YOU AIN'T MY BABY DADDY: THE PROBLEM OF PATERNITY FRAUD AND PATERNITY LAWS

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INTRODUCTION

Men are trading in parental status for money and doing so with the permission of the courts. In *R.A.C. v. P.J.S.*,[1] the New Jersey Superior Court allowed such behavior by construing the discovery rule to allow a victim of paternity fraud to pursue a claim for the reimbursement of child-rearing expenses against the biological father of the child.[2] The August, 2005, decision held that this statutory right—to sue the biological father for reimbursement of certain funds expended in the raising of the child—extended even to some expenditures after the child had reached the age of majority.[3] The facts of *R.A.C.* deviated from the majority of paternity disputes in that the child was thirty years old at the time of the proceedings and had been raised exclusively by the mother and R.A.C., who was not the biological father.[4] Rather than centering its decision on the family unit and the bond between father and son, the court focused on the fraud perpetuated by the mother and biological father and utilized equitable tolling to allow the putative father to bring suit thirty years after the birth of the son.[5] By construing statutes in ways that allow such results, courts effectively encourage men to question the paternity of their children and to seek remedies that will be harmful to the children.

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1. 880 A.2d 1179 (N.J. Super. Ct. App. Div. 2005).
2. *Id.* at 1188.
3. *See id.* at 1189.
4. *Id.* at 1183.
5. *Id.* at 1188.

Paternity fraud occurs when a mother makes a representation to a man that the child is genetically his own even though she is aware that he is not, or may not be, the father of the child.[6] Paternity fraud has existed for centuries[7] and has become a widespread problem today. At common law, paternity was presumed when the man was the husband of the mother,[8] but modern courts have begun to abandon such an approach.[9] Under the common law, any child born into an existing marriage was presumed to be the legitimate child of the husband, absent certain circumstances.[10] This presumption was not absolute, but rather a rebuttable presumption, provided that the husband could demonstrate contrary evidence. More specifically, a man would have to prove that his parenting the child was impossible by demonstrating sterility, lack of access during the conception period, or impotence.[11] By allowing the man to contest paternity without a showing of these traditional means of refutation, the *R.A.C.* decision demonstrates how far the courts have moved since the days of the common law.[12] The move away from the common law presumption is a positive step due to modern technology and the protection of a putative father's rights, but moving too far will result in negative effects such as the destruction of households, especially as children are left confused about their true parentage. The courts must reach a middle ground between the harsh presumption of paternity and the lax modern rules that allow suits to be pursued at almost any time after the birth of the child. The courts must balance the rights of the putative father with those of the child in order to develop a law that is fair and that will enable children to be happy and healthy members of society. As discussed in this Note, current paternity laws are failing in their purpose, and new laws must be enacted to protect the interests of the children. This Note proposes that a shortened statute of limitations (eighteen months) would alleviate the problems

6. *See, e.g.*, Betty L.W. v. William E.W., 569 S.E.2d 77, 87 (W. Va. 2002) (Maynard, J., dissenting).

7. *Cf.* Janet L. Dolgin, *Choice, Tradition, and the New Genetics: The Fragmentation of the Ideology of Family*, 32 CONN. L. REV. 523, 527 (2000) (explaining how courts determined paternity for centuries before modern technology).

8. *Id.* at 527.

9. *See* Clay v. Clay, 397 N.W.2d 571, 580 (Minn. Ct. App. 1986) (Randall, J., concurring in part, dissenting in part).

10. *See, e.g.*, Dolgin, *supra* note 7, at 527.

11. *See, e.g.*, Miscovich v. Miscovich, 688 A.2d 726, 729 (Pa. Super. Ct. 1997).

12. R.A.C. v. P.J.S., 880 A.2d 1179 (N.J. Super. Ct. App. Div. 2005).

associated with paternity fraud by providing the putative father ample time to file his suit but not allowing him to file his suit at such a time that it might endanger the child's social and mental well-being.

This Note addresses the trend away from the strict common law presumption of paternity and toward the laxity demonstrated in *R.A.C.*, and it discusses how to minimize the negative effects of this shift. Part I summarizes the common law notions of paternity and the rationale behind the presumption of paternity. Part II briefly summarizes the Supreme Court's rulings that define paternal rights and then gives a brief overview of the prevailing methods of analysis in state courts. Finally, Part III sets forth a proposed framework for paternity disputes based on psychological studies of child development and on the significance of breaking the father-child relationship. More specifically, Part III argues for a statute of limitations for paternity fraud claims that is in the best interest of the child and concludes that an eighteen-month statute of limitations would provide the best balance between the interests of the child and those of the putative father.

I. PATERNITY FRAUD IN THE COMMON LAW

A. *Presumption of Paternity*

Paternity fraud is not a modern concept—it is probably as old as paternity itself. In the days of the common law, British lawmakers addressed the issue despite the lack of modern technology and genetic testing. One of the oldest British laws concerning paternity was entitled, "Acte for the setting of the Poore on Worke, and for the avoyding of Ydleness."[13] This law mandated that illegitimate children be provided for by the putative father.[14] In many cases, the offered proof of paternity was the mother's oral testimony.[15] Accordingly, if the genitor could be determined, he would be located and forced to pay child support.[16]

In order to avoid controversy, the common law utilized the "presumption of paternity" doctrine, which stated that any child born

13. 18 Eliz., c. 3 (1576) (Eng.).

14. *Id.*; *see also* Alan Macfarlane, *Illegitimacy and Illegitimates in English History*, *in* BASTARDY AND ITS COMPARATIVE HISTORY 71, 75 (Peter Laslett et al. eds., 1980).

15. *See, e.g.*, HARRY KRAUSE, ILLEGITIMACY: LAW AND SOCIAL POLICY 105 (1971).

16. *Id.*

into a lawful marriage was presumed to be fruit of the marriage.[17] Such a presumption served to make certain that children were legitimate and to clarify whose duty it was to care for them.[18] Although there were several policy rationales behind the common law presumption, lawmakers were primarily concerned with avoiding the title of "illegitimate," which would deprive the child of inheritance and succession.[19] The promotion of "peace and tranquility of States and families"[20] served as a secondary rationale for the presumption. In order for children to inherit, it had to be proven that the children were born of the man whose estate was at issue and that he left no contrary intention in his will.[21] As Samuel von Pufendorf further states, the main proof of legitimacy is marriage; because a woman's fidelity to her husband is presumed, any child born to a woman is presumed to be the child of her husband.[22]

B. *Rebutting the Presumption*

Although the common law utilized a strong presumption of paternity, it was a rebuttable presumption. If the husband could prove impossibility, then the presumption could be successfully rebutted.[23] To prove impossibility under the traditional common law, a man had to show sterility, impotence, or non-access during the period of conception.[24] As Blackstone stated: "[I]f the husband be out of the kingdom of England (or, as the law somewhat loosely phrases it, *extra quatuor maria*) for above nine months, so that no access to his wife can be presumed, her issue during that time shall be bastard."[25] Without such evidence, the child was conclusively presumed to be legitimate and the husband was presumed to be the father.[26]

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17. 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *445.

18. *See id.* at *443.

19. Michael H. v. Gerald D., 491 U.S. 110, 125 (1989).

20. *Id.* (quoting JAMES SCHOULER, A TREATISE ON THE LAW OF THE DOMESTIC RELATIONS § 25, at 304 (Boston, Little, Brown & Co., 3d ed. 1882)).

21. 4 SAMUEL VON PUFENDORF, OF THE LAW OF NATURE AND NATIONS 432 (Basil Kennett trans., The Lawbook Exch., Ltd. 4th ed. 2005) (1729).

22. *Id.*

23. 1 BLACKSTONE, *supra* note 17, at *445.

24. Miscovich v. Miscovich, 688 A.2d 726, 729 (Pa. Super. Ct. 1997).

25. 1 BLACKSTONE, *supra* note 17, at *445.

26. *Miscovich*, 688 A.2d at 729.

C. *Duties Owed to Illegitimate Children*

Legitimate children enjoyed the full rights of being heirs of their fathers. However, an illegitimate child was stripped of any inheritance rights.[27] An illegitimate child could only acquire throughout his life, never inherit, because the law perceived such children as *fillius nullius*, or the son of nobody.[28] Furthermore, if a child was not only an illegitimate child but also born out of wedlock, then he also lost any right to support from the father.[29] Thus, the common law instituted the concept of the presumption of paternity to avoid labeling children illegitimate and stripping them of their rights.[30]

Even if the presumption was successfully rebutted, it did not cure the presumed father of his paternal responsibilities. The common law viewed paternal love so highly that to take away the care and devotion of a father from his child would be to make impossible and unintelligible a social life.[31] If the child had been born during the marriage of the presumed father and the mother, then the father still owed the duty of maintenance to the child.[32] Pufendorf defines the duty of maintenance as education, nourishment, protection, information, and governing so that the child may be useful to society and learn to be self-reliant.[33] Through the duty of maintenance, a father derived his dominion over his children.[34] Thus, in order for a family unit to maintain stability, a father needed to maintain the children in his house such that he could hold them under his dominion.

The common law forced a strict policy on fathers via the presumption of paternity. Rebuttal was a difficult task without the testimony of the wife, and if a marriage was involved, maintenance was still required. Although the child may not have belonged to the presumed father, the common law recognized that the child still needed a father and support. As Pufendorf stated: "For what Reason

27. 1 BLACKSTONE, *supra* note 17, at *447.
28. *Id.*
29. *Id.*
30. *See* Michael H. v. Gerald D., 491 U.S. 110, 125 (1989).
31. 4 PUFENDORF, *supra* note 21, at 601.
32. *Id.* at 428.
33. *Id.* at 603.
34. *See id.*

is there that the poor innocent Infant should be suffer'd to famish for another's Sin?"[35] Pufendorf and Blackstone demonstrate that the makers of the common law focused on the well-being of the child by enforcing the presumption of paternity to preserve the rights of children and by enforcing the duty of maintenance to ensure that children became functioning members of society.[36]

II. MODERN TRENDS IN PATERNITY FRAUD

A. *Paternal Rights in the United States Supreme Court*

The issue of paternity fraud has generally been left to the states to determine their own theories as to its resolution. The United States Supreme Court, however, has ruled in five major cases and defined specific paternal rights under the Constitution. Although these cases do not directly discuss paternity fraud, they do demonstrate the constitutional meaning of paternity and the rights of a father, and they also illuminate what is at stake during paternity fraud disputes.

In *Stanley v. Illinois*,[37] a single father challenged an Illinois law mandating that children of unwed fathers become wards of the state upon the death of the mother, whether or not the father was a fit parent.[38] Stanley, the father, contended that the Illinois law violated his constitutional right to equal protection because mothers were given greater protection than fathers.[39] The Court held that *all* parents are entitled to a hearing before their children are removed from their custody.[40] The Court reasoned that separating children from fit fathers does not advance any legitimate state interest;[41] and that the state violates any interest it may have in maintaining families by making irrelevant a father's fitness.[42] Thus, fathers have custodial rights of their children and the right to a fair hearing should the state bring a parental fitness challenge.

35. *Id.* at 428–29.
36. *Id.* at 428; 1 BLACKSTONE, *supra* note 17, at *443.
37. 405 U.S. 645 (1972).
38. *Id.* at 646.
39. *Id.* at 646–47.
40. *Id.* at 658.
41. *Id.* at 652–53.
42. *Id.*

The Court's next major case was *Quilloin v. Walcott*,[43] in which a father challenged a Georgia law that allowed a child to be put up for adoption with only the consent of the mother and not that of the father.[44] In the case, the father failed to legitimate the child for eleven years.[45] It was not until the mother married and her new husband filed a petition for adoption that Quilloin asserted his paternal rights.[46] Under the Georgia law, if a father failed to legitimate his child, then only the mother was recognized and given parental rights.[47] The Court held that Quilloin's substantive due process and equal protection rights were not violated by the law.[48] According to the Court, adoption merely gave recognition to a family unit already in existence, a result that is desired by all, and thus, Quilloin's due process rights were not violated.[49] Furthermore, Quilloin had never shouldered the burden of rearing the child and failed to exercise such responsibilities for eleven years.[50] Thus, under Supreme Court jurisprudence, a father may only exert paternal rights if he has shouldered his paternal burden as mandated by law.

The next year, the Court decided *Caban v. Mohammed*, in which a father challenged a New York law that allowed a natural mother and stepfather to adopt the children of the natural father without his consent.[51] The Court held that the statute was unconstitutional because the distinction between unmarried fathers and unmarried mothers did not further a legitimate state interest.[52] The Court reasoned that even though adoption may be in the best interest of the child, gender-based distinctions of parents do not serve to further that interest because such distinctions are not reasonable and violate the Equal Protection Clause.[53] Thus, fathers' rights are equal to those of mothers in adoption proceedings only if the father has created a "substantial relationship with the child and admitted paternity."[54]

43. 434 U.S. 246 (1978).
44. *Id.* at 248.
45. *Id.* at 249.
46. *Id.* at 247.
47. *Id.* at 249.
48. *Id.* at 256.
49. *Id.* at 255.
50. *Id.* at 249, 256.
51. 441 U.S. 380, 381–82 (1979).
52. *Id.* at 382.
53. *Id.* at 391.
54. *Id.* at 393.

The Supreme Court's next major paternity ruling was *Lehr v. Robertson*, in which a father challenged an adoption hearing because he had not been given advance notice.[55] A New York state law provided for a putative father registry in which a father could submit his name to ensure that he would receive notice of any adoption proceedings.[56] The natural father had never entered his name in the state registry to legitimize his claim, and he had rarely seen his daughter or supported her.[57] New York law stated that a father who did not meet certain criteria defined in the statute had no right to notice of adoption proceedings if he had not registered as the child's father.[58] The Court held that where one parent had established a relationship with the child and the other parent abandoned or never established a relationship with the child, the government could accord the parents different legal rights.[59] Thus, a state can lessen the paternal rights of a father if the father has not complied with state laws in claiming paternity of the child.

The final key paternity case is *Michael H. v. Gerald D.*,[60] which concerned a father's claim that California's presumption of paternity infringed on the natural father's right to claim paternity of the child born to a woman who was married to another man.[61] In this case, the mother was married to Gerald but had an affair and a child with Michael.[62] Gerald, however, was listed on the birth certificate and held the child out as his own.[63] Michael sought and was granted visitation rights.[64] Under California law, the husband, Gerald, was presumed to be the father of any child born into the marriage, as was the child in the instant case.[65] Gerald claimed that, under California law, the presumption of paternity precluded Michael from gaining visitation rights.[66] Michael appealed the California Superior Court's decision that denied him visitation rights, claiming the law violated

55. 463 U.S. 248, 250 (1983).
56. *Id.* at 250–51.
57. *Id.* at 251–52.
58. *See id.* at 250–51.
59. *Id.* at 267–68.
60. 491 U.S. 110 (1989).
61. *Id.* at 113.
62. *Id.*
63. *Id.* at 113–14.
64. *Id.* at 115.
65. *Id.*
66. *Id.*

his due process rights.[67] The Supreme Court held that the California law did not violate his rights as such suits would force a court to choose between the rights of an adulterous natural father and those of a marital father.[68] The Court held that such a decision as to whose rights should prevail is left to the discretion of the state.[69]

In sum, the Supreme Court has held: natural fathers are entitled to a hearing before their children are removed from their custody;[70] a natural father has no paternal rights if he has not asserted his paternal rights or seeks to disrupt an intact family unit;[71] a state may not distinguish between fathers and mothers based purely on gender;[72] states may afford a father less rights than a mother if he fails to legitimize and create a relationship with the child;[73] and states may decide whether a natural father's rights should prevail over a marital father's rights.[74] These are the limitations placed on natural fathers who *seek* paternal rights.

B. *Paternity Fraud in the State Courts*

Although the federal courts have determined what is to be included in paternal rights, it is generally left to the state courts to determine the legal doctrines used in paternity fraud and in the outcomes of the individual cases.[75] The states are left to deal with the determination of presumed fathers (fathers who were married to the mother during the time of birth), adjudicated fathers (men who the court has determined to be the father), and acknowledged fathers (men who have declared themselves to be the father). Although many courts still rule against the presumed fathers in paternity fraud cases, there has been a growing trend in courts to find for the presumed fathers and allow them to discontinue child support.[76] In some states, the presumed father can sue the biological father or

67. *Id.* at 116.

68. *Id.* at 130.

69. *Id.*

70. Stanley v. Illinois, 405 U.S. 645, 658 (1972).

71. Quilloin v. Walcott, 434 U.S. 246, 256 (1978).

72. Caban v. Mohammed, 441 U.S. 380, 394 (1979).

73. Lehr v. Robertson, 463 U.S. 248, 267–68 (1983).

74. *See* Michael H. v. Gerald D., 491 U.S. 110, 130 (1989).

75. *See Lehr*, 463 U.S. at 256.

76. *See, e.g.*, Cauthen v. Yates, 716 So. 2d 1256, 1258, 1261–62 (Ala. Civ. App. 1998); Ferguson v. State *ex rel.* P.G., 977 P.2d 95, 97 (Alaska 1999).

mother for child support reimbursement.[77] States have dealt with paternity fraud by employing a variety of theories, ranging from the antiquated presumption of paternity to the revised Uniform Parentage Act of 1997. Although many of these laws are applied in varying disputes, they will only be discussed in relation to paternity fraud disputes.

1. *Presumption of Paternity*

Some states continue to use the common law presumption of paternity by statutory enforcement.[78] For example, Pennsylvania has preserved the "pure" presumption of paternity, as demonstrated in *Miscovich v. Miscovich*,[79] a case that made headlines.[80] In *Miscovich*, the husband, Gerald, and his wife, Elizabeth, were divorced, and during the divorce proceedings Gerald never questioned the paternity of the child.[81] Two years after the divorce, when the child was four years old, Gerald and the child underwent genetic tests that confirmed that Gerald was not the biological father.[82] Gerald petitioned the court to vacate his child support payments. The court declined to remove the child support obligation and refused to admit DNA evidence because of the presumption of paternity and because the child was born during the marriage.[83] The appellate court affirmed the ruling of the trial court because Gerald had failed to rebut the presumption with clear and convincing evidence.[84] The court stated that, to overcome the presumption, Gerald needed to prove non-access to his wife during the time of conception, sterility, or impotence.[85] Thus, the Pennsylvania court upheld the common

77. *See, e.g.*, R.A.C. v. P.J.S., 880 A.2d 1179, 1188–89 (N.J. Super. Ct. App. Div. 2005); *cf.* State *ex rel.* P.M. v. Mitchell, 930 P.2d 1284 (Alaska 1997) (allowing a putative father to seek child support reimbursement from the state).

78. *See, e.g.*, Clay v. Clay, 397 N.W.2d 571, 575 (Minn. Ct. App. 1986); Miscovich v. Miscovich, 688 A.2d 726, 728 (Pa. Super. Ct. 1997); Godin v. Godin, 725 A.2d 904, 909 (Vt. 1998).

79. *Miscovich*, 688 A.2d at 728.

80. *See, e.g.*, Marylynne Pitz, *Fighting a 16th-Century Presumption of Paternity*, PITTSBURGH POST-GAZETTE, Feb. 21, 1999, *available at* http://www.post-gazette.com/regionstate/19990221father2.asp.

81. *Miscovich*, 688 A.2d at 727.

82. *Id.*

83. *Id.* at 728.

84. *Id.* at 733.

85. *Id.* at 729.

law presumption of paternity four centuries after its creation.[86] The presumption of paternity is alive and well in some state courts despite the ease of rebutting it with new scientific developments.

The presumption of paternity should be respected for the intent behind its creation—the desire to protect the child and the family.[87] In light of today's scientific breakthroughs, however, the presumption of paternity must be discarded, or at least amended, due to the inherent unfairness to the presumed father. When it is possible to determine true parentage, some courts continue to rely on a mere presumption based on circumstance. Thus, the presumption of paternity is an inadequate doctrine for modern paternity suits.

2. *Uniform Parentage Act*[88]

The Uniform Parentage Act ("UPA") also preserves the presumption of paternity.[89] Seven states have adopted the UPA.[90] This Note focuses specifically on Article 6 of the UPA, which covers adjudication of parentage.[91] However, section 201 is also pertinent because it defines the establishment of a parent-child relationship.[92] Section 201 states that a father-child relationship can be established in one of six ways: (1) an unrebutted presumption of paternity, (2) acknowledgement of paternity by the man, (3) adjudication of paternity, (4) adoption, (5) consent to assisted reproduction, or (6) an adjudication of a man as the father to a child of a gestational mother.[93] During the adjudication of parentage, the UPA does not require that

86. *Id.* at 728, 733; *see* Pitz, *supra* note 80 (stating that the presumption of paternity is rooted in sixteenth-century English common law).

87. 1 BLACKSTONE, *supra* note 17, at *443.

88. UNIF. PARENTAGE ACT (amended 2002), 9B U.L.A. 295 (2000). The National Conference of Commissioners on Uniform State Laws enacted the original version of the UPA in 1973 and revised the Act in 2000. *Id.* pref. note. Although both versions of the Act have had some acceptance in the states, this Note will only address the most modern version of the UPA, the 2000 revision.

89. *Id.* § 204.

90. Delaware, North Dakota, Oklahoma, Texas, Utah, Washington, and Wyoming have adopted the UPA (2000). The Act has been introduced in Nevada. Uniform Law Commissioners, 2002 Fact Sheet, http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-upa.asp (last visited Mar. 2, 2007).

91. UNIF. PARENTAGE ACT §§ 601–37 (amended 2002), 9B U.L.A. 338–53 (2000).

92. *Id.* § 201.

93. *Id.* § 201(b).

the child be joined as a party.[94] And, depending on the paternal status of the child, the UPA imposes different statutes of limitations on parties bringing suits.[95] If the child has no presumed, adjudicated, or acknowledged father, the UPA imposes no statute of limitations.[96] A suit can be brought at any time, but only by the child once he reaches the age of majority.[97] If the child has a presumed father, then the adjudication must come within two years of the *birth* of the child.[98] Similarly, if the child has an acknowledged or adjudicated father, then a suit may only be commenced within two years of the *acknowledgement or adjudication*.[99] The UPA allows for modern genetic testing to challenge or prove paternity unless the actions of the mother or father estops testing or it would be inequitable to disprove paternity. But in determining the use of genetic testing, a court must always be concerned with the best interests of the child.[100] Thus, the UPA preserves the presumption of paternity,[101] paternity by estoppel,[102] and the best interests of the child.[103]

The UPA sets forth a solid framework for drafting the law of paternity fraud. The versatility of the UPA allows the states to mold it for various situations or to enforce the original draft.[104] However, the UPA is not without its flaws. The two-year statute of limitations imposed on adjudication of paternity if the child has an

94. *Id.* § 612(a); *id.* § 603 cmt. (explaining that a child is not a necessary party due to modern technology); *see also id.* § 637 (explaining the availability of a collateral attack by the child if the child was not joined in the original proceedings).

95. *Id.* §§ 606–07, 609.

96. *Id.* § 606.

97. *Id.*; *see also* Calcaterra v. Manfra, 56 P.3d 1003 (Wash. Ct. App. 2002) (holding that the thirty-four-year-old child could seek an adjudication of paternity because she had no presumed, acknowledged, or adjudicated father).

98. UNIF. PARENTAGE ACT § 607(a) (amended 2002), 9B U.L.A. 341 (2000); *see also* Dickerson v. Doyle, 170 S.W.3d 713, 717 (Tex. App. 2005) (applying the four-year statute of limitations of the Texas Family Code because the child had a presumed father).

99. UNIF. PARENTAGE ACT § 609 (amended 2002), 9B U.L.A. 344 (2000); *see also In re* R.A.H., 130 S.W.3d 68 (Tex. 2004) (holding that the Texas Family Code four-year statute of limitations, which begins from the date of adjudication, applied because paternity had been adjudicated in a previous paternity suit); M.S. v. Snell, 115 P.3d 405, 408 (Wash. Ct. App. 2005) (holding that the UPA's two-year statute of limitations applied because the child had an adjudicated father).

100. UNIF. PARENTAGE ACT § 608 (amended 2002), 9B U.L.A. 342–43 (2000).

101. *Id.* § 204.

102. *Id.* § 608(a)(1).

103. *Id.* § 608(b) (identifying factors that the court must weigh in determining the best interest of the child versus the desirability of genetic testing).

104. *See, e.g.*, UNIF. PARENTAGE ACT pref. note (amended 2002), 9B U.L.A. 297 (2000).

acknowledged or adjudicated father constitutes one of the largest flaws.[105] Such a time limit does not commence until the date of acknowledgement or adjudication;[106] thus, contesting paternity could occur at any point in the child's life. The UPA also notes that a child is not considered a necessary party.[107] If one of the prevailing concerns in adjudicating paternity is the best interest of the child,[108] then it seems as though the child should be made a party to the proceedings in order to ensure that those interests are protected. Despite its many positive attributes, the UPA is not perfect and needs revision before it is suitable to be the prevailing law in paternity fraud.

3. *Res Judicata*

Several states that have not adopted the UPA recognize the idea of an adjudicated father.[109] In such cases, the courts decree that *res judicata* bars an adjudicated father from challenging the paternity of the child.[110] Many courts recognize that dissolution of a marriage constitutes a final judgment, and if a child was decreed to be of the marriage, then the paternity is now adjudicated and cannot be challenged.[111] This approach locks a man into the role of the father even if he is not the biological father, thus rendering permanent the paternity fraud committed by the mother. For example, a father was barred from challenging paternity due to *res judicata* in the Illinois case *Rogers v. People ex rel. Dep't of Public Aid*.[112] The husband, Victor, and his wife, Susan, were married for two years and had one child before divorcing.[113] Victor did not appear at the dissolution proceedings, and the court entered default judgment.[114] Among other things, the court specifically found that Victor was the father of the

105. *Id.* § 609(b).

106. *Id.*

107. *See id.* § 612(a).

108. *Id.* § 608(b); *see also id.* § 611 cmt. (stating that it is in the best interest of the child to quickly establish parental relationships).

109. *See, e.g.*, Rogers v. People *ex rel.* Dep't of Public Aid, 697 N.E.2d 1193, 1198 (Ill. App. Ct. 1998).

110. *Id.* at 1199.

111. *E.g.*, *id.* at 1198; *see also* Clay v. Clay, 397 N.W.2d 571, 577 (Minn. Ct. App. 1986).

112. 697 N.E.2d at 1198–99.

113. *Id.* at 1195.

114. *Id.*

child.[115] Eight years later, Victor petitioned the court to declare the nonexistence of a parent-child relationship due to blood tests he received.[116] The trial court ruled that the issue of paternity was *res judicata*, and Victor was barred from bringing the claim.[117] On appeal, the appellate court affirmed the trial court and found that both *res judicata* and collateral estoppel prevented Victor from bringing his claim.[118] The court found that *res judicata* applied because (1) a final judgment had been entered in the dissolution proceedings in which the court ruled on the parentage of the child, (2) the same claim was involved in Victor's suit and the dissolution, and (3) the same parties were involved in both suits.[119] Furthermore, the court found that collateral estoppel barred Victor's suit because the issue of parentage had been necessarily decided during the dissolution, and Victor had been a party to both proceedings.[120] Finally, the court noted that Victor would have had a remedy by a claim of fraud, but he failed to present specific allegations that Susan knew he was not the father and therefore could not pursue such a claim.[121] Thus, *res judicata* and collateral estoppel bar against adjudicating the paternity of a child more than once. Many cases, however, have been decided in which *res judicata* did not bar the action because sufficient facts were presented to establish fraud committed by the wife.[122] *Res judicata* serves to prevent the relitigation of paternity, but it is flexible enough to allow adjudicated fathers some form of a remedy.

115. *Id.*

116. *Id.* at 1195–96.

117. *Id.* at 1196.

118. *Id.* at 1199.

119. *Id.* at 1197.

120. *Id.* at 1198.

121. *Id.*

122. *See, e.g.*, *In re* Marriage of M.E. & D.E., 622 N.E.2d 578, 583 (Ind. Ct. App. 1993) (finding that the mother had perpetrated extrinsic fraud on the court and, thus, the issue of paternity was not barred by *res judicata*); Love v. Love, 959 P.2d 523, 529 (Nev. 1998) (holding that *res judicata* did not bar a challenge to paternity because an issue of material fact existed as to whether the wife fraudulently concealed the child's paternity).

4. *Federal Rule of Civil Procedure 60(b)*[123]

Men are not without recourse when they are the adjudicated father of a child; they may still seek justice through the use of Federal Rule of Civil Procedure ("FRCP") 60(b). Virtually every state employs some form of the FRCP 60(b),[124] which allows a court to relieve a party from a final judgment for one of a six reasons.[125] Rule 60(b) imposes a statute of limitations in that a motion must "be made within a reasonable time," and for parts (1), (2), and (3), the motion must be "not more than one year after the judgment, order, or proceeding was entered or taken."[126] Most courts that utilize Rule 60(b) use parts (1), (2), (3), and (5) to determine paternity suits.[127] Pursuant to a 60(b)(2) motion, a putative father may succeed in contesting paternity if he presents new evidence, usually blood tests, that prove he is not the biological father.[128] A motion pursuant to 60(b)(2), however, will not succeed if made after one year or if such evidence could have been obtained prior to the original adjudication.[129] Rule 60(b)(3) also allows a putative father to overturn a paternity ruling by proving that he failed to contest

123. FED. R. CIV. P. 60(b).

124. *See, e.g.*, IND. R. TRIAL P. 60(B); KY. R. CIV. P. 60.02; ALA. R. CIV. P. 60(b); TENN. R. CIV. P. 60.02; WYO. R. CIV. P. 60(b).

125. FRCP 60(b) states the following:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b).

126. *Id.*

127. *See, e.g.*, Crowder v. Commonwealth *ex rel.* Gregory, 745 S.W.2d 149, 150 (Ky. Ct. App. 1988) (utilizing Ky. R. Civ. P. 60.02(e)); Strack v. Pelton, 637 N.E.2d 914, 916 (Ohio 1994) (utilizing Ohio R. Civ. P. 60(B)(2)); State *ex rel.* M.J.J. v. P.A.J., 934 P.2d 1257, 1259 (Wyo. 1997) (utilizing Wyo. R. Civ. P. 60(b) in addressing fraud and excusable neglect).

128. *See, e.g.*, State *ex rel.* Ondracek v. Blohm, 363 N.W.2d 113, 115 (Minn. Ct. App. 1985); *Strack*, 637 N.E.2d at 916.

129. *See, e.g.*, *Strack*, 637 N.E.2d at 916 (holding that the husband failed to assert his claim in a timely manner because he filed more than a year after the final judgment under Ohio R. Civ. P. 60(B)(2)).

paternity due to the perpetration of fraud by the mother.[130] Finally, under 60(b)(5), a court can overturn the paternity ruling if enforcement of the ruling is no longer equitable. A 60(b)(5) hearing encompasses many factors, such as fairness to the man's legitimate children, fairness to the child at issue, and the diligence used by the man in determining the truth of the child's paternity.[131] Thus, Rule 60(b) can be used to reverse a finding of paternity if sufficient evidence (blood tests, fraud, equity, etc.) is presented, and the claim is brought within a reasonable time. Rule 60(b) thus gives a man an extra weapon in his arsenal to contest a ruling that he is the biological father.

5. *Paternity by Estoppel*

Some states recognize the doctrine of equitable estoppel in paternity suits.[132] Paternity by estoppel, however, is not on point with the paternity fraud discussion because courts enforce estoppel when the husband *knew* he was not the father of the child yet held himself out as the father to the rest of the world.[133] Paternity by estoppel will be briefly analyzed in this Section nonetheless because some states have utilized the doctrine in true paternity fraud suits. A Pennsylvania case, *Wachter v. Ascero*,[134] provides one such example. In *Wachter*, the plaintiff voluntarily acknowledged paternity in court and declined blood tests.[135] Ascero later obtained the blood tests by court order. He told the court, however, that he would continue to be the child's father and would continue paying support; he merely

130. *See, e.g.*, *M.J.J.*, 934 P.2d at 1261 (holding that the ex-husband provided clear and convincing evidence that the mother had perpetrated fraud by claiming that the child was his and lying to him about sexual relations with any other men, thereby entitling him to relief from the paternity ruling under Wyo. R. Civ. P. 60(b)(3)).

131. *See, e.g.*, *Crowder*, 745 S.W.2d at 150–51 (declining to recognize an equitable exception to Ky. R. Civ. P. 60.02(e) because the presumed father exercised due diligence on discovering the truth of the paternity, enforcing paternity would be a detriment to the presumed father's true children, and it would be a detriment to the child to force him to have an unrelated father).

132. *See, e.g.*, Perkins v. Perkins, 383 A.2d 634, 635 (Conn. Super. Ct. 1977); Knill v. Knill, 510 A.2d 546, 549–52 (Md. 1986); A.R. v. C.R., 583 N.E.2d 840, 842–43 (Mass. 1992); Wachter v. Ascero, 550 A.2d 1019, 1021 (Pa. Super. Ct. 1988).

133. *See, e.g.*, *Perkins*, 383 A.2d at 636; *cf. Knill*, 510 A.2d at 551–52 (stating that estoppel would have applied but for the fact that there was no detriment inherent in the reliance).

134. 550 A.2d 1019 (Pa. Super. Ct. 1988).

135. *Id.* at 1019–20.

wished to know the true paternity of the child.[136] Later, Ascero sought to disestablish paternity through the same blood tests.[137] The court held that the later action was barred by the doctrine of equitable estoppel[138] because "the law cannot permit a party to renounce even an assumed duty of parentage when by doing so the innocent child would be victimized."[139] The court stated that the important facts were that Ascero had held himself out as the father of the child and acknowledged paternity in writing to the court.[140] Ascero's statements in the original action and his conduct as a father barred his subsequent action by the doctrine of equitable estoppel.[141] Thus, paternity by estoppel can bar a father from disputing paternity if his conduct has established a significant reliance by the child and allowing the dispute would victimize the child.[142] Another important factor involves the amount of time that the father has held himself out to be the father without challenge.[143] However, if the mother and child are unable to prove significant detriment, courts are reluctant to bar a challenge by estoppel.[144] Thus, estoppel is a flexible standard that can serve to relieve a putative father from support obligations or keep the support in place, depending on the facts of the case and the outcome of weighing the amount of detriment to the putative father versus the detriment to the child.

136. *Id.* at 1020.

137. *Id.*

138. *Id.* at 1021.

139. Commonwealth *ex rel.* Gonzalez v. Andreas, 369 A.2d 416, 419 (Pa. Super. Ct. 1976) (quoted in *Wachter*, 550 A.2d at 1021).

140. *Wachter*, 550 A.2d at 1021.

141. *Id.*

142. *See id.*

143. *See, e.g.*, Watts v. Watts, 337 A.2d 350, 352 (N.H. 1975) (holding that fifteen years without a challenge to paternity estopped the father from challenging paternity).

144. *See, e.g.*, A.R. v. C.R., 583 N.E.2d 840, 843 (Mass. 1992) (concluding that the children suffered no detriment because they were both under three years old at the time of the action); Wiese v. Wiese, 699 P.2d 700, 702–03 (Utah 1985) (holding that equitable estoppel did not apply because the mother failed to demonstrate detriment, especially since she had not approached the natural father for support).

III. CREATING A NEW TREND IN PATERNITY FRAUD

A. *The Psychological Importance of Fathers*

It is generally undisputed that children fare much better when raised in a two-parent household.[145] Thus, in an ideal world, children would be raised by their biological parents in a marital union. Unfortunately, this is not an ideal world, and the law must protect children who find themselves without a father present in their lives. Psychological studies have shown that "where both mothers and fathers have been studied, most of the research has shown the father's influence on the child's behavior to be at least equal to that of the mother."[146] For example, around the ages of five to ten, "[a] boy learns a sense of moral responsibility, most strongly identified with his father's activities."[147] Furthermore, "[f]atherless children are at an increased risk of poor male identification, drug and alcohol abuse, mental illness, suicide, poor educational performance, school dropout, teen pregnancy, criminality, and violent behaviors."[148] Significantly, one observer noted that "much of the evidence of the past decade suggests that the variability of children's behavior is more closely associated with the type of father one has than the type of mother."[149] A father plays a significant role in the life of his children and must protect them from emotional and social pitfalls.

Even without a two-parent household, children still need both a mother and a father present in their lives.[150] The most prevalent threat to the stability of the child is the absentee father. The presence of the father has many documented benefits. Research has shown that children whose fathers are involved in rearing them are smarter than those with uninvolved fathers; more likely to graduate from high school; less likely to fail or drop out of school; and less inclined to

145. *See, e.g.*, Sheila F.G. Schwartz, *Toward a Presumption of Joint Custody*, 18 FAM. L.Q. 225, 230 (1984).

146. Wesley C. Becker, *Consequences of Different Kinds of Parental Discipline*, *in* 1 REVIEW OF CHILD DEVELOPMENT RESEARCH 169, 204 (Martin L. Hoffman & Lois Wladis Hoffman eds., 1964).

147. Arik V. Marcell & Erica B. Monasterio, *Providing Anticipatory Guidance and Counseling to the Adolescent Male*, 14 ADOLESCENT MED. 565, 566 (2003).

148. *Id.* at 567 (footnotes omitted).

149. James Walters & Nick Stinnett, *Parent-Child Relationships: A Decade Review of Research*, 33 J. MARRIAGE & FAM. 70, 102 (1971).

150. Schwartz, *supra* note 145, at 232.

incidents of teen violence, delinquency, and other problems with the law.[151] For a child to have the most stable life, he or she needs to have continuing relationships with both parents who share responsibility and concern for the child's well-being.[152] Thus, a lasting relationship with *both* the mother and father is of prime importance to the well-being of the child.

Furthermore, psychological studies have shown the trauma inflicted on children when their father figure is taken away from them.[153] Such studies have shown that a child who feels abandoned by his or her father may exhibit psychological and behavioral problems.[154] Parental rejection (by either parent) can result in various negative effects, including "issues of negative self-concept, negative self-esteem, emotional instability, anxiety, social and emotional withdrawal, and aggression; conduct problems, including externalizing behaviors and delinquency; drug and alcohol abuse; cognitive and academic difficulties; and forms of mental disorder such as depression, depressed affect, and borderline personality disorder."[155] One study demonstrated that forty-seven percent of the children who had borderline personality disorder had suffered the loss of their father by divorce or death.[156] While both paternal and maternal love serve to safeguard children against these dangers, the love of the father seems to be more important in the deterrence of many of these social problems.[157] Even where the father's presence is limited (as can be the case in paternity fraud), the child continues to need and use his father.[158] Despite limitations, a father's presence helps the child avoid loneliness, vulnerability, and total reliance upon the mother.[159] Some researchers have stated that children need male

151. GARRET D. EVANS & KATE FOGARTY, UNIV. OF FLA., FAMILY, YOUTH & CMTY. SERVICES DEP'T., THE HIDDEN BENEFITS OF BEING AN INVOLVED FATHER (2005), http://edis.ifas.ufl.edu/pdffiles/HE/HE13700.pdf.

152. Schwartz, *supra* note 145, at 232 (quoting JUDITH S. WALLERSTEIN & JOAN B. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE 310 (1980)).

153. *See, e.g.*, *id.* at 232–33; Frank J. Dyer, *Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee*, 10 PSYCHOL. PUB. POL'Y & L. 5, 6–8 (2004).

154. Schwartz, *supra* note 145, at 230.

155. Ronald P. Rohner & Robert A. Veneziano, *The Importance of Father Love*, 5 REV. GEN. PSYCHOL. 382, 397 (2001).

156. Mary C. Zanarini, *Childhood Experiences Associated with the Development of Borderline Personality Disorder*, 23 PSYCHIATRIC CLINICS N. AM. 89, 90–91 (2000).

157. Rohner & Veneziano, *supra* note 155, at 393.

158. *See* Schwartz, *supra* note 145, at 232.

159. *Id.*

role models in order to anticipate problems and solve them as they occur, especially when the father is absent.[160]

Role models serve vital purposes in the lives of children. As *nurturers*, they are instrumental to the developing child's "increased cognitive competence, empathy, and internal locus of control."[161] This nurturing figure also "stimulates individuation, and initiates the child into group relations."[162] *Role models*, such as friends, neighbors, or persons from the larger culture, "demonstrate how to solve problems, handle adversity and failure, and recover from setbacks."[163] Positive role models encourage children to have "flexible and adaptive identities and confidence in their abilities."[164] Negative role models encourage "stereotypical models of masculinity that are self-consciously imitated."[165] As *initiators*, role models provide "external validation for the change from child to [adult]."[166] This initiation stresses "teamwork, loyalty, and group commitment as counterweights to individual achievement and excessive egocentricity."[167] A failed initiation may cause "perpetual adolescence, with no sense of commitment to either self or community."[168] As *mentors*, role models "foster the skill development and knowledge acquisition that young [adults] seek in order to thrive in the adult world."[169] A positive mentor provides "the interpersonal skills neces[s]ary to accept guidance, listen to advice, work collaboratively, and manage anger maturely."[170] The role model as *elder* represents "a shift from the outside to the inside, from the physical to the spiritual, and from egocentricity to community centeredness."[171] The lack of an elder can result in "malaise and cynicism" throughout society.[172]

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160. Arthur M. Horne et al., *Men Mentoring Men in Groups*, *in* MEN IN GROUPS: INSIGHT, INTERVENTIONS, AND PSYCHOEDUCATIONAL WORK 97, 102 (Michael P. Andronico ed., 1996).

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at 103.

167. *Id.*

168. *Id.*

169. *Id.* at 104.

170. *Id.*

171. *Id.* at 105.

172. *Id.*

These functions would be best executed in the role of the primary caregiver of the child: the father.[173] A child should be born into a world in which role models are at the ready; a child should not have to actively seek another person in order to ensure social and mental well-being.

Therefore, the withdrawal of the father from the child's life can have serious detrimental effects that should be curtailed when possible. Due to these concerns about the child's well-being, the law must center its attention on the child, despite the inconveniences that may be forced on the putative father.

B. *Forging a New Trend in Paternity Fraud*

As demonstrated, states have many ways of dealing with the issue of paternity fraud. Each doctrine can be a double-edged sword, either relieving the putative father of his obligations or continuing to enforce the obligations.[174] These doctrines each have positive attributes; however, due to some negative attributes, none of the doctrines is completely appropriate in the sensitive context of paternity fraud. This does not mean that these doctrines need to be discarded; on the contrary, they still have their uses and should be incorporated into a widely applicable law.

The most important issue to be addressed in the creation of a new law is the statute of limitations for filing suit for the adjudication of

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173. *See id.* at 101–02.

174. *See, e.g.*, *In re* Marriage of Tzoumas, 543 N.E.2d 1093 (Ill. App. Ct. 1989) (holding that the UPA allowed a putative father to contest paternity as he exercised due diligence by filing within six months of learning the true paternity of the child); Clay v. Clay, 397 N.W.2d 571 (Minn. Ct. App. 1986) (holding that *res judicata* barred the ex-husband from challenging paternity since it had been a settled issue during the divorce proceedings); Love v. Love, 959 P.2d 523 (Nev. 1998) (holding that *res judicata* did not bar the ex-husband from challenging paternity because an issue of material fact existed as to whether the ex-wife fraudulently concealed the paternity); Strack v. Pelton, 637 N.E.2d 914 (Ohio 1994) (holding that the husband failed to bring his Rule 60(b) claim in a timely manner); Wachter v. Ascero, 550 A.2d 1019 (Pa. Super. Ct. 1988) (finding that the father was estopped from bringing suit where he had voluntarily held himself out as the father and waived blood tests during the original support hearings); Wiese v. Wiese, 699 P.2d 700 (Utah 1985) (holding that equitable estoppel did not apply because the mother failed to demonstrate detriment where she had not approached the natural father for support); Calcaterra v. Manfra, 56 P.3d 1003 (Wash. Ct. App. 2002) (holding that the UPA allowed a daughter to bring a paternity suit thirty-four years after birth because she had no presumed, acknowledged, or adjudicated father); State *ex rel.* M.J.J. v. P.A.J., 934 P.2d 1257 (Wyo. 1997) (holding that the ex-husband provided clear and convincing evidence to pursue a Rule 60(b) claim).

paternity. Such a limitation is needed to create fairness to the putative father but also to ensure that such suits minimize the child's emotional harm.[175] The UPA establishes three different statutes of limitations based on the child's paternal status, that is, having: (1) no father,[176] (2) a presumed father,[177] or (3) an adjudicated or acknowledged father.[178] The doctrine of *res judicata* establishes no statute of limitations; it merely enforces a judicial decree from the time of the decree.[179] Like *res judicata*, paternity by estoppel establishes no definitive statute of limitations. Instead, it measures the merits of a claim based on the actions of the putative father and the benefit to the child and mother.[180] Although these doctrines differ in approach, they can be combined to formulate a statute of limitations that protects the interests of both the child and the putative father.

First, it is desirable to allow adjudication of paternity at any time if the child has no legal father.[181] The most desirable result of such an adjudication is that a child has a relationship with both parents, even if parental presence is limited.[182] And with the modernization of genetic testing, it will be easy to determine whether the child is the biological child of the putative father, thus eliminating the need for later suits filed by the putative father. Therefore, the law should favor the adjudication of the father at any point to ensure that the child has a father figure and to avoid negative mental consequences associated with the lack of a parent. Second, the differentiation of presumed fathers and acknowledged or adjudicated fathers is a fair distinction to make, but the distinction may not be in the best interest of the child. If the timing prescribed by the UPA is applied to acknowledged and adjudicated fathers, then it is possible that a suit

175. *See* Dyer, *supra* note 153, at 7–8 (discussing the various stages of a child's life and the emotional development at each stage).

176. UNIF. PARENTAGE ACT § 606 (amended 2002), 9B U.L.A. 341 (2000) (establishing no statute of limitations if the child has no presumed, adjudicated, or acknowledged father).

177. *Id.* § 607 (establishing a two-year statute of limitations from the birth of the child if the child has a presumed father).

178. *Id.* § 609 (establishing a two-year statute of limitations from the date of acknowledgment or adjudication if the child has an acknowledged or adjudicated father).

179. *See, e.g.*, Rogers v. People *ex rel.* Dep't of Public Aid, 697 N.E.2d 1193 (Ill. App. Ct. 1998).

180. *See, e.g.*, Wachter v. Ascero, 550 A.2d 1019 (Pa. Super. Ct. 1988).

181. *See* UNIF. PARENTAGE ACT § 606 (amended 2002), 9B U.L.A. 341 (2000).

182. *See* Schwartz, *supra* note 145, at 230.

could be filed at any point during the child's life.[183] The law should attempt to curtail such suits because they could occur during a tender time in the child's life, possibly causing emotional harm.[184] In order for *all* children to be secure in their paternal attachments, acknowledged and adjudicated fathers should be held to the same statute of limitations as presumed fathers. And like acknowledged and adjudicated fathers, presumed fathers should not be locked into paternity due to a legal presumption but should be able to contest paternity within the statute of limitations.[185]

The determination of the statute of limitations should be premised on the best interest of the child in an attempt to avoid causing conflict in the child's life at the times when emotional development is the most sensitive. Although the courts should focus on the best interest of the child, they should also consider fairness to the putative father. Thus, the statute of limitations should provide adequate time to file suit but not so much that it will interfere with the child's development. It has been shown that paternal bonding is not immediate and that there is a gap between birth and initial bonding.[186] However, studies have shown that a child enters one of the most delicate developmental phases, the rapprochement subphase, between the ages of eighteen months to three years.[187] During this phase, the child develops extreme dependency on his parents such that if he is deprived of a consistent love object, he may not develop "the capacity to function as a separate individual with a solid sense of self."[188] Therefore, the ideal statute of limitations would be eighteen months after the birth of the child. During those eighteen months, the putative father would have the ability to file a paternity suit and to obtain genetic proof that he is not the father of the child, thus preserving the use of modern genetic technology as allowed by part (2) of FRCP 60(b)[189] and the UPA.[190] Such a time limit preserves

183. *See, e.g.*, *In re* R.A.H., 130 S.W.3d 68 (Tex. 2004).

184. *See* Schwartz, *supra* note 145, at 230.

185. *See* Miscovich v. Miscovich, 688 A.2d 726, 733 (Pa. Super. Ct. 1997) (disallowing a rebuttal of the presumption of paternity because the man could not demonstrate non-access, sterility, or impotency); *but see In re* Marriage of Tzoumas, 543 N.E.2d 1093, 1098 (Ill. App. Ct. 1989) (allowing the presumed father to rebut the presumption by administering blood tests).

186. *Cf.* Robert J. Trotter, *Failing to Find the Father-Infant Bond*, PSYCHOL. TODAY, Feb. 1986, at 18.

187. Dyer, *supra* note 153, at 8.

188. *Id.*

189. *See* State *ex rel.* M.J.J. v. P.A.J., 934 P.2d 1257 (Wyo. 1997).

fairness for the putative father by allowing eighteen months to file suit without the threat of traumatizing the child at a delicate stage in life.

C. *But What About . . .*

It could be argued that such a time limit is too short to maintain fairness to the father because it may take more time to raise questions about the paternity of the child. Although this argument has merit, the Supreme Court has emphasized "the paramount interest in the welfare of children."[191] As previously noted, children can suffer extreme hardship when abandoned by someone they know as their father, and such trauma can last well beyond adolescence.[192] The government and the courts should be concerned with parents providing the "preparation for obligations the state [cannot] supply"[193] to the child and therefore should encourage a strong family unit to ensure that the child receives such preparations. In order for children to be productive members of society, they must be well adjusted emotionally, and the best means to achieve that result is by providing the child with both parents.[194] Thus, although the father does not receive complete fairness by a limited statute of limitations, the best result is reached by protecting the child and ensuring his or her emotional well-being. The courts must always balance the interests of the child and the putative father by determining the best situation for the child.

Another possible argument against a new law would be that the government cannot protect the child if the putative father tells the child about his paternity despite the lack of court interference. Although a man may inform his children of their true paternity, it is not the role of the government to encourage or reward such behavior. Paternity fraud suits not only allow men to disavow children, it encourages them to do so by stopping child support[195] or possibly recouping support paid.[196] The primary concern of the government

190. UNIF. PARENTAGE ACT § 621 (amended 2002), 9B U.L.A. 346 (2000).
191. Lehr v. Robertson, 463 U.S. 248, 257 (1983).
192. *See* Rohner & Veneziano, *supra* note 155, at 397.
193. Prince v. Massachusetts, 321 U.S. 158, 166 (1944).
194. Schwartz, *supra* note 145, at 230.
195. *See, e.g.*, Wiese v. Wiese, 699 P.2d 700, 702 (Utah 1985).
196. *See, e.g.*, R.A.C. v. P.J.S., 880 A.2d 1179 (N.J. Super. Ct. App. Div. 2005).

should be the child[197] and the family unit.[198] The government should not encourage fathers to traumatize children because the government should always protect the child to ensure he or she is able to function and participate fully in society.

Also, some may argue that such a short statute of limitations is too similar to the common law presumption of paternity and ignores the modern developments in genetic testing that would allow a man to contest paternity at a later time.[199] Despite the concern that genetic testing would be ignored, such a statute of limitations would allow genetic testing to be introduced as evidence during the initial eighteen months. Like the previous arguments, such a claim centers on the rights of the putative father and not the child. As stated before, the law must worry about the child first, even if that means limiting the claims of the putative father by imposing a short statute of limitations. Genetic testing does not lessen the blow to a child when the man believed to be the father walks away. A child needs a father, regardless of a genetic bond.

A final argument that could be made is that the child can still bond with his biological father and thus curtail the negative consequences of the putative father's departure. Although it is true that a child could bond with another man, it has been shown that paternal bonding begins in early infancy, thus leaving little time for the child to bond with someone else.[200] Furthermore, studies have shown that healthy attachments are integral to the proper development of the child within the first few years.[201] Thus, the disruption of a child's attachments cannot be offset by subsequently attaching to another figure.[202] In sum, even if a child is able to bond with his genetic father after losing his putative father, the harm has already been done, and the new attachment cannot completely offset the negative effects. Therefore, such an argument has little merit and should not be used as an "offset" to allow a putative father to contest paternity beyond the eighteen month statute of limitations.

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197. Lehr v. Robertson, 463 U.S. 248, 257 (1983) (noting that the government's paramount interest is the welfare of the child).

198. Trimble v. Gordon, 430 U.S. 762, 769 (1977) (noting the societal importance of the family unit).

199. *See, e.g.*, Pitz, *supra* note 80.

200. *See* Schwartz, *supra* note 145, at 234.

201. *See* Dyer, *supra* note 153, at 7.

202. *See id.*

Although there are many arguments against a short statute of limitations, the best interest of the child should prevail every time in the eyes of the law. It is true that these men have rights and should not suffer for the mistakes of the mother. However, the government should always consider the child's interest, even if that means causing a detriment to the putative father. Even if the mother has wronged the putative father, the child should not have to suffer for the mistakes of his or her parents.

CONCLUSION

The courts have begun to move away from the common law presumption of paternity, which aimed to protect the interests of the child, and toward approaches that protect the interests of the putative father. But children should be paramount in the eyes of the law despite whatever unfairness that may mean for the putative father. The courts must reorient themselves away from the current trend and return to the best interest of the child.

The common law doctrine of presumption of paternity, in the context of paternity fraud, protected the inheritance rights of the child. Since the days of the common law, the United States Supreme Court has elaborated on what it means to be a father and on the rights that attach to paternity, but it has left the issue of paternity fraud to the states. The states have established several doctrines to deal with paternity fraud, none of which has proven adequate to ensure the well-being of the child and protection of the putative father's rights. By establishing a brief period to contest paternity—as argued in this Note—the courts will preserve the putative father's ability to protect his interests while protecting the child from the emotional trauma that results from the abandonment of a parental figure.

Thus, the courts should embrace a short statute of limitations so that children are protected, are able to grow up happy and healthy, and become functioning members of society. The courts must establish a consistent doctrine to deal with paternity fraud to ensure children are happy, healthy, and safe. If the current trend in paternity fraud continues and fathers are allowed to contest paternity at any time, children will never have guaranteed security in the one place they expect and need such security: the family.