, instead of prosecuting their claim immediately after Mr. Millar's death, when the evils, which it is said result from the tendency detrimental to public policy set forth, might have been prevented.⁷⁹

The very same day that Middleton's judgement was made, the Toronto newspapers were reporting that several appeals of his decision would be made. The first appeal was to be launched by Mrs. Clarke's counsel, Mr. McKeown. Because Middleton had said that illegitimate children were not included under the terms of the will, Mr. McKeown was going to argue that Mrs. Clarke's children were, in fact, not illegitimate. This is the very complication that Middleton foresaw in his judgement. McKeown was also considering appealing the legitimacy issue. He said to the Telegram that they had, "two strings to our bow" and "we'll use both".⁸⁰ To the query of what McKeown would do about Mrs. Clarke's repeated statement that her children were fathered by two different men, McKeown replied:

A married woman's statement is not permitted by law to offset the presumption that her children are legitimate. In other words, she cannot bastardize her children by any such statement. She is married and her husband has access to her.⁸¹

Mr. Mckeown's response indicated that this case was becoming more of an artful showpiece for the cleverness of the lawyers involved than a serious settling of the whole affair. At this point, the papers were not aware of the appeal to be launched by the Millar relatives, Arabella West and Alexander Butcher.

It is interesting to note that three days after Middleton gave his judgement, the Acting Crown Attorney, Paul Leduc sent a letter to Raoul Mercier, a lawyer for the Crown in Ottawa. Leduc sent a copy of Justice Middleton's statement regarding the Stork Derby, to Mercier, who was involved with the Eastview Birth Control Trial. Mercier was the lawyer for the Crown, prosecuting Dorothea Palmer. Palmer's lawyers were arguing that she be released because her act was for the "public good". Leduc was clearly good friends with Mercier, beginning the letter with the salutation of "My Dear Raoul". The letter continued:

I draw your attention particularly to the part of it dealing with public policy...In the Palmer case, the public good is the defense but it may be that you will be able to find in the judgement and decisions quoted by Mr. Justice Middleton some principles of law which may help you in the argument.⁸²

Leduc was also the lawyer who took up an unsuccessful appeal against the acquittal of Dorothea Palmer. This was yet another link between these two events. This close association lends further credence to the idea that the Stork Derby grew out of very specific social conditions and

was not just an aberration in history. Certainly its beginnings were by chance, but its development into a spectacle, both legal and social, was a logical outgrowth of societal fears about reproduction just as was the Palmer Case.

The decision reached by Justice Middleton was unanimously upheld in the Court of Appeal of the Supreme Court of Ontario on February 23, 1936. The hearing was presided over by the Chief Justice of Ontario (Rowell) and four other Supreme Court Judges (Riddell, Masten, Fisher and Henderson). Chief Justice Rowell and Justice Riddell both wrote lengthy statements that explained, and further supported Middleton's decisions regarding this case.

The reasons for Mrs. Clarke's appeal were threefold, as outlined in the legal records of the case. The first ground for appeal was that as the object of the gift was the mother the issue of whether the children are legitimate was irrelevant. Secondly, the appellant claimed that Middleton had erred in finding that the word "children" in Clause 9 excluded illegitimate children. Thirdly, it was argued that the Judge had erred in not ascertaining the beneficiaries as outlined in question 2 of the executer's notice of motion and that therefore the appeal should not now be proceeded with but that Middleton should have to dispose first of question 2. ⁸³

The next of kin appealed on eight different grounds, all of which pointed to their belief that Middleton had erred in not finding the will contrary to public policy. Both appeals were unsuccessful with all three Judges agreeing with Justice Middleton's decisions in the lower court.

Justice Rowell's statement documenting the reasons for his judgement shed further light on the debate surrounding the illegitimacy issue. In his comments he wrote that the "prima facie" definition of children as legitimate (mentioned by Middleton in his original decision) was now slightly more flexible than it had been in previous times. Elaborating on this point, Justice Rowell explored the instances of other gifts given to illegitimate children and quoted authorities who concurred with the idea that such gifts had generally been discouraged because they were thought to promote immorality. However, with that said, Justice Rowell then proceeded to quote from an authority that supported a more liberal attitude towards illegitimate children. Justice Rowell wrote the following passage from Jarman on Wills, 7th edition, page 1755 in his judgement:

"Hence the extreme strictness shown in the old cases in applying the rule that 'children' prima facie means legitimate children, and can only mean illegitimate children by necessary implication. At the present day slight peculiarities of language contained in a will, taken in conjunction with the circumstances of the case, are allowed to show that by 'children' the

testator meant to include illegitimate children." ⁸⁴

He added in his own words that:

Notwithstanding this tendency [to be more lenient about the interpretation of the word "children"] as illustrated by more recent judicial decisions, the cases referred to by counsel show that it still requires clear evidence that the testator intended to include illegitimate children under a bequest to children, to enable them to take under such bequest. This intention may be manifested either on the face of the will or in the conditions or circumstances of the testator's family. ⁸⁵

Despite Justice Rowell's awareness of the changing attitude towards illegitimate children in the Courts and in public policy, he still ultimately came down on the side of tradition. The counsel for Mrs. Clarke had argued that there were many examples of this changing attitude as demonstrated by various acts of the Provincial legislature including: The Legitimation Act, The Adoption Act also of 1927, and also The Children of Unmarried Parents Act all of 1927. Justice Rowell stated that these acts did "indicate a change in public policy and in the 'policy of the law' in reference to illegitimate children, and the recent decisions show that the Courts look with greater favour than formerly on bequests designed to make provision for illegitimate children born in the lifetime of the testator. But it does not appear from these cases that there is any change in attitude toward bequests to future illegitimate children.

Such bequests would tend to encourage immorality and are consequently contrary to public policy." ⁸⁶

This argument perhaps indicated that Justice Rowell was shying away from making a precedent setting decision. Justice Rowell was willing to concede that these recently enacted bills worked to protect the rights of illegitimate children (from the moment they were enacted forth, which implicitly included born and unborn children). He pointed to the bills as proof of the changing attitudes regarding illegitimate children already alive. Surely if this were his belief, he could have extended it to indicate a change in attitude towards the unborn. At the last minute, it would appear Justice Rowell fell back on old tried and true attitudes.

Justice Henderson only wrote in his statement that followed that of Justice Rowell, "I agree".⁸⁷ Justice Riddell, however, briefly discussed his views but, in the end, he too agreed with Justice Rowell, that Middleton's original decisions should be upheld.

No sooner had this decision been reached than the Toronto Star was reporting the possibility of an appeal to the Supreme Court of Canada by Mrs. Pauline Mae Clarke.

If necessary I will take my case to the privy council: I have already had so much publicity that I do not mean to turn back now; for my children's sake I will see the thing through.⁸⁸

These were the words of Mrs. Clarke reported to the Star the day after the decision of the Court of Appeal. Mrs. Clarke's legal advisors maintained that her children, in the eyes of the law, were legitimate because she had never obtained a legal divorce from her husband. Meanwhile solicitors for the estate continued to advertise for claimants for the Millar money as the issue of eligibility was still to be decided.

The final step in the legal procedure involved in determining the validity of the will was an Appeal to the Supreme Court of Canada which began on November 4, 1937. This appeal was, once again, launched by the counsel for Arabella West and Alexander Butcher and by Mrs. Pauline Mae Clarke. The case was presided over by the Chief Justice of Canada, Justice Crockett, Justice Davis and Justice Hudson. On December 22, 1937 they rendered their decisions, which concurred wholly with the decisions made by Justice Middleton on the 20th of November, 1936. The judges' statements were lengthy and explored the difficulty of the courts trying to decide on issues of public policy. All but Justice Crockett agreed with Justice Middleton in his assertion that the courts had no business in determining public policy but should only see that laws laid down by the Legislature were followed. Crockett wrote that there is a role in certain circumstances for the courts to pass judgement on public policy but that in this case the

"principle of public policy cannot be invoked against its (the clause's) validity."⁸⁹ And so the validity of the will was upheld and the issue of which mothers were to receive the money was now ready to be addressed. The affair was to be handed over, once again, to Justice Middleton. The total legal fees for this appeal amounted to \$7,709.92 which added to the earlier bill of \$7,500 meant that \$15,209.92 now had been taken out of the estate to pay legal fees.

Slowly, the Millar case was being settled. It was now left up to Middleton to determine the winners. He set himself to this task immediately and within six months the case was finally concluded.

ENDNOTES

Chapter IV

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CHAPTER V

"Cheap Advice from Cheap People" The Hearings of 1938

The Supreme Court decision to uphold the validity of the will, issued in December 1937, finally put the claims of the Millar relatives to rest. There could no longer be any question nor dispute about this matter; the highest court in the land had deemed the will as sound. The Millar relatives dropped their claims to the money and were not heard from again. The whole affair was then handed back to Justice Middleton.

Justice Middleton resumed the Stork Derby hearings in the Ontario Courts on February 12, 1938. The main issue left to be resolved was the determination of which mothers were eligible to claim the prize money. This process turned out, as now was typical of everything to do with the Stork Derby, to be incredibly complicated. The most difficult claims to be settled were those of Mrs. Clarke and Mrs. Kenny. For very different reasons, their cases became the focus of another sensational round of hearings. This chapter will follow the hearings to their eventual resolution in the Spring of 1938. Four mothers ultimately shared in the money. They were Mrs. Timleck, Mrs. Nagle, Mrs. Smith and Mrs. MacLean. Mrs. Kenny and Mrs. Clarke received small sums of money through an out- of- court settlement.

Through an examination of these hearings, it becomes remarkably clear that the odds were against Mrs. Kenny and Mrs. Clarke from the very beginning of the legal process. The criticisms of the Stork Derby levelled by social reformers, explored in Chapter IV, were also very much present in the minds of Justice Middleton and the estate lawyer, Mr. Tilley. This was explicitly revealed by some of their comments made during the hearings and by the harsh judgement that was finally rendered. Mrs. Clarke and Mrs. Kenny were not, it seems, the type of people that they wanted to see rewarded with this money and so everything was done to prevent this situation.

As the hearings began, Mrs. Clarke's counsel, Mr. McKeown and Mr. Cartwright, turned to arguing that Mrs. Clarke's children were, in fact, legitimate. They took this tack because the Supreme Court ruling had explicitly excluded illegitimate children from benefitting under the will. To prove the legitimacy of the children, the lawyers put Mrs. Clarke in the witness stand and also called upon her ex-lover, Mr. Madill, to take the stand. The whole exercise was an attempt to demonstrate that there was a possibility that Mr. Clarke could have had access to Mrs. Clarke during the time she was living with Mr. Madill. The details of the hearing will be explored later in the chapter.

The official court records to this case have been

destroyed or have disappeared; consequently the available information comes largely from newspaper reports. This is not unusual for Ontario court records from the 1930s. They are scanty at best, due both to poor record keeping and because records connected to famous cases were often given away to retiring lawyers and judges. This may well have been the fate of the Millar Will records. The affidavit, minus the exhibits, of Andrew Wentworth a solicitor for the executors, however, did survive. In it Wentworth states:

I have received letters or claims from a great many people and from many countries. Some of the countries that occur to me now from residents of which I have received letters or claims are: India, Egypt, Ecuador and British Honduras. I received many letters or claims from mothers residing in the Province of Quebec and in the other Provinces of Canada, and from mothers residing in Ontario outside of Toronto.¹

This remark indicated the far reaching effect of the Stork Derby, not just in Toronto but throughout the world. Several international papers carried news of the Stork Derby. All over the world the attention of large, poor, families was caught. They wrote to the executors of the estate inquiring about the competition and wondering if they were eligible for the prize. These people were obviously not aware of the condition that Derby competitors had to be residents of Toronto. Considering that this sort of interest existed internationally, it is not surprising that

the competition was followed so closely by the residents of Toronto.

When Justice Middleton opened the hearings on February 12, 1938 the Stork Derby, once again, made headlines. At that time Middleton heard some preliminary evidence and also established February 25, 1938 as the date for the final hearing to determine the winners of the Millar Will money. Meanwhile, the gates outside Osgoode Hall were swarming with newspaper reporters, photographers and movie cameramen as with the hearings of November 1936.

Inside the hall, Mr. Tilley (the lawyer representing the estate) reported that seventeen mothers had filed claims for the money but stated that he considered only four of them to be truly eligible for the money. Tilley named Mrs. Annie Smith, Mrs. Kathleen Nagle, Mrs. Alice Timleck and Mrs. Isabel Maclean as the mothers that had submitted sufficient evidence to show that they had given birth to nine children within the given time period. "These mothers," the Telegram stated, "are assured of a fortune."² The article continued to state that :

Mr. Tilley created somewhat of a sensation, when at the court he questioned Mrs. Kenny's claim, for it was generally believed that she was certain of sharing in any distribution. Her claim was questioned on the grounds that some of her nine children were still-born. He quoted authorities to show that still-born babies are not children under the eyes of the law.³

For the rest of the case the "winning" mothers were named as the defendants (represented by Mr. Tilley and B.V. McCrimmon) and Mrs. Clarke (represented by Mr. Cartwright and Mr. McKeown) and Mrs. Kenny (represented by Mr. Walsh and Mr. Weldon) were named as plaintiffs. Mrs. Kenny's case was troubled by a two-fold problem. She and her lawyer claimed that she had given birth to eleven children during the ten-year competition, nine of whom were properly registered and two more that had not been registered at birth. The legality of counting three of the nine registered children was to be questioned on the grounds that they were stillborn. Prior to this hearing, there had been no discussion of whether or not stillborn children would be counted in the competition. In fact, it had been assumed on many occasions by mothers and reporters alike, that a stillborn child would be eligible. This is illustrated in the following representative quotation taken from the Evening Telegram in 1936.

What may have been a half-mil'ion dollar baby was still-born at seven o'clock last night to Mr. and Mrs. Matthew Kenny....Though the baby did not live, the voluble little French-Canadian woman moves up one in the bizarre "stork derby"....⁴

Mr. Tilley, however, seized upon the issue of stillborn children. He expressed his views strongly in the opening hearing stating that:

"Looking up the authorities," he said, "I think it is beyond question that stillborn

children would not take under the clause. We have called on Mrs. Kenny for proof of the death of her children who do not appear to be alive, but this is not forthcoming. So we are unable to say how many of her children were stillborn."⁵

Tilley further asserted (referring to Mrs. Kenny's other claims) that late registration of children should not be allowed. "It is not for parties to come forward years after and claim registration on disputed grounds."⁶ As the hearings progressed, so too did Tilley's tenacity to this rule. He seemed determined to disqualify Mrs. Kenny from the competition. Despite Mr. Tilley's vehement objections, it would seem that late registration of Mrs. Kenny's children would have been a perfectly legitimate way to clear up the case, had the Provincial Secretary agreed to it.

At this hearing, Mrs. Kenny's lawyers indicated that they were going to file for a mandamus order⁷ in an attempt to force the Provincial Secretary to register the children. They later pursued this course of action but to no avail because of the very fact that the late registration of children was a discretionary power of the Provincial Secretary. A mandamus order could only force the Provincial Secretary to make a decision on the matter; it could not influence the decision itself. Therefore, the decision not to allow the registration of Mrs. Kenny's children could not be successfully challenged. Mrs. Kenny's lawyers, at this point, suggested trying to reach a settlement with her but Middleton flatly rejected the idea.

Mrs. Clarke's case, like that of Mrs. Kenny, had two complications. Mrs. Clarke had given birth to ten children, five of whom were fathered by Mr. Clarke and five by a Mr. Harold Madill. Mrs. Clarke had never been officially divorced from Mr. Clarke which, in the eyes of the law, made her five youngest children illegitimate. It seems that there was one further child that was born just outside the limits of the City of Toronto. This child was born on a street one half of which was in the City and the other outside.

Mrs. Clarke's counsel took a decidedly different course in this round of hearings than they had in the hearings of 1936/37. They essentially took an about face in their argument. Mrs. Clarke's counsel dropped the defeated idea that illegitimate children should be included in the will and turned to assert that Mrs. Clarke's children were, in fact, legitimate. They were legitimate, it was posited, because all of her children were born while she was still legally married. In response to this legal showmanship and obvious reversal in position, Middleton quipped "'Mrs. Clarke should be asked. She knows all about it.'"⁸ This statement also suggested that Middleton disapproved of Mrs. Clarke's behaviour.

Mrs. Clarke stated in her affidavit that the children had been registered under two different names because she became afraid her husband would take her children away from

her if they had his name. Middleton was not convinced by this suggestion. Mrs. Clarke's counsel maintained that the only way to disprove Mrs. Clarke's case was to show the "impossibility of access during the time these children might have been conceived. This is a very important rule of public policy."⁹ If the defendants (that is Mr. Tilley representing the four winning mothers) could show that there was no time that Mr. Clarke could have had access to Mrs. Clarke, and had sexual intercourse with her, then it would prove that the five youngest children could not have been his. The children would therefore be illegitimate. This, of course would be a very difficult point to prove and it was likely for this reason that Mr. McKeown (acting for Mrs. Clarke) introduced it. The hearings that followed were terribly degrading and embarrassing for Mrs. Clarke. Her case also sparked a surprisingly open discussion of sexuality in the Toronto newspapers.

There was laughter in the courtroom as Justice Middleton went on with the proceedings, demonstrating yet again the light-hearted manner in which this case was often treated. The Telegram reported that Mrs. Bagnato did not laugh at the quips of Middleton, but sat in the court room pale and solemn.¹⁰ Mrs. Bagnato was now out of the running for the money.

It was eventually decided that the mothers of eight children should have the right to investigate and perhaps

contest the claims of the mothers of nine. This was to be done, as well as resolving the claims of Mrs. Kenny and Mrs. Clarke, in the hearings beginning on February 25, 1938.

On February 25th Middleton determined that he would first decide on Mrs. Kenny's case and then move on to that of Mrs. Clarke. Two days of grueling testimony followed, full of discussion pertaining to Mrs. Kenny's stillborn children. Little sympathy was shown for Mrs. Kenny as her obstetrician, Dr. Frank O'Leary, gave intimate details while on the stand about the births of three of Mrs. Kenny's children.

The bulk of the evidence given by Dr. O'Leary was presented "in camera". The court room was cleared but the press was allowed to stay. Dr. O'Leary spoke about the births of three of Mrs. Kenny's children. He had been present at five of her births in total. Mr. Weldon, representing Mrs. Kenny, presented birth certificates for nine children (not including the two who were unregistered) and "contended that a stillborn child was a child, and was not excluded from the will. He based his arguments on the provisions of the Vital Statistics Act." Mr. Tilley objected to this on the grounds that on two of the birth certificates, the children were not given names. Mr. Tilley was determined, one may conjecture, to disqualify Mrs. Kenny in any way possible. He felt perhaps that she was not the right type of mother to be rewarded with the money. Mrs.

Kenny was outspoken, flamboyant, Catholic and had tried to benefit financially through her participation in the race. In other words, she violated the norms of middle class decorum. It is difficult to find any other reason why Tilley would have tried so hard to see that she did not get the money- other than perhaps the fact that he received more money, the longer the hearings continued.

The testimony of Dr. O'Leary went into minute detail about the births of three of Mrs. Kenny's children. The children in question were: Patrick Kenny, born 11 June, 1927; Frances Kenny born 8 May, 1929; and Charles Vance Millar Kenny, born 3 February, 1936. Dr. O'Leary testified that Patrick and Frances had lived for a few moments after birth, that their hearts had pulsated but that they had not breathed. Charles Vance Millar Kenny, O'Leary testified, had definitely been a stillbirth.¹¹ There was lengthy discussion regarding the exact meaning of stillborn; did it mean that the child never had a heartbeat or that it had never breathed or both? Mr. Walsh asked Dr. O'Leary for the medical definition of stillborn to which Dr. O'Leary replied, "We have live born, stillborn and dead born."¹² At which point, he was interrupted by the Judge who said there was no such thing as "dead born". Dr. O'Leary countered that this was a medical term. Mr. Walsh asked the doctor what the definition of stillborn was, in response Dr. O'Leary said, "a baby we fail to make breathe."¹³ Mr. Walsh

continued to press Dr. O'Leary, asking if a heartbeat was evidence of life, to which Dr. O'Leary replied "yes". Dr. O'Leary was seemingly contradicting himself from one statement to the next. He was finally forced to admit that the "authorities disagreed over the meaning of stillborn".¹⁴ Despite this admission, no leeway was granted to Mrs. Kenny or to her lawyers regarding the registration and validity of the three infants in question. At no time were they given the benefit of the doubt, even though the will did not specify that the infants had to live beyond a given period of time.

The lawyers did not hold back on asking probing questions of Dr. O'Leary about the exact state of Mrs. Kenny's infants before they died. This approach was extremely insensitive to the feelings of Mrs. Kenny.

"Did this baby Patrick Joseph, show signs of life when delivered?" asked Mr. Walsh. "His heart was still beating and continued to beat for a few minutes," replied the doctor.¹⁵

Of the child, Frances Kenny, Walsh asked:

"Did the child breathe" asked his lordship. "No," replied witness. "Did the heart pulsate after the child was separated from the mother?" "Yes".¹⁶

Of the last child in question, Charles Vance Millar Kenny, the doctor said: "it was stillborn, I couldn't tell whether the heart was beating or not,....It didn't breathe."¹⁷ Throughout the testimony of Dr. O'Leary "Mrs.

Kenny was allowed to remain in court and sat alone weeping."¹⁸ This must have been a traumatic experience for Mrs. Kenny. Not only were the most intimate details of her life being discussed in public but she was being forced to relive some of its most painful moments.

Another problem in Mrs. Kenny's case, was that on two of the registration forms, in answer to the question "Born alive?" the form had been marked "yes" and then later changed to "no". This could be explained, in part, by the fact that there was no medical consensus regarding the definition of stillborn.

During the afternoon session, not held in camera, the medical testimony continued. This time Mrs. Kenny settled into her seat accompanied by one of her young daughters. The newspaper reports conflicted as to the exact moment Mrs. Kenny left the courtroom and as to the way she did it. It would seem that she rushed from the court house screaming although one report says she was dragged out of the court house. Mrs. Kenny was, understandably, terribly upset by the hearings:

Rushing from the courtroom where Mr. Justice Middleton is presiding in to-day's "stork derby" hearing at Osgoode Hall, Mrs. Matthew Kenny, firey [sic] little French-Canadian entrant, shouted to astonished groups in the stately old corridors:
"They're treating me like a dog. I'm no dog. They're dogs. They can take the money and go to ---- "¹⁹

It is no wonder that Mrs. Kenny was so upset and felt that she was being treated like a "dog". It is only surprising that the newspapers had no sympathy for her. The members of the court were treating her like an animal, examining her reproductive capacities as if she had no human emotion, no sense of dignity, nor any feelings for the infants she had carried to full-term. One of the Evening Telegram articles reported that she was led to the door by two court officers and after exclaiming that "they can take the money" went on to say "I'm not drunk. I know what I'm doing. Look at this child is she still- born?" The more the officers tried to quiet her, the more Mrs. Kenny became upset. The report continued:

The shrieks of the infuriated woman, who smelled strongly of liquor were disturbing all court rooms and offices in the building and in a moment there was a large gallery....Sheriff's officers hesitated to lay hands on her. She struck back at them viciously when they attempted to take her arm....During the scuffle, Mrs. Kenny dealt at least half a dozen hard blows on the arms and bodies of the officers who showed great restraint in their tactics.²⁰

This report was, undoubtedly, somewhat embellished but it is clear where the sympathy of the reporter lay - and it was not with Mrs. Kenny. She may have had a few drinks during the noon recess after listening to the testimony of Dr. O'Leary which had been terribly stressful for her. This behaviour would not have been extraordinary for anyone after

such a stressful experience but it did not, of course, do anything to further her claim to the Millar money.

As Mrs. Kenny left the court room crying, she shouted to a waiting photographer, "Take my picture. What do I care? I'm through with this bunch. I'm getting out of here."²¹ The trial of evidence regarding Mrs. Kenny's claim finished on this day and Judge Middleton reserved his judgement until after he had heard the claims of Mrs. Clarke.

With the dawning of February 26, 1938, Mrs. Clarke found her life story splattered across the front pages of Toronto newspapers. The Home Edition of the Evening Telegram carried the headline "Madill Denies Threats to 'Mrs. X'", a headline that capitalized on one of the more sensational, though irrelevant moments of the hearing, that probably sold a great many papers. Essentially, Mrs. Clarke's lawyers stated that Mrs. Clarke's children were not illegitimate and that the only way to disprove this statement was for the other lawyers to demonstrate that Mr. Clarke could not have had access to Mrs. Clarke during the time that the children were conceived. For this reason, Madill, the supposed father of the youngest five of Mrs. Clarke's children, was called to the stand by Tilley. At this point, Madill and Pauline Clarke had been separated for a few months. Madill proved to be a lively witness, although not particularly useful to either side.

Mrs. Clarke was the first to take the stand and Mr. Tilley questioned her carefully, trying to determine her relationship with Madill and her relationship with her first child. It would appear, with respect to this issue, that Tilley was trying to demonstrate that Pauline Clarke was not a good mother. He questioned her as to the whereabouts of her first five children who carried the name of Clarke on their birth certificates. Mrs. Clarke replied that the oldest boy lived with her, that two of the girls were looked after by the aunt of Mr. Clarke and two of the children were adopted through the Children's Aid Society. This line of questioning was extraneous to the central issue, but Tilley was, nevertheless, given full rein by Middleton. Middleton did not acknowledge Mr. Cartwright's objection that only questions which tended to disprove misconduct could be asked, not ones that tended to prove misconduct.²²

Madill was asked to testify as a defense witness, to prove that Mr. Clarke could not have had access to Mrs. Clarke during the time that she lived with Madill. Initially, Madill said that there was no way that Mr. Clarke could have had access to Mrs. Clarke because he was with her all the time that they had lived together. He had been unemployed and so at home during most of this period. "I was with her constantly from the time she first left her

children,....On Dovercourt Road and St. Clair Avenue we lived together as man and wife.' admitted Madill."²³ Later on, under persistent questioning by Mr. Cartwright, Madill admitted that there had been periods in their relationship when they had not been together.

In an effort to prove that Mrs. Clarke had registered the children in Madill's name under duress, Cartwright questioned Madill closely about his relationship with Mrs. Clarke. He was looking for evidence of violence by Madill against Pauline Clarke, which he did find. Ultimately, however, this evidence did not make a difference to the case. Mr. Cartwright suggested that Mr. Madill had threatened Mrs. Clarke with a knife and a revolver in order to force her to register the children in his name. Madill replied that this was a lie but admitted to other "milder" offenses:

The witness [Madill], however, admitted striking the woman, giving her a black eye, and also said he broke down the door to her house in 1936.²⁴

One has to wonder with testimony like this, about the dire circumstances in which Mrs. Clarke lived. In all likelihood these children were the issue of Madill but it is not surprising that Mrs. Clarke was willing to try any tactic to get the Millar money and so secure her freedom. It certainly makes one question the validity of her repeated statements that she had given birth to all of these children

out of love. She no doubt said this publicly to try to maintain at least a shred of dignity. Her story did not make her the most respectable of people in middle class society and would furthermore, have gained her no sympathy. She did not need more people telling her that she was "disgusting" for participating in this competition.

On the evening that Madill broke into Mrs. Clarke's house, he had chased her out on to the street in her night clothes. This incident occurred after Pauline Clarke had told him to leave in March of 1936. It was used in the hearing as evidence of Madill's capacity to intimidate but did not pertain directly to the issue of "non-access". There was, however, no feeling that this evidence might be painful and embarrassing for Mrs. Clarke to have aired publicly. Madill continued that "he had been given a revolver by his brother to sell for him, but declared that he had never used it to intimidate Mrs. Clarke nor had he thrown a knife at her as Mr. Cartwright had hinted."²⁵ Judging on Madill's past statements, his words were not easily believed. This whole testimony was at best peripheral to the point at hand.

Madill also said that he had drawn up an agreement with Mrs. Clarke, that she had signed, stating that he would share in the Millar prize money. He had later lost the agreement. Unbelievably, the court room was filled with laughter as Madill spoke of this agreement. There seems to

have been absolutely no compassion for Mrs. Clarke's predicament. She had, through her "immoral" behaviour transgressed the bounds of forgiveness and understanding.

"I made it out myself," said Madill amidst laughter, in which witness joined. Madill caused further laughter when he added, with regret, that he had lost the agreement.²⁶

Before the day ended, Mr. Cartwright attempted to get the child that had been born just outside the city limits to be considered in the competition. To prove his point, he called a postman to the stand who stated that as a postman who delivered on the given street, he considered it within the city limits. Middleton, however, would not for even a moment entertain the idea and dismissed further evidence on this issue.

In his closing remarks for the day Judge Middleton did sound a clear warning that Mrs. Clarke was unlikely to win her claim. It is apparent from the following quotation that Middleton felt Mrs. Clarke would lose her claim not because of the discrepancy over the number of her children nor because of the illegitimacy issue. Rather, Middleton felt that she would lose her claim to the money because of her inappropriate behaviour.

"The whole conduct of Mrs. Clarke throughout discredits her position," commented Mr. Justice Middleton as the hearing concluded with the final disposition of the \$500,000 still undecided.

Mrs. Clarke, he said, had turned, her back on her children, and had deliberately tried to

abandon them.²⁷

Middleton's comments demonstrated a complete lack of understanding of Mrs. Clarke's predicament. She had not "abandoned" her children but had farmed them out to various relatives and to the Children's Aid Society. This was a common practice for the time, a strategy employed by poor people to cope with poverty. Families that did this, hoped that their children would find better lives and more opportunity in the homes of their adoptive parents. On several occasions, Mrs. Clarke had expressed her desire to get her children back. She could not, however, support them at that time. It must be remembered that she was only twenty-four years old and, once again single.

Before the day ended Mr. Cartwright took the floor once again and reiterated his contention that Mrs. Clarke's children were not illegitimate. To this Justice Middleton replied, "It is well known that evidence proving adultery is not anything sufficient to prove illegitimacy."²⁸ Despite this statement, which supported the notion that Mrs. Clarke's relationship with Harold Madill did not necessarily make her children illegitimate, it is clear that Middleton was suspicious of Cartwright's arguments. Mrs. Clarke, at this stage, had only a sliver of a chance at receiving a share in the money.

In his final remarks, Mr. Tilley (lawyer for the Millar will executors and the four mothers already in the winners'

circle) asked Justice Middleton to find "that there had been no sexual intercourse between Mr. and Mrs. Clarke during the period when her five youngest children were conceived."²⁹

Mr. Tilley asserted that, as Mrs. Clarke was not a woman of loose morals, she would not have had sexual relations with two men at the same time, especially when living in her father's house, as she was when she was with Mr. Madill. Strangely enough, Tilley argued that to find Mrs. Clarke's children legitimate would turn her into an object of moral scorn because that would mean she had been sexually involved with two men at the same time. To award her the money would therefore be an "outrage on decency."³⁰ If Mrs. Clarke's children were deemed illegitimate and she did not receive the money, it could be assumed that she had two monogamous relationships, one with Mr. Clarke and later another with Mr. Madill. This scenario, Tilley implied was more morally acceptable. This was quite a shocking discussion for the front pages of local newspapers. It lent support to the notion that the Stork Derby was cause for moral outrage and Tilley used these attitudes as fuel for the fire in his case against Mrs. Clarke.

At that point Middleton closed the hearings for the weekend and reserved judgement on Mrs. Clarke's case. The hearing ended having unearthed more new questions than it had resolved. Everyone involved and the thousands of

vicarious participants had to wait through Sunday until they could learn more of the case.

On March 1, 1938 the hearings resumed after a day's recess. This time, it was Mrs. Kenny's case that was again the focus of attention. The judgement on Mrs. Clarke's case had been postponed. Mr. Walsh, as council for Mrs. Kenny, contended that Mr. Millar had intended to include children living and dead in the competition. He drew on the terms of the Vital Statistics Act to support his case.

"I say, my lord, that the will meant both the living children," argued Mr. Walsh. "The act directs that every child shall be registered. It says that living new born children have to be registered and we contend it includes children, living, dead, or still born."³¹

Middleton's response to this statement revealed some of the biases that he brought to this case and to his decisions regarding it. Middleton tried, in certain respects, to be fair to the mothers during the hearings. He attempted to move the case as quickly as possible and so avoid too much publicity and too much money going to legal fees. He did, however, also have strong ideas about what type of people the winners should be.

"'I have been receiving some free advice through the mail regarding matter,' [sic] his lordship told Mr. Walsh. 'It is cheap advice sent by cheap people on one-cent postcards instead of two-cent cards. The senders believe the mothers [sic] agonies of birth should be considered. I do not believe Mr. Millar meant dead children. I rather believe

his desire was to increase the population' laughed the court."

This statement lends even greater credence to the conjecture that Mr. Justice Middleton was not above the same class prejudices that had turned so much of the community against the Stork Derby contestants. Middle'on's words also makes suspicious the fact that all but one of the winners were of white, protestant extraction and that two of the four families had held steady jobs during the Depression.

Mr. Walsh was unable to get anywhere in trying to further Mrs. Kenny's cause, it seemed that the Judge and the executors were set against her receiving any of the money. Leaving the issue of the stillborn children, Walsh tried to persuade Middleton to order the late registration of two of Mrs. Kenny's other children. Walsh was however unsuccessful in attempting to prove even the existence of these children.

There was some confusion as to the actual claims of Mrs. Kenny and it is difficult even with the aid of hindsight, to sort them out. It would seem that Mrs. Kenny had six children who were unquestionably eligible for the competition, two more children who were living but unregistered, and three children who had been stillborn. If all were accepted, she would be the indisputable winner with a total of eleven children. There seems to have been one more child who Mrs. Kenny claims was a twin but of whom the doctor denied existence. Mrs. Kenny and her lawyer did not

push very hard to have this child claimed. The battle was, perhaps, perceived as impossible considering Middleton's open disapproval of Mrs. Kenny and her lifestyle.

It was this same prejudice against Mrs. Kenny which may have prevented the Provincial Secretary from retroactively registering the Kenny children and that caused Middleton to support this decision. It was within the Provincial Secretary's power to register the children but on his affidavit to the court he wrote that "it did not appear wise to me to exercise my discretionary powers of granting registration."³² He did not give any reason why he did not deem this action as "wise". Perhaps he feared that a host of other mothers might demand late registration or perhaps he simply felt that Mrs. Kenny was unworthy of such a prize.

The mandamus order submitted to Middleton had compiled significant evidence as to the existence of these children. Mrs. Kenny and her lawyer had compiled the testimony of 20 people regarding the birth and survival of Mary Kenny, born on June 16, 1930 and Joseph Kenny born on July 12, 1931. The mandamus order also contained several statements by Mr. and Mrs. Kenny and the older Kenny children attesting to the birth of these children. The sworn statements were from neighbours, old family friends, relatives, and local merchants. Middleton said that he considered this material although it was not "strictly evidence." He must not have given it very serious consideration.

Written in pencil on the front of the archival document of the mandamus order were words to the effect that the Catholic Charities and the Department of Health had no records of the birth and of these two children. Whoever went through the order and scratched this message across the front (was it Middleton?), distorted the evidence contained within it. The words were perhaps emblematic of how this evidence was received by those who read it. The testimony of the Kenny's neighbours regarding the existence of their two children was worthless because there was a predetermined belief that she should not win.

Contained within the mandamus order was a letter from the Medical Health Officer dated April 28, 1936. The officer stated that his office had no records for the birth of any of the Kenny children between May 15, 1929 and March 12, 1932. This was a statement of the obvious. The children were not recorded because they had been born at home with no doctor in attendance. The letter from the Catholic Charities could have been better used to support Mrs. Kenny's case yet it was used to detract from it. The statement ran as follows:

O'Gorman, Leila- Catholic Welfare Charities-
July 20, 1930 - states Kenny family is known
to Bureau from October 1924 to 1930 -gives
list of children ending with Juliette born
1929-further states that entry dated January
13, 1930 states that Mrs. Kenny is said to be
pregnant.

The office had no record of the births because their records ended before the children were born and therefore should not have been used as evidence against Mrs. Kenny. Moreover, the pregnancy mentioned in this letter coincided with the birth of Mary Kenny six months later. Another doctor who attended to Mrs. Kenny at her house on May 15, 1931 due to an injury she had sustained, stated that his records of the visit showed that Mrs. Kenny was approximately six months pregnant. This statement essentially gave credence to the existence of Joseph Kenny as he was born about two months after the visit of this doctor. It would seem that Judge Middleton did not accept these statements and allow for the late registration of the two Kenny children not because the evidence was inadequate but because he did not want Mrs. Kenny to win.

Mrs. Kenny stated that the children were not registered because they were not born at the hospital. Mrs. Kenny had not wished to go to the hospital for the birth of Mary on June 16, 1930 but several neighbours persuaded her to go and summoned an ambulance (many neighbours verified this in their statements). Mrs. Kenny, however, left after a few hours and gave birth to the child at home. When Joseph was born on July 12, 1931, they were unable to find a doctor so a neighbour attended to Mrs. Kenny -both the neighbour and her husband supported this statement. Mrs. Kenny also said in her declaration that "it was not until two or three years

after birth of Joseph that question of Millar will came up and she began to look into the registration of the children and found that Mary and Joseph were not registered."³³ This was a perfectly reasonable explanation for why the children had been unregistered but Middleton was unwilling to accept it.

The last irony regarding the issue of the late registration was that the two children along with another sibling had been baptised at St. Michael's Cathedral in 1935. The baptisms were likely performed to help verify the existence of the children (because they were performed several years after their birth) but it is highly unlikely that the procedure could have been falsified. The record of their baptism still exists in the Church archives, but it would seem that nothing could change the mind of Justice Middleton.

Judge Middleton reserved judgement on both cases until March 21, 1938. The recess did little to change Middleton's mind as to the verdict. In the case of Mrs. Clarke, Middleton maintained that she was the mother of five children by one man and five by another. As it had been decided previously by Middleton and upheld by the Court of Appeal that the will was for only legitimate children, Mrs. Clarke was not eligible to share in the prize. And so ended the claim of Mrs. Clarke.

In making his ruling against Mrs. Kenny, Justice

Middleton, did not spare words in suggesting that Mrs. Kenny was at base, a liar.

I also very gravely doubt the birth to Mrs. Kenny of any such children. The conduct of Mrs. Kenny leads me to be exceedingly suspicious of her actions. I particularly refer to a previous demand made by her with reference to the birth of Frances Lillian, who was registered as a stillborn on May 8, 1928, and which at a later date Mrs. Kenny sought to have registered as twin children, Frances and Lillian, the doctor in charge stating that there was no doubt that only the one child was in existence at that time. The birth was single and not double. I would also draw attention to the extreme improbability of the existence of the birth of these unregistered children having regard to the dates of birth of the other children registered.³⁴

Middleton clearly held a prejudice against Mrs. Kenny as there was no real reason he should take the word of Dr. O'Leary over that of Mrs. Kenny regarding the existence of a twin. Middleton was asking O'Leary to remember a delivery that had taken place ten years prior to this hearing, a birth that would have been in no way extraordinary. In 1928, Mrs. Kenny was not known as a Stork Derby mother, the delivery of her children would have been just one of hundreds of routine births Doctor O'Leary attended. Even in his earlier testimony, regarding the stillbirths, he had admitted that the information he gave was based more on standard procedure than on a clear recollection of the births.

It is not particularly suspicious that Mrs. Kenny tried to correct the registration of these births several years after they had occurred. It was not until that time, that she became aware of the Millar race and recognized the need to have the births of all her children properly documented. Regarding the two unregistered children, Justice Middleton was being almost fraudulent in denying their existence. Ample evidence had been provided to demonstrate that the children were alive and there was no conflict with their dates of birth and those of the other children. Middleton could have reached a completely different conclusion regarding this matter based on the very same evidence but his class prejudice would not allow him to do this. If he had allowed for the late registration of Mary and Joseph Kenny and counted at least one of the stillborn children, Mrs. Kenny could have shared equally in the money. If he had allowed her all the children, she would have been the winner.

In his final summation of his reasons for disqualifying Mrs. Kenny, Middleton went into a lengthy discussion about why he believed that stillborn children could not be counted under the terms of the will. He stated that, "a child born dead is not in truth a child. It was that which might have been a child."³⁵ In Middleton's comment it is possible to see, yet again, the broad range of social concerns that became caught in the Stork Derby net. Middleton was here

essentially forced to pronounce his views on abortion because of the stillborn children involved in the Kenny case. He tried, however, not to get too involved in this issue because along with birth control, abortion was another contentious moral matter in the 1930s.

Middleton's rejection of the claims of both Mrs. Clarke and Mrs. Kenny meant that the Timleck, Nagle, Maclean and Smith families were ipso facto the winners of the Millar money. Middleton allowed costs to these families and to Mrs. Kenny but only partial costs to Mrs. Clarke. Middleton would only allow costs to Mrs. Clarke up until the time of the Appeal Court's decision to uphold Middleton's judgement that illegitimate children were excluded from the bill.³⁶ Clarke's lawyer protested this distribution of costs (the costs owing would have been a huge financial burden for Mrs. Clarke). McKeown objected on the grounds that they had not been contesting this particular judgement but were, rather, trying to demonstrate that Mrs. Clarke's children were legitimate under the eyes of the law. McKeown's protests, however, fell on deaf ears.

Soon after the rendering of these decisions an article appeared in the Toronto Telegram noting that notice had been filed by some of the Millar relatives for an appeal to the Privy Council in Britain regarding their right to share in the Millar money. Furthermore, Mrs. Clarke and Mrs. Kenny were to appeal their cases to the Supreme Court of Canada.

These appeals never reached fruition. The relatives simply dropped their claim, perhaps because they realized that they had only a glimmer of a chance to win, and Mrs. Clarke and Mrs. Kenny reached an out-of-court settlement with the four winning mothers. This agreement was announced on the front page of the Telegram on May 30, 1938 - two and a half years after the initial round of litigation.

Mrs. Kenny and Mrs. Clarke were awarded "consolation" prizes of \$12,500 each. The other mothers received cheques for \$100,000 each. The lawyers for the Kennys and the Clarkes said that they felt their clients deserved a good deal more money but the risk of proceeding with litigation and incurring further expenses was too great.³⁷ With this settlement, the mothers at least had a sum of money in hand.

In March of 1938 several articles about the winning Stork Derby families appeared in the Star. The articles were written by the popular Star staff writer, Gregory Clarke and he continued to write periodic articles about the Derby families until May of 1938. The articles painted rhapsodic visions of these families, their past struggles and the sensible way in which they were all handling their new found wealth. Gregory Clarke turned these once despicable families into visions of middle-class propriety. This is especially true of the Nagle and Timleck families who had been long time participants in the Derby. The MacLeans and Smiths never really faced public scorn because

they stepped forward at the last minute, and only then reluctantly, as Millar will claimants. Clarke described the winners as follows:

For of the four winners, one is a civil servant, and one a fireman, and an employee of the city parks department and the last a carpenter, a quiet, gentle man of Roman Catholic faith, who regards every child that comes to his home as a gift from God, for which he is most intensely and happily grateful.³⁸

If Clarke's articles revealed nothing else, they showed that Judge Middleton chose winners who conformed most closely to middle-class standards. This was, no doubt, a mixture of conscious and unconscious decision on Middleton's part. Gregory Clarke was, once again, extremely generous in his description of the homes of the winners. He described the Smiths' home as "a little house, trim, tidy, with pretty little girls being 'got ready' to go to Sunday School at St. Stephen's Anglican Church." The Nagles coming from much more difficult financial circumstances were favourably described, showing that they were struggling to maintain proper standards on a limited income. "It is a tiny little house, making no pretence to anything but the narrow circumstances in which the Nagles have been obliged to live for several years past."³⁹ Clarke praised Mrs. Nagle's ability as a housekeeper, noting that she was an expert on diet and that the "children played about, in a quiet and

order that would be an example to many a house with only two or three."⁴⁰

Articles appeared later when the Timlecks and the Nagles bought new houses. Once again the articles stressed the thrift of these families and the wise way in which they were handling their new-found wealth. The articles noted that the Derby winners had been plagued by the solicitations of advertisers and salesmen. Both families had got rid of these people by directing them all to their lawyer.

We have escaped all the plague of agents and promoters by absolutely refusing to discuss anything, even so much as a vacuum cleaner, by referring every agent to Mr. Russell. He, of course, handled the purchase of the house and made a wonderful bargain for us, as he did for Mrs. Timleck.⁴¹

The experiences of these winning families stands in stark contrast to that of Mrs. Kenny. Mrs. Clarke seemed to have simply disappeared after the settlement but Mrs. Kenny was harassed by people asking her for money. She also had to deal with more serious trials when her family home was burned down three times in the course of only a few months after the end of the competition.

Two fires within a week and charges of Mrs. Matthew Kenny that she had been hounded by persons seeking part of her Millar will money have brought an inquiry by detectives of the first fire marshall's office.⁴²

The second fire gutted the house and destroyed much of the "Toronto-in-miniature" set which Mrs. Kenny had spent

twelve years building. The Kennys were all out at the time. Mrs. Kenny said that a man had been around to the house asking for \$25.00 so he could go home to his wife and Mrs. Kenny told him to come back in a few months. She wondered if there was a connection between the fire and this man. She had \$400.00 in a trunk, which she had taken out from the bank to pay debts, which was also lost in the fire.

"'They're all after me, I'm going to move out of here.'"⁴³

And move they did, to a new home on Bathurst Street but this house was also burned in September, 1938 and \$2,000 worth of damage was done.⁴⁴ Mrs. Kenny was once again subject to suspicion when it was discovered a few days later that the house carried an insurance policy of \$2000. An inquiry into the fire was held.⁴⁵ Mrs. Kenny stated that Mr. Weldon, her lawyer, had arranged for the purchase of the house and that she was unaware of the policy that was included in the purchase of the house. Mr. Weldon verified this story.

During the inquiry into the fires the story of how the house came to be burned was recounted in a rather convoluted manner in the newspapers. It would seem that Mrs. Kenny and her husband were at the Canadian National Exhibition when a stranger approached her and told her that her son had been killed on his bicycle. This turned out to be untrue and when Mrs. Kenny arrived home, she changed her dress, went outside and hailed a cab to take her and several of her children to Niagara Falls. The investigator asked her if

she had been drinking, indicating that he suspected her of playing a hand in the fire. Mrs. Kenny was quite indignant and said that she had not been drinking. Mrs. Kenny, when questioned, said that she had never before collected any money for her lost items through an insurance policy.

The man conducting the investigation asked Mrs. Kenny if she did not think it strange that when she went home there was no fire, that she locked the doors when she left and that upon her return the house was on fire. Mrs. Kenny replied:

"No. I do not. People are telling lies. Pardon me if I get a little cranky. I am getting sick of this."⁴⁶

The results of the investigation were never reported in the paper but it is clear that Mrs. Kenny not only had to face the trauma of constant harassment and danger but was also still suspect in the eyes of the law. Mrs. Kenny had a big heart and could not, like the other winners, turn down all the requests for money. The taxi driver who was going to take her to Niagara Falls asked for \$25 for the trip and to bring his wife and child. He was a poor man so Mrs. Kenny gave him \$30.00.⁴⁷ Another time, she paid for the funeral of a man who had been hanged for murder. His old mother had come to the door saying that they had no money to give him a proper funeral and that no one would help them because of his crime. Mrs. Kenny paid for the funeral and even arranged for flowers to go to the gravesite.⁴⁸ Despite

her eccentricities, she was clearly a kind person who received terrible treatment throughout this whole event. These last stories about Mrs. Kenny brought with them the end of the Stork Derby. The winning and losing families faded out of the public eye and they were left alone in their attempt to restore a degree of normality to their lives.

ENDNOTES

Chapter V

1. Affidavit of Andrew Wentworth in the Supreme Court of Ontario. Archives of Ontario, RG 22, Matters 112/38, 1.

2. "May Split Stork Derby Prize Among 4: Throw Doubt on Claim of Mrs. Martin Kenny Over Still-Born Babies," Evening Telegram, 12 February, 1938, 1.

3. Ibid.

4. "Baby That Never Breathed May Win Mother \$500,00 Tallying 12 in Stork Race," Evening Telegram, 4 February, 1936.

5. "Executors Take Position That 'Stillborn' Not Eligible," Toronto Daily Star, 12 February, 1938.

6. Ibid.

7. The legal term "Mandamus" is defined in the Canadian Law Dictionary as "Mandamus: Lat: we command. A discretionary prerogative writ issued by a superior court and used to compel public authorities to perform their duties, to ensure the proper exercise of discretion, or to compel observance of the rules of natural justice where a duty to observe those rules is required by statute or can be implied. Before mandamus will be granted, the applicant must show (a) a sufficient interest in the performance of the duty; (b) proof that the duty is due to be performed; (c) proof that the duty is ministerial by nature, is imperative and not discretionary; (d) proof that there was a demand for performance of the duty and a refusal of that demand." John A. Yogis, ed. Canadian Law Dictionary, 2nd ed., (New York: Barron's Educational Series Inc., 1990), 135.

8. Ibid.

9. "Executors Take Position 'Stillborn' Not Eligible," Toronto Daily Star, 12 February, 1938.

10. "Mrs. Bagnato Unsmiling As Judge Draws Laugh," Evening Telegram, 12 February, 1938.

11. "Babies Didn't Breath Though Hearts Beat Says Kenny Physician," Toronto Daily Star, 25 February, 1938.

12. Ibid., 2.

13. Ibid.
14. Ibid.
15. Ibid.
16. Ibid.
17. Ibid.
18. "Another Round Comes Up in Stork Race Court Fight With \$500,000 As Reward," Evening Telegram, 25 February, 1938, 2.
19. "Mrs. Kenny Quits Will Trial Much Peeved," Evening Telegram, 25 February, 1938, 1.
20. "Hear Claims Of 'Mrs. X' For Share In \$500,00 Left By Charles Millar," Evening Telegram, 26 February, 1938, 2.
21. Ibid.
22. "Hears Claim Of 'Mrs. X' For Share In \$500,000 Left By Charles Millar," Evening Telegram, 26 February, 1938, 2.
23. Ibid.
24. "Madill Denies Knife Threats to 'Mrs. X'," Evening Telegram, 26 February, 1938.
25. Ibid.
26. Ibid.
27. "Share of Baby Derby Money Promised Him Madill Tells Court," Toronto Star Weekly, 26 February, 1938.
28. "Counsel For Mrs. Clarke Holds No Proof provided Children Not Legitimate," Evening Telegram, 28 February, 1938.
29. "Will Executors' Counsel Attacks Claim Of 'Mrs. X'," Evening Telegram, 28 February, 1938.
30. Ibid.
31. "Flood of Advice Postcards Sent to Baby Derby Judge," Toronto Daily Star, 1 March, 1938, 3.
32. "Kenny and Clarke Claims to Money Rejected," Toronto Daily Star, 21 March, 1938.

33. Records of the Office of the Attorney-General, Archives of Ontario, RG4 , Series 32, no.75, April 1938.

34. "Kenny and Clarke Claims To Millar Money Rejected," Toronto Daily Star, 21 March, 1938.

35. Ibid.

36. "Full Millar Case Costs Granted 5 Baby Racers Mrs. Clarke Gets Part," Evening Telegram, 21 March, 1938, 3.

37. "Mrs. Kenny and Mrs. Clarke Get \$12,500," Evening Telegram, home edition, 30 may, 1938, 1.

38. "Beneficiaries Won't Let Millar \$500,000 Spoil Spark of Happiness," Toronto Daily Star, 21 March, 1938, 3.

39. Ibid.

40. Ibid.

41. "Only Old Clock Given By Priest Kept By Nagle," Toronto Daily Star, 10 September, 1938.

42. "Kenny House Fired Again 'Obviously Incendiary'," Toronto Daily Star, 12 July, 1938.

43. Ibid.

44. "Fire Again Damages Home Occupied By Kenny Family," Toronto Daily Star, 6 September, 1938.

45. No record of this inquiry was found in the records of the Office of the Fire Marshall, Fire Marshall Investigation Reports for September and October, 1938. Archives of Ontario, RG 33, Series I8.

46. "Unaware House Insured Mrs. Kenny Tells Probe," Toronto Daily Star, 16 September, 1938.

47. Ibid.

48. "Mrs. Kenny Pays For Funeral of Bryans, Hanged For Murder," Toronto Daily Star, 2 July, 1938.

CONCLUSION

In modern times as well as throughout history the topic of reproduction and all issues related to it have evoked strong emotion and strong comment. It was no different in the case of Canada in the 1930s although this period was perhaps particularly fraught with debate. Much of the discussion surrounding reproductive issues was carried out in the newspapers and the courts of the country. Attitudes towards the subject were at once ambivalent and strident.

The sexual liberalization that had occurred after World War I, the increasingly common use of birth control devices and the continuing burgeoning of women's rights fuelled the heated debate about reproductive issues. The Stork Derby focused these concerns and this was one of the reasons for its popularity. People followed the event because the decisions rendered in the case carried moral implications for all of Canadian society.

This avid interest in the moral implications of the story was combined with a purely voyeuristic impulse. The circus-like development of the Stork Derby made it well-suited to vehicles of popular culture. For all those following the story, the Derby provided a diversion from a time of terrible despair.

The Stork Derby, in some respects, became an allegory for life in the Depression or at least a sort of fairy tale

in which, as was often the case, the darker side was ignored. A poor family was given, through strange circumstances, a chance to rocket from abject poverty to unimaginable wealth. What story could provide better hope to a country lost in the misery of a severe economic depression? The insatiable desire for fantasy and escape through popular culture drove the Toronto newspapers to zealously pursue the Stork Derby story.

Millar could not have picked a riper decade in which to have his "joke" will take root. The trials and tribulations of the Derby families were front page stories and vied for space alongside news of the Dionne Quintuplets. People were eager to know the intimate details of the lives of these families.

As the Derby progressed, it moved from a world where it was viewed with mild bemusement into a world ripe with moral judgement and scorn. In 1932, when the government of Ontario attempted to take the money away from the competition, people were concerned about how this action would affect the legal sanctity of a Last Will and Testament. The people who cried out against this move were largely concerned about property rights. This concern never completely disappeared but it was superseded by eugenically-based fears about population control. These fears were present in the comments made by social reformers about the Derby, in the newspapers and sometimes by the contestants

themselves. In this manner, the Stork Derby became a divining rod for a host of moral issues in the 1930s.

Clearly, the Derby, though generally treated lightly in the press and in later accounts of the event such as in Mark Orkin's book, had serious implications for all those involved with it. The contestants who appeared early in the competition and who stayed in it the longest were poor working class people. They were families in which the fathers were unemployed and the Millar money was seen as the only way to lift them from their dire circumstances. Some of the poor families earned a little money during the race through publicity and advertising contracts, but even this small monetary reward brought with it public scorn. Many of the really poor families that had paraded through the newspapers went unrewarded. One can only guess at the hardship faced by these large families once the hope of a windfall had been dashed.

The winners of the race were largely those who lived up to middle class standards. They were the families who had avoided publicity by waiting to the last minute to enter the contest. They were families in which the fathers were employed and in three out of the four families were of the Protestant faith. Three elements weaved together to create this story: the development of a moral panic around the Stork Derby; the circus aspect of the media coverage including the public/private dynamic; and the legal cases.

The emerging theme in the paper has been that class, gender and ethnic dynamics played a large part in the unravelling of the Millar Will. The Stork Derby has served as a means to illuminate some of the more hidden attitudes in Canadian society in the 1930s.

Upon examination of this event it has become clear that the biggest variable in the Millar will equation was class, as opposed to gender or ethnicity. This is a somewhat surprising fact as on the surface one would think that gender would have been the most relevant characteristic. This study lends further evidence to the historical argument that it is impossible to deal separately with these mutable and intrinsically connected categories. The category of gender is obviously essential to this discussion as the competition was specifically engineered for women and also because the Stork Derby women were the centre of attention throughout the event. Although class was the biggest factor in determining the outcome of the race, the influence of class was tempered by that of gender. By the very nature of the competition the middle class expectations that were placed on the women were specific to their gender. They were expected to live up not simply to an ideal of femininity but to a middle class ideal.

The competition, of course, took a higher toll on the participating mothers than it did on the fathers. The mothers bore the physical effects and the responsibilities

of the primary caregiver but the financial and emotional burden of such large families was carried by both parents. The decision to participate in the competition was controlled largely by economic factors and not necessarily by the desires of the patriarch.

The competition was designed by a man from the upper class of society and the ultimate decision as to who got the money was determined by members of the very same class. Middleton did not heed the public suggestion of acknowledging the difficulties of child birth and counting mothers of stillborn children. Instead, he disqualified the mothers of stillborn children who were also the more flamboyant and outspoken characters in the race. Middleton, in fact, trod on thin legal ground in doing this, as some of the winning families had in their count children that were no longer living. Middleton never mentioned this, nor did anyone question the way in which Middleton determined how long a child had to live to be counted in the competition. Several of Mrs. Kenny's children gave clear signs of life at birth but they did not count whereas Mrs. Timleck's child who died at six months was counted. In this case, with no direct legal precedent, Middleton was forced largely to go on his personal judgement in which it would seem lurked many prejudices.

The growing moral concerns about the Stork Derby also had class interests at their base. As already established,

motherhood was celebrated in the post-war world and growing attention was paid to the skills of mothering and the administration of child development. Mothers were encouraged to have children but this was not blanket encouragement. The advice of child care experts was aimed at a specific group of mothers. As demonstrated in this paper individuals such as Dr. Helen McMurchy, Margaret Sanger, Alfred Tyrer and Reverend Claris Silcox wanted the upper classes of the population to reproduce and the lower classes to control their rate of reproduction. This was the cause for the growing criticism of the Stork Derby. Few people seized on the intrinsically exploitive nature of the competition in their protests, most rather grasped on to a concern about the type of people in the competition. This "type" was despised because they were unemployed or poor, in some cases foreign, and perceived by reformers and their sort as uneducated.

In this way it is possible to see that the Stork Derby and the manner in which it came to be perceived had connections with a much wider body of thought than simply a concern over this one event. In particular, the Derby struck fear into the hearts of people associated with groups like the Canadian eugenics movement. Attitudes towards the Derby were perhaps representative of a larger discriminatory belief system that was spreading throughout the western world during the inter-war period.

The ultimate division of the money reflected these concerns and sent out the message that those who adhere to middle class standards shall be rewarded in society. Mrs. Kenny and Mrs. Clarke managed to get some of the money because of their tremendous determination. If they had not insisted on pursuing the case they would have been disqualified in the first round of the hearings. The lifestyles of these two women and their families constituted a flagrant violation of middle class standards which made their struggle tumultuous and difficult.

Mrs. Kenny gave much of her money away out of the kindness of her heart and was also subject to a great deal of harassment after the competition was over. Mrs. Clarke, perhaps wisely, simply disappeared. The other families received rhapsodic praise for their behaviour and benefitted tremendously from the money, gaining new homes and new chances at life. The lawyers walked away with a sizeable piece of the Millar will fortune in their pockets and a feather in their cap for their performance in this large and dynamic case. The government was satisfied with a large amount of money in succession duties and the local government got money in the repayment of relief from some of the winning families. Justice Middleton retired in peace. So, who, one must ask, were the real winners in this competition? It would seem that the winners were those who were most economically advantaged at its inception.

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