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Evelyn L. Wilson

Southern University Law Center

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Caught in a Trap - Paternity Presumptions in Louisiana

CAUGHT IN A TRAP – PATERNITY PRESUMPTIONS IN LOUISIANA

By: Evelyn L. Wilson¹

In 2005, Louisiana amended its Civil Code articles on paternity to give a presumption of paternity to an earlier husband under circumstances that suggest the child is the biological child of a later husband. Under current law, if a woman conceives a child in one marriage, divorces, then remarries, the child, who will be born within three hundred days of the termination of the earlier marriage, is considered the child of the earlier marriage. This presumption holds even when the earlier husband has been living separate and apart from the mother of the child for some time, as is likely before a divorce.

These articles place a burden on the earlier husband to bring a disavowal action within one year from when he learns of the birth of the child or, if he was physically separated from the mother at the time of the child's conception, within one year from when he gets notice that someone alleges he is the child's father. Alternatively, the mother of the child can admit her adultery in open court to facilitate her child's filiation to the child's biological father rather than with the mother's former spouse. This opportunity to sort out the paternity of the child is only available to the mother if the mother is married to the child's biological father and only if the child has been acknowledged by that biological father.

When a child is conceived during one marriage and born during another, reason should suggest that the later husband, in the home with the newborn and the child's mother, is the child's father. He should be the presumed father under the law. This paper will suggest revisions to Louisiana's rules for filiation consistent with that presumption.

I. Introduction

Children are born out of wedlock. It happens. In 2006, almost 50% of all children born in Louisiana were born outside of a marriage.² By 2010, 53.3% of the children born in Louisiana were born out of wedlock.³ Of all the children born in Louisiana in 2010, a total of 33,269 face issues of filiation.⁴ A child born during a marriage is presumed to be the child of the husband of that child's mother.⁵ The child born outside of marriage has no presumed father. When a child is born out of wedlock, one or both of the child's biological parents, or the child, must take some action to create a legal relationship between the father and the child.⁶

In 2005, Louisiana's legislature drastically changed the rules for filiation to make filiation easier for a child, but more burdensome for his parents. Regrettably, the legislation created a presumption of paternity under circumstances that suggest that the legal presumption is factually incorrect. Under current Louisiana law, if a woman conceives a child in one marriage, divorces, then enters into another marriage, the child, if born within 300 days of the termination of the earlier marriage, is considered the child of the earlier marriage, and not a child of the later marriage during which the child was born.⁷

Presume Martha and Josiah are married to one another, but have physically separated. They have not lived together for several years when Martha meets William. Martha and William decide to marry, but Martha must first obtain a divorce from Josiah. Presume Martha's divorce from Josiah is final on January 1, and that Martha marries William on January 16. Martha gets pregnant right away and delivers a baby on September 30. Because the child was born within three hundred days of Martha's

marriage to Josiah, Josiah is the presumed father of the child.⁸ The child has a right to inherit from Josiah and is entitled to demand that Josiah provide support.

This article takes a critical look at the current Louisiana law that gives a presumption of paternity to an earlier husband under circumstances that suggest the child is the biological child of the later husband. When a child is conceived during one marriage and born during another, reason should suggest that the later husband, in the home with the newborn and the child's mother, is the child's biological father. That later husband should be the presumed father by law. Part II of this paper discusses why filiation is important. Part III reviews the filiation laws in place just prior to the revisions in 2005. Part IV discusses the 2005 revisions to the laws on paternity and demonstrates how they work to undermine familial peace and tranquility. Part V identifies the particular problems created by this erroneous presumption of paternity, which prompted this article. Part VI suggests revisions to Louisiana's rules for filiation to create the presumption that the current husband is the father of the child born during the later marriage and to make other changes. Finally, Part VII presents a conclusion.

II. Why Filiation is Important

Filiation is defined as "the legal relationship between a child and his parent."⁹ It brings with it many reciprocal rights and obligations. A child is under the authority of his or her parents and ". . . owes honor and respect to his [or her] father and mother."¹⁰ "An unemancipated minor cannot quit the parental house without the permission of his father and mother . . ."¹¹ because "[a] child remains under the authority of his father and mother until his majority or emancipation."¹² Filiation allows for this exercise of authority.

Parents are under an obligation to support their children "by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children."¹³ Whether the parents of a child are married, "[f]athers and mothers owe alimony to their illegitimate children, when they are in need[.]"¹⁴ Filiation gives recognition to these responsibilities.

The reverse is also true: children owe an obligation of support to their parents. "Children are bound to maintain their father and mother and other ascendants, who are in need, and the relatives in the direct ascending line are likewise bound to maintain their needy descendants, this obligation being reciprocal."¹⁵ This mutual obligation for support exists for children whether born in or out of wedlock. "Illegitimate children owe likewise alimony to their father and mother, if they are in need, and if they themselves have the means of providing it."¹⁶

In addition, children and their parents are intestate heirs of one another. "In the absence of a valid testamentary disposition, the undisposed property of the deceased devolves by operation of law in favor of his descendants, [and] ascendants . . ."¹⁷ When a parent dies with a valid testament, Louisiana law requires that the children of that parent who are under the age of twenty-four or who are permanently incapable of taking care of their persons or administering their estates receive a portion of their parent's estate.¹⁸ Given the reciprocal rights to support and inheritance, establishing paternity could be of great importance to both the father and the child. In addition to the economic ramifications, there are emotional and social implications to establishing paternity. It is important that the law get the presumptions right.

While children born of a marriage enjoy a presumption of paternity and no proof of filiation is required, children born outside of marriage must establish filiation to enjoy the rights of children born within a marriage. In Louisiana, filiation can be established "by proof of maternity or paternity or by adoption."¹⁹ Adoption can be proven through the paper trail that accompanies the procedure.²⁰ Maternity can be proven at any time by any evidence.²¹ Establishing paternity, on the other hand, is highly regulated, both as to who can bring an action and as to when the action may be brought.

III. Louisiana's Filiation Laws in Place Just Prior to the 2005 Revisions

The 1804 Code Napoleon of France, from which much of the language of Louisiana's Civil Code was taken, forbade proof of paternal descent.²² A child born outside of a marriage could not prove paternity

and was not entitled to support or inheritance from a natural father. Early in Louisiana's history, the state rejected that prohibition and allowed a natural father to acknowledge his child but only under limited circumstances. A father could acknowledge a child born out of wedlock, but only if, at the time of the child's conception, there were no impediments to the biological parents marrying one another, and at the time of acknowledging the child, the father had no legitimate ascendants or descendants.²³ A married man could not acknowledge a child born to someone other than his wife.²⁴ A father could not acknowledge a child unless he was without parents or children born of a marriage at the time of the acknowledgement. Only a parent who had no children from a marriage, and whose parents and grandparents were deceased, leaving him no legitimate ascendants or descendants, could acknowledge a child born out of wedlock.

Even when acknowledged, Louisiana's laws discriminated against children born out of wedlock with respect to their rights to inherit. A child born out of wedlock would not inherit from the father when that father had any other relatives, or any lawful descendants from them.²⁵ The acknowledged child who was able to take from his father's succession was not entitled to inherit from his relatives.²⁶

In 1977, the United States Supreme Court, in *Trimble v. Gordon*,²⁷ addressed the rights of children to inherit from their parents when they are born out of wedlock. In that case, the Court expressly "rejected the argument that a State may attempt to influence the actions of men and women by imposing sanctions on the children born of their illegitimate relationships."²⁸ It declared that, "imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing."²⁹

In *Trimble*, a child born out of wedlock had been denied an intestate inheritance although her father had been identified by the courts and ordered to contribute to the child's support. The Court found that denial unconstitutional, and ruled that children born out of wedlock should have the same rights with respect to their parents as children born inside a marriage.³⁰ The child born out of wedlock could inherit from her biological father.

In 1980, Louisiana's highest court recognized the right of children born out of wedlock to inherit

equally and under the same conditions as children of a marriage.³¹ It agreed, "that innocent children should not suffer from the promiscuous adventures of their parents."³² The court, in *Succession of Brown*, determined that "both the United States and Louisiana Constitutions prohibit the total denial of inheritance rights of acknowledged illegitimates in the succession of the[ir] father . . ."³³ A child who establishes filiation will have all the rights of children born during marriage.

Immediately prior to the 2005 revisions to these articles, children born out of wedlock could be legitimated solely by the subsequent marriage of their parents, whether the parents formally or informally acknowledged the children.³⁴ In a family where the children were born long before the parents married, this rule retroactively cured their status. Children once considered illegitimate were now legitimated by their parents' marriage so they suffered no disadvantage from the timing of that marriage.

Even those children deemed legitimate because they were born during a marriage could be filiated to their biological father by the subsequent marriage of their parents. A child born during an earlier marriage, and enjoying the presumption of paternity from that earlier marriage, could be recognized as a legitimate child of a later marriage simply by the parents marrying and informally acknowledging the child. In *Succession of Mitchell*,³⁵ Louisiana's Supreme Court allowed marriage to establish the father's filiation to his children even though the children may have been born during their mother's marriage to another man.³⁶ The court found "an express legislative intent to permit the legitimation of adulterous children by the subsequent marriage of their parents."³⁷ Subsequent courts expressly affirmed this dual paternity.³⁸

If the parents did not marry, the father or mother of a child born out of wedlock could establish filiation by acknowledging the child in an authentic act,³⁹ or by signing the child's birth certificate or the child's certificate of baptism.⁴⁰ In addition, a biological parent of a child born out of wedlock could inherit from that child through the laws of intestate succession if that parent "openly and notoriously treated the child as his own and has not refused to support him."⁴¹ The law did not require that the parent support the child, but only that the parent not refuse to support the child if asked. This informal

acknowledgment created rights for the father, but not for the child, who was required to prove filiation.⁴²

A child could prove paternity only in an action filed before the child's nineteenth birthday, or within one year of the parent's death, whichever occurred first.⁴³ Before 1981, the child's action to prove paternity was required within six months after the death of the alleged father.⁴⁴ The article allowing this action expressly stated that, "[i]f the proceeding is not timely instituted, the child may not thereafter establish his filiation, except for the sole purpose of establishing the right to recover damages under Article 2315."⁴⁵ Thus, it was much easier for a father to acquire rights of support and inheritance from a child than for a child to acquire those rights with respect to his father. Unless emancipated earlier,⁴⁶ a child had to depend upon an adult to file an action to prove paternity,⁴⁷ or had only one year of young adulthood in which to file such an action.⁴⁸

IV. Louisiana's 2005 Revisions to its Laws on Paternity

In 2005, the rules governing filiation were dramatically changed.⁴⁹ The new laws allow a child to bring an action to prove filiation at any time.⁵⁰ The age nineteen limit on the action was removed so that children are no longer dependent upon others to bring the action for them. Thus, an adult can bring an action to establish filiation to a parent even long after the parent is dead. Although the filiation action is permitted, the child can take from his father's succession only if the action is brought within a year of the father's death, and the burden of proof is higher when the action is brought after the father's death: clear and convincing evidence is required.⁵¹

Under current law, the marriage of the parents is not sufficient to establish the child's filiation to his biological father. In addition to marrying the mother, the father must acknowledge the child by an authentic act or by signing the birth certificate, with the mother's consent.⁵² A father wanting to establish his filiation without marrying the child's mother must incur the costs of a filiation action.⁵³ The father must file suit in a court and prove his biological connection even when the mother has acquiesced in his claim of paternity.

Louisiana Civil Code article 196 allows a father to acknowledge a child without filing a court action,⁵⁴ but an acknowledgement is not the equivalent of a judgment of filiation. A father who has merely acknowledged a child may demand visitation and may petition for custody,⁵⁵ but has no right to inherit from the child.⁵⁶ The father's acknowledgement creates rights of inheritance and support for the child, but it does not create these rights for the acknowledging father.⁵⁷ The child is associated with the acknowledging father, but is not fully filiated to the father.⁵⁸

The informal acknowledgement is gone; any acknowledgement must be formal and coupled with a marriage to the mother of the child to establish rights for fathers. Otherwise, one of the parents or the child must get a court order of filiation to create a father-child legal relationship. These 2005 changes make filiation easier for a child, but much more difficult for the child's parents.

For children born during a marriage, or within three hundred days after the termination of the marriage, the husband or former husband of the wife is presumed to be the father of the child.⁵⁹ Much of the time this paternity presumption is correct. Children are often an intended result of a marriage and this presumption of paternity precludes any need for children of a marriage to prove their paternity.⁶⁰ Should a father die while his child is in utero, the child's rights are not affected by the father's untimely death.⁶¹

Occasionally, a mother will bring to the marriage a child who was not fathered by her husband. If the husband is aware of the birth, but unaware of the child's true paternity, this presumption of paternity creates a legal father-child relationship where no biological relationship exists. If the husband is aware of the absence of a biological relationship, the father can take legal steps to absolve himself of the obligations of fatherhood.⁶²

Louisiana's laws allow a husband who is aware that he is not the biological parent to bring a disavowal action within a year after the child's birth, or within a year from when the husband knew or should have known of the child's birth.⁶³ If the husband lived separate and apart from the mother continuously during the three hundred days immediately preceding the birth of the child, this one year prescriptive period does not begin until the husband receives written

notice that someone has asserted his paternity of the child.⁶⁴ In most cases, however, when a child is born to a married woman, paternity is not at issue.

V. Presumption of Paternity

While the 2005 changes represent improvements in the law in many respects, the articles go too far in presuming paternity where it does not exist. The revised articles place an unnecessary burden on a new family to seek court action to sort out paternity issues. They create a legal quagmire if these issues go unaddressed.

The new articles presume that the husband of the mother is the father of a child when the child is born during the marriage or within three hundred days after the marriage ends.⁶⁵ This three hundred day time period ensures that children born after the death of their father are considered born of the marriage and are entitled to the same rights as a child born while the father was alive.

This period also applies when the marriage ends in divorce. A child born within three hundred days after a divorce is presumed to be the child of the former husband of the child's mother, although it is unlikely that the divorcing adults would conceive a child together so near to the time of the divorce. It is even less likely when considering the grounds for divorce permitted in Louisiana: living separate and apart for one hundred eighty days if there are no minor children of the marriage, living separate and apart for three hundred and sixty-five days when there are minor children of the marriage, a spouse has been sentenced to death or imprisonment at hard labor, or adultery.⁶⁶ Even when a husband divorces his wife for adultery, he is forced to bring a disavowal action or he will be considered the legal father of the child of the adultery, be required to support the child, and be entitled to custody and visitation rights with the child.

This presumption of paternity controls even when the mother remarries within three hundred days after her former marriage ends.⁶⁷ If a woman terminates a marriage, then contracts another within three hundred days of the termination, it is unlikely that her child, born within that period, is the child of the former husband.⁶⁸ It is more likely that the current husband fathered the child. Indeed, the divorce,

which often follows the actual physical separation of the couple by a substantial period of time, may have been prompted by the pregnancy, which resulted from the liaison with the current husband. Article 186 gives a presumption of paternity to the former husband under circumstances that suggest the child is more likely the child of the current marriage.⁶⁹ It creates a need for litigation when a different presumption would avoid a great deal of confusion and expense.

Burdened with this presumption, the former husband must file a disavowal action within one year from when he learns or should have learned of the birth of the child.⁷⁰ A former husband who may have left home many years earlier is required to file litigation to disavow a child within a year after he is notified in writing that someone is asserting his paternity.⁷¹ It can be expected that this disavowal action will be prompted by the mother of the child asking the former husband to contribute to the support of the child or by the child seeking to inherit from the former husband's estate.⁷² Without any prompting event, the former husband will continue to be the child's legal father, with all the rights and responsibilities that status entails, although he is totally unaware of his status as father and perhaps unaware that the child has been born. The status as legal father and the requirement that the legal father bring a disavowal action are punishments for the earlier husband's failing to promptly get a divorce from the mother of the child. This punishment is in place, although failing to promptly secure a divorce is not a crime. Reason would suggest that the current husband, in the home with the newborn and the child's mother, should be the presumed father, not the former husband.⁷³

This misplaced paternity presumption forces the divorced couple and the biological father of the child into court to point accusing fingers at one another so that responsibility for caring for the child can rest with the biological father who has married the mother and already assumed responsibility for the child. This litigation to release the former husband of the mother from responsibility for the child, whether brought as a disavowal action or as a contestation action, would be unnecessary if the presumption of paternity fell onto the current husband of the wife at the time of birth of the child.

When the revisions to these paternity statutes were initially submitted to the legislature, Article 186 read as follows:

If a child is born within three hundred days from the day of the termination of a marriage and his mother has married again before his birth:

(1) The second husband is presumed to be the father if the previous marriage was terminated by judgment of divorce, declaration of nullity, or declaration of death under Article 54.⁷⁴

(2) The first husband is presumed to be the father if the previous marriage was terminated by death.⁷⁵

This statute drew the attention of State Senator Derrick Shepherd from Harvey, Louisiana, who objected to enacting a statute that created a presumption that the mother of the child had committed adultery.⁷⁶ Senator Shepherd explained that, as written, the law would presume that the mother of the child had sexual relations with a man who was not yet her current husband while she was still married to her former husband. He found that presumption morally repulsive and asked for a change to the legislation.⁷⁷ Professor Trahan, who drafted the change, noted that the law, as initially proposed, would have allowed the child to be born into an intact family where the husband of the mother is presumed to be the father of the child.⁷⁸ The amendment, he confessed, “will, of necessity, complicate things for this otherwise intact family.”⁷⁹

Under the statute as revised, the former husband and legal father of the child is forced to suffer the litigation expenses of a disavowal action when he has no connection to this child other than the legal presumption of paternity. If that former husband dies without bringing a disavowal action, this child may seek to inherit from him, forcing that man’s heirs or legatees to bring a disavowal action within one year of his death to prevent this child from sharing in his estate.⁸⁰ None of this litigation, with its financial and emotional costs to the families and to the court system, would be necessary if the legal presumption was enacted as initially proposed.

The law makes the former husband of the child’s mother the presumed father of this child and allows the current husband only one year to bring a filiation action because the child is presumed to be the child of another man.⁸¹ It is unlikely that the current husband will take steps to bring an avowal action to establish his filiation. He will expect that he will be considered the father of the child because he was the husband of the mother at the time of the child’s birth.⁸² To the question, “Are you married and to whom?” the mother of the child will give the name of the later husband, not that of the earlier. The name of the later husband will appear on the birth certificate as the child’s father, as we would expect a biological father’s name to appear, but under our law, that man has no legal affiliation to the child. This child could spend her entire life legally affiliated to one man while believing and being treated as if she is the child of another man.

Should this current husband and biological father die without formally acknowledging the child, his biological child would have only one year from the father’s death to establish her right to inherit.⁸³ If a succession proceeding is not brought promptly, this child’s lack of filiation may escape notice until it is too late for the child to inherit from her father. Imagine, instead, the confusion and familial dissension if the child is put in possession of her father’s property, a possession to which she is not entitled absent a filiation action, and her siblings learn later of the error. The siblings born during the marriage can demand that the unacknowledged child return the property to the estate. The current husband at the time of the child’s birth should be the presumed father of that child.

The mother of the child, of course, could sort out the issue of the child’s paternity, but she must act quickly. A mother of a child can bring a contestation action to establish both that her former husband is not the child’s father and that her current husband is the child’s father.⁸⁴ This action, however, must be brought within one hundred eighty days from her new marriage and within two years from the date of the birth of the child.⁸⁵ The action is not available if the parents wait to marry until after the child is two years old.

Before this action can be filed, the current husband must acknowledge the child by an authentic act or by signing the child’s birth certificate.⁸⁶ The court will not accept the testimony of the mother

alone.⁸⁷ In addition, the mother must prove both that her former husband is not the child's father and that her current husband is the child's father by clear and convincing evidence.⁸⁸ Why would a mother, unaware of this inane presumption, even think to bring such an action? She would believe that inscribing her husband's name on her child's birth certificate would be sufficient to establish his filiation to her newborn child, or that her current marriage to the child's biological father would be sufficient to establish his filiation to her newborn child, as it does for other married couples.⁸⁹

Rather than protect a mother from a presumption of adultery, the Civil Code now requires that the mother admit her adultery in open court, while incurring the financial costs and "other inconvenience unique to this specific litigation"⁹⁰ According to Professor Trahan, "[T]hese inconveniences [are] . . . a small price to pay . . . given the magnitude of the evil they have committed"⁹¹ The late Justice Blanche of Louisiana's Supreme Court was concerned that, "innocent children . . . [would] suffer from the promiscuous adventures of their parents."⁹² Professor Trahan finds some satisfaction in noting that the parents of a child conceived in one marriage and born into another will suffer.⁹³ He forgets about the inconvenience to the former husband or the problems that may inure to the child who is the subject of the litigation. He forgets about the burden this excess litigation places on the courts or about the costs it imposes on taxpayers who fund the judicial system. He forgets that the gestation period for a human child is usually less than two hundred eighty days, not three hundred days.

The 2005 changes to the code mystifyingly work towards family disunity rather than in support of the newly constituted family. They are counter-intuitive and will lead to confusion. They cause hardship, as they frustrate the expectations of the parties involved. They create additional business for family law attorneys and leave ill feelings and expenses with the former and current husbands and the mother of the child.

It is unreasonable to assign paternity to a man when circumstances suggest that the man is not the father of the child.⁹⁴ It is also unreasonable that a mother should be forced to publically admit her adultery, like wearing the scarlet letter of old, when she has "done the right thing" by marrying the father

of the child.⁹⁵ The court in *Succession of Mitchell*⁹⁶ understood this. It held that the subsequent marriage of a child's biological parents created the necessary link for lawful filiation between the child and his father whether or not the mother of the child was married to another man at the time of the child's conception.⁹⁷ This new law reverses that decision.

It is unreasonable to expect the mother to bring the required litigation within the limited time period of one hundred eighty days from her marriage to her present husband and two years from the birth of the child, especially because she will not suspect that litigation is necessary.⁹⁸ Parents who agree to accept their roles as parents should not have to go to court to establish their parentage unless their claim is challenged. When a mother and a father agree to acknowledge their child, their agreement should be sufficient. The court system and its tools of intervention should be reserved for circumstances when there is not agreement.

When revising statutes concerning children, a guiding principle should always be the best interest of the child.⁹⁹ Statutes governing the paternity of children should be directed at recognizing biological affiliation and encouraging filiation. Requiring parents to incur litigation expenses to timely and publically sort out the legal filiation of a child is not in the best interest of the child. It drains resources from the family and introduces stress. The presumptions in the law should maximize the statutory support for forming families. They should minimize litigation and the resultant strain placed on the family and on the public fisc.

When more than half of the babies born in Louisiana come into the world without a presumption to assist in determining their paternity, Louisiana's laws ought to make the process of filiation as user friendly as possible. When babies are born shortly after a marriage legally ends and a new one begins, the legal presumption of filiation should reflect the more common reality; babies born into a marriage should enjoy a presumption of filiation to the current husband of the mother. The standard of proof for paternity is sufficient to protect the interests and assets of those wrongly presumed to be parents.

Historically, a child's parents were more likely than not to be married to one another at the time of the child's conception and birth.¹⁰⁰ More and more frequently, childbirth precedes marriage.¹⁰¹

Paternity is always at issue for the child born outside of a marriage. A child not born within a marriage or within three hundred days of a marriage enjoys no presumption of paternity.¹⁰² The child, the child's mother, the child's father, or any of their heirs must institute some action to establish the child's filiation to his biological father.¹⁰³ The cost of litigation is a deterrent to a father who may want to establish his legal filiation to the child. The biological father of a child should be allowed to establish filiation by simply completing an authentic act of acknowledgment with the mother's consent: litigation and proof should be required only if the claim of affiliation is challenged.¹⁰⁴

VI. Suggestions

A. Article 186

I propose that the statutes relating to filiation as they appear in 2012 be changed. Article 186 should read as proposed in 2005:

If a child is born within three hundred days from the day of the termination of a marriage and his mother has married again before his birth:

(1) The second husband is presumed to be the father if the previous marriage was terminated by judgment of divorce, declaration of nullity, or declaration of death under Article 54.¹⁰⁵

(2) The first husband is presumed to be the father if the previous marriage was terminated by death.¹⁰⁶

The presumption follows the logical conclusion that, in most cases, the current husband fathered the child and not a prior husband. It allows a presumption in favor of the prior husband only when the marriage terminated by death within three hundred days of the child's birth. Under those circumstances, the child will not need to litigate paternity in order to inherit, unless the filiation is contested by the earlier husband's successors.¹⁰⁷

B. Articles 187-190

The disavowal action permitted by Articles 187-190, which allows a husband to rebut the presumption of his paternity, should remain available. However, the one-year prescriptive period may be unfair to a husband who trusts his wife and does not investigate the true paternity of a child until other events in the marriage give rise to doubt. A marriage should not be a trap that holds one spouse forever responsible for the acts of the other spouse. The short prescriptive period could impose a lifetime burden on the husband to support a child who is not related biologically. It discourages marriage by punishing the victim of adultery for his spouse's behavior. It creates discord by suggesting that paternity tests accompany each birth of a child, even during marriage.

In the case of *Smith v. Cole*,¹⁰⁸ when Mrs. Smith gave birth to a child fathered by Mr. Cole, Mrs. Smith and Mr. Cole contacted Mr. Smith to get his consent to obtain a birth certificate for the child that showed Mr. Cole as the child's father.¹⁰⁹ Mr. Smith was too angry with his wife to discuss the matter and more than a year passed without him seeking to disavow the child.¹¹⁰ The court determined that Mr. Smith could not now disavow the child.¹¹¹ Mr. Smith could divorce his wife because of her adultery, but would forever be the legal father of the product of that adultery. There should be no limit to the time period allowed for a husband to disavow paternity. Husbands should not have to bear the burden of supporting someone else's child simply because they were slow to uncover their wives' unfaithfulness, or because they did not timely follow through on a suspicion.

While the first paragraph of Civil Code article 189 creates a prescriptive period of one year from the time the husband learns of the birth of the child, the second paragraph of Civil Code article 189 imposes no time period on a husband who lived separate and apart from his wife during the three hundred days prior the birth of the child.¹¹² For a husband who has not lived with his wife, the one year prescriptive period on his opportunity to bring his disavowal action "does not commence to run until the husband is notified in writing that a party in interest has asserted that the husband is the father of the child."¹¹³

Why should a husband who stays at home with his cheating wife in an effort to hold his marriage together be burdened with supporting a child not biologically his while a husband who has left his wife to fend for herself not be so burdened? Why should a husband who trusts his wife and learns of her infidelity long after a child is born be burdened with supporting that child while a husband who walks away is not? Is it in the child's best interest to have a man who is not biologically his father have permanent legal ties to the child? In this current world, children born out of wedlock are to be treated the same as children born during a marriage. A child no longer needs protection from the stigma of illegitimacy, as that status carries with it no legal disabilities.¹¹⁴ Husbands who are not biological parents of their wives' children should be able to disavow these children at any time.

C. Articles 191-194

Articles 191-194, which allow a mother to sort out the fathers of the child by alleging that the former husband is not the father and the current husband is the father of a child, should remain available for those circumstances when the earlier marriage has not terminated before the child was born and the biological father of the child subsequently marries the child's mother.

Again, the time period should not be short, given that the cooperation of all the relevant persons may not be easy. It may be that the parents become concerned about the paperwork only when the child reports for school and must produce a birth certificate. The child may be using the biological parent's name and not know that his legal name is that of the earlier husband. A ten year time period may be more appropriate as it allows the involved adults time to deal with the emotions associated with love, marriage, adultery, and parenting, and to more dispassionately make decisions in the best interest of the child.

D. Article 195

Article 195 allows a biological father to acknowledge his child by marriage to the child's mother, coupled with signing the birth certificate or an acknowledgment by authentic act. An authentic act is far less costly than an action at court. The signing of the birth certificate or the acknowledgement in which the mother concurs should be enough to

establish the filiation of a man to a child whether or not the child has a presumed father who is not his biological father. The signing of the birth certificate or the acknowledgement in which the mother concurs should be enough to create all the reciprocal rights and responsibilities incident to a father-child relationship.

The husband who marries a woman who is pregnant would not expect her former husband to be the presumed father of his child. It is unlikely that he would ever imagine that he will need to file litigation within a year of the child's birth or forever lose his right to establish his paternity.¹¹⁵ Even in the absence of adultery, a child could be born within three hundred days of a divorce as a child's due date is set at forty weeks, or two hundred eighty days, after conception, and many children are born before their due dates. Husbands who are biological fathers should be allowed to establish their filiation at any time regardless of the marital status of the mother of the child at the time of conception or the time of delivery, and should be able to do so without incurring substantial expense.

If the husband at the time of birth is not the biological father, he can bring the disavowal action under Article 187 if he wishes to discontinue his filiation to the child.¹¹⁶ The disavowal action should be available to a man who marries after the birth of a child on the same terms as it is available to the husband at the time of the birth of the child.¹¹⁷

Article 195 should read:

A man who marries the mother of a child and who, with the concurrence of the mother, acknowledges the child by authentic act or by signing the birth certificate is presumed to be the father of the child. The husband may disavow paternity of the child as provided in Articles 187-189.

E. Articles 196 and 198¹¹⁸

Article 196 allows a man to acknowledge his child by authentic act without the consent of the child's mother, but the father does not derive the benefits of filiation from that acknowledgment.¹¹⁹ Article 198 allows a father to institute an action to establish his paternity at any time, without the consent of the

mother.¹²⁰ This action must be brought within a year of the child's birth when the child is presumed to be the child of another man,¹²¹ and provides another reason to ensure the initial presumption of paternity is correct.¹²²

Articles 196 and 198 allow the father who goes to the expense of litigating his paternity to receive benefits from his filiation while the father who merely signs the birth certificate gets the obligations but no benefits. Perhaps it is appropriate to give more weight to a court-adjudicated paternity than to an authentic act of acknowledgment, but this differentiation treats two similarly situated persons differently depending on their knowledge of the law and their willingness and ability to undertake the costs of litigation.

The signing of the birth certificate or the acknowledgement in which the mother concurs should be enough to establish the filiation of a man to a child whether or not the child's parents marry and whether or not the child is presumed to be the child of another man. This extrajudicial affiliation should be available to all biological parents. It is unlikely that two persons would execute this joint act without a sincere belief in its veracity. If they are wrong, the law should allow a man who has acknowledged a child in error to disavow the child.¹²³

The concurrence of the mother in the father's acknowledgment should be as valuable, and should render the same results, whether it is coupled with a marriage or not coupled with a marriage. A second paragraph in article 196 can allow a man who acknowledges his child, with the consent of the mother of that child, to establish filiation for all purposes. Litigation would be required only when the mother does not concur in the acknowledgment. The danger of fraud is remote, as an authentic act is signed under oath, and an acknowledgement of paternity is void where there is no biological link.¹²⁴

Article 196, second paragraph, should read:

A man may, by authentic act or by signing the birth certificate, and with the written consent of the child's mother, acknowledge a child. This acknowledgement creates the presumption that the man who acknowledges the child is the father of the child for all purposes.

The action under article 198 should remain available for those rare circumstances in which a mother does not concur in a father's efforts to filiate to a child. A court action, with its requirements for proof, seems appropriate when paternity is contested. The time period, however, should not be limited. The comments to Civil Code article 198 presume that a father who does not bring a filiation action during a child's life has "failed . . . to assume his parental responsibilities."¹²⁵ Nowhere does the law require that a parent bring a filiation action. A parent can "assume his parental responsibilities" without "conform[ing] to societal norms."¹²⁶ A parent can "assume his parental responsibilities" in the absence of any legal relationship. A court should consider the facts of a parent's relationship to the child, rather than whether certain papers are filed in court.

In *Udomeh v. Joseph*,¹²⁷ the court noted that the father "maintained an active presence in S.U.'s life and held himself out to the community as his father. . . . S.U.'s birth and death certificates . . . list Udomeh as S.U.'s father, and child support pleadings requir[e] . . . Udomeh to pay child support for S.U."¹²⁸ These facts suggest that Udomeh was fulfilling at least some of his parental responsibilities.¹²⁹ The actions required to fulfill parental responsibilities are unrelated to those required to establish filiation.

VII. Conclusion

Establishing filiation creates important rights for both children and their parents. Public law should encourage the formation of familial relationships¹³⁰ without penalizing persons not in a traditional family structure. It should facilitate the father who is willing to assume the role of father whether inside or outside of a marriage.

As currently written, Louisiana's laws presume that a prior husband is the father of a child when that man is not the child's biological father, is not a part of that child's life, and may very well hold a great deal of animosity towards that child's mother. This presumption is not in the child's best interest. Presuming that a subsequent husband is the child's father, when he is the child's biological father, lives with the child on a daily basis, and is married to the child's mother, more clearly serves the child's best interest.

No law should jeopardize the best interest of the child under the guise of protecting the reputation of the mother or under the guise of punishing the father, especially when the law gives the mother the choice of living with a lie, leaving her child's filiation in confusion, or destroying her reputation on her own. The paternity presumption assigning parentage to the husband at the time of conception rather than the husband at the time of delivery should be changed. Other suggested changes in this area of the law will facilitate the formation of family relationships without undue expense, and mitigate antipathy among family and non-family members.

Federal and state courts have ordered that all children, whether born inside or outside of marriage, be extended the same rights. Biological fathers, whatever the marital status of their children's mothers, should be afforded an economical way to establish their legal relationship to their children. A father's statement under oath with the mother's consent should establish filiation for their child. The courts should play a role only when paternity is contested. This approach will minimize burdens on the family and on the court system. A father willing to assume his role as father should be encouraged to do so. All unnecessary impediments to this purpose should be removed.

(Endnotes)

¹ Evelyn L. Wilson, Horatio C. Thompson Endowed Professor, teaches Louisiana Civil Law Property, Successions and Donations and Federal Civil Procedure at the Southern University Law Center. She is the author of the legal history, **LAWS, CUSTOMS AND RIGHTS**.

² 2008 Louisiana Health Report Card 33, La. Dept. of Health and Hosps. (2009), available at http://dhh.louisiana.gov/assets/oph/Center-RS/healthstats/DHHLthCreRprtCrd_2008.pdf (Apr. 2009)

³ Martin, Hamilton, Ventura, Osterman, Wilson, Mathews, Table I-4. *Births to unmarried women, by race and Hispanic origin of mother: United States, and each state and territory*, 61 National Vital Statistics Reports 1, 2010, available at http://www.cdc.gov/nchs/data/nvsr/nvsr60/nvsr60_02.pdf.

⁴ See National Center for Health Statistics, National Vital Statistics Reports (2011), available at <http://www.cdc.gov/> (From 1940 until just before 1970, fewer than 10% of children born were reportedly born out of wedlock. By 1970, that number has risen over 10% and neared 20% by 1980. It neared 30% by 1990. In 2010, 40.8% of children born nationwide were born out of wedlock.).

⁵ La. Civ. Code Ann. art. 185 (2005) ("The husband of the mother is presumed to be the father of a child born during the marriage or within three hundred days from the date of the termination of the marriage."). Maternity of a child is usually not at issue because of the physical act of carrying a child until birth. Maternity for a child born of a human embryo is determined by La. Rev. Stat. Ann. § 9:121 – 133 (1986).

⁶ La. Civ. Code Ann. arts. 191, 195, 197, 198 (2005).

⁷ La. Civ. Code Ann. art. 186 (2005) ("If a child is born within three hundred days from the day of the termination of a marriage and his mother has married again before his birth, the first husband is presumed to be the father.").

⁸ La. Civ. Code Ann. arts. 185 (2005), 186 (2005).

⁹ La. Civ. Code Ann. art. 178 (2009).

¹⁰ La. Civ. Code Ann. art. 215 (1870).

¹¹ La. Civ. Code Ann. art. 218 (1974).

¹² La. Civ. Code Ann. art. 216 (1870).

¹³ La. Civ. Code Ann. art. 227 (1870).

¹⁴ La. Civ. Code Ann. art. 240 (1870).

¹⁵ La. Civ. Code Ann. art. 229 (1979).

¹⁶ La. Civ. Code Ann. art. 240 (1870).

¹⁷ La. Civ. Code Ann. art. 880 (1982).

¹⁸ La. Civ. Code Ann. arts. 1493 (2003), 1494 (1996).

¹⁹ La. Civ. Code Ann. art. 179 (2009).

²⁰ See La. Child. Code Ann. arts. 1173 et seq. (1992).

²¹ See La. Civ. Code Ann. art. 184 (2005).

²² Article 340, sentence 1 of the Code Napoleon of 1804, La recherché de la paternité= est interdite.@ Translated, The right of proving paternal descent is forbidden.@ 16 La. Civ. Code (2008 Comp. Ed.) page 218.

²³ La. Civ. Code Ann. art. 203 (1947) (repealed 2005) ("The law considers the husband of the mother as the father of all children conceived during the marriage.").

²⁴ See La. Civ. Code Ann. art. 87 et seq. (An undissolved marriage to another was not the only impediment to marriage under the Civil Code. Those other impediments, capacity and close relationship, are not relevant to this discussion.).

²⁵ La. Civ. Code Ann. art. 913 (1947) (repealed 1981) ("Natural children are called to the inheritance of their father, who has duly acknowledged them, when he has left no descendants[,] nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the state.").

²⁶ La. Civ. Code Ann art. 20 (repealed 2005) (1947).

²⁷ *Trimble v. Gordon*, 430 U.S. 762 (1977).

²⁸ *Id.* at 769.

²⁹ See *id.* at 769-70 (quoting *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972)).

³⁰ *Id.* at 776.

³¹ *Succession of Brown*, 388 So. 2d 1151 (La. 1980).

³² *Id.* at 1153 (La. 1980).

³³ *Id.* at 1154; 1974. U.S. Const. amend. XIV, § 1. ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws."); La. Const. art. I, § 3. ("No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth . . .")

³⁴ La. Civ. Code Ann. art. 198 (1979) (“Illegitimate children are legitimated by the subsequent marriage of their father and mother, whenever the latter have formally or informally acknowledged them as their children, either before or after the marriage.”).

³⁵ Succession of Mitchell, 323 So. 2d 451 (La. 1975).

³⁶ See *id.* at 452-53. The first husband of the children’s mother left her in 1926 and was not heard from again. The mother did not know if he was still alive when the children were born in 1930 and 1937. The parents of the children married in 1941.

³⁷ *Id.* at 455.

³⁸ Smith v. Cole, 553 So. 2d 847, 854 (La. 1989).

³⁹ La. Civ. Code Ann. art. 200 (1983).

⁴⁰ La. Civ. Code Ann. art. 203 (1997) (repealed 2005).

⁴¹ La. Civ. Code Ann. art. 891 (1982).

⁴² La. Civ. Code Ann. art. 209 (1984).

⁴³ La. Civ. Code Ann. art. 209 (1984).

⁴⁴ La. Civ. Code Ann. art. 209 (1980).

⁴⁵ LA. CIV. CODE ANN. art. 209 (1984). “Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.” La. Civ. Code Ann art. 2315(A) (2012).

⁴⁶ La. Civ. Code Ann. art. 366 (2012).

⁴⁷ La. Civ. Code Ann. art. 246 (1924) , 256 (1983).

⁴⁸ La. Civ. Code Ann. art. 209 (1984).

⁴⁹ 2005 La. Acts 192 (Jul. 18, 2005).

⁵⁰ La. Civ. Code Ann. art. 197 (2005) (“A child may institute an action to prove paternity even though he is presumed to be the child of another man. If the action is instituted after the death of the alleged father, a child shall prove paternity by clear and convincing evidence. For purposes of succession only, this action is subject to a preemptive period of one year. This preemptive period commences to run from the day of the death of the alleged father.”).

⁵¹ *Id.*

⁵² La. Civ. Code Ann. art. 195 (2005) (“A man who marries the mother of a child not affiliated to another man and who, with the concurrence of the mother, acknowledges the child by authentic act, or by signing the birth certificate is presumed to be the father of that child. . . .”).

⁵³ La. Civ. Code Ann art. 198 (2005) (“A man may institute an action to establish his paternity of a child at any time except as provided in this Article. The action is strictly personal . . .”).

⁵⁴ La. Civ. Code Ann. art. 196 (2005) (“A man may, by authentic act or by signing the birth certificate, acknowledge a child not filiated to another man. The acknowledgment creates a presumption that the man who acknowledges the child is the father. The presumption can be invoked only on behalf of the child.”).

⁵⁵ La. Rev. Stat. Ann. § 9:392(A)(4) (“After the alleged father signs an acknowledgment of paternity, he has the right to pursue visitation with the child and the right to petition for custody.”).

⁵⁶ La. Civ. Code Ann. art. 185 (2005) (“The acknowledgement, by authentic act or by signing the birth certificate, only benefits the child. It does not create a presumption in favor of the man.”).

⁵⁷ La. Civ. Code Ann. art. 196 (2005) (“Except as otherwise provided in custody, visitation, and child support cases, the

acknowledgement does not create a presumption in favor of the man who acknowledges the child.”).

⁵⁸ La. R.S. 9:392.1.

⁵⁹ La. Civ. Code Ann. art. 185 (2005).

⁶⁰ Smith v. Cole, 553 So.2d 847, 850 (La. 1989) (“The policy [presuming paternity of the husband] was to protect innocent children against attacks upon their paternity and the presumption was the strongest known in law.”).

⁶¹ La. Civ. Code Ann. art. 185 (2005).

⁶² La. Civ. Code Ann. art. 187 (2005).

⁶³ La. Civ. Code Ann. art. 189 (2005) (“The action for disavowal of paternity is subject to a liberative prescription of one year. This prescription commences to run from the day the husband learns or should have learned of the birth of the child. Nevertheless, if the husband lived separate and apart from the mother continuously during the three hundred days immediately preceding the birth of the child, this prescription does not commence to run until the husband is notified in writing that a party in interest has asserted that the husband is the father of the child.”).

⁶⁴ La. Civ. Code Ann. art. 189 (2005).

⁶⁵ La. Civ. Code Ann. art. 185 (2005) (“The husband of the mother is presumed to be the father of a child born during the marriage or within three hundred days from the date of the termination of the marriage.”).

⁶⁶ La. Civ. Code Ann. arts 102-103.1 (2007). The grounds for divorce in a covenant marriage are not included in this list, but may be found in La. Rev. Stat. 9:307 (2004).

⁶⁷ La. Civ. Code Ann. art. 186 (2005) (“If the child is born within three hundred days from the day of the termination of a marriage and his mother has married again before his birth, the first husband is presumed to be the father. . . .”).

⁶⁸ Center of Excellence for Medical Multimedia Virtual Library, <http://www.pregnancyatoz.org/Resource-Center/FAQs> (last visited Oct. 7, 2013). The average gestation period for a human child is 280 days.

⁶⁹ La. Civ. Code Ann. art. 186 (2005).

⁷⁰ La. Civ. Code Ann. art. 189 (2005); See also Smith v. Cole, 553 So.2d at 854.

⁷¹ La. Civ. Code Ann. art. 189 (2005).

⁷² La. Civ. Code Ann. art. 189 (2005).

⁷³ Katherine Shaw Spaht, *Who’s Your Momma, Who Are Your Daddies? Louisiana’s New Law of Filiation*, 67 La. L. Rev. 307, 352-53 (2007) (“[W]here a child is conceived in one marriage and born during another . . . The rather obvious assumption . . . is that in cases where the first marriage ends in divorce . . . it is the second husband who is the biological father in a majority of the cases.”).

⁷⁴ La. Civ. Code Ann. art. 54 (2006) (“One who has been absent for five years is presumed to be dead . . .”).

⁷⁵ J.R. Trahan, *Glossae on the New Law of Filiation*, 67 LA. L. REV. 387, 404 (2007).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ La. Civ. Code Ann. art. 190 (2005) (“[H]is successor whose interest is adversely affected may institute an action for disavowal of paternity.”).

⁸¹ La. Civ. Code Ann. art. 198 (2005) (“If the child is presumed to be the child of another man, the action shall be instituted with one year from the day of the birth of the child. . .”).

⁸² La. Civ. Code Ann. art. 185 (2005) (“The husband of the mother is presumed to be the father of a child born during the marriage or within three hundred days from the date of the termination of the marriage.”).

⁸³ La. Civ. Code Ann. art. 197 (2005) (“A child may institute an action to prove paternity even though he is presumed to be the child of another man. If the action is instituted after the death of the alleged father, a child shall prove paternity by clear and convincing evidence. For purposes of succession only, this action is subject to a preemptive period of one year. This preemptive period commences to run from the day of the death of the alleged father.”).

⁸⁴ La. Civ. Code Ann. art. 191 (2005) (“The mother of a child may institute an action to establish both that her former husband is not the father of the child and that her present husband is the father. This action may be instituted only if the present husband has acknowledged the child by authentic act or by signing the birth certificate.”).

⁸⁵ La. Civ. Code Ann. art. 193 (2005).

⁸⁶ La. Civ. Code Ann. art. 191 (2005).

⁸⁷ La. Civ. Code Ann. art. 192 (2005) (“The testimony of the mother shall be corroborated by other evidence.”).

⁸⁸ *Id.*

⁸⁹ La. Civ. Code Ann. art. 185 (“The husband of the mother is presumed to be the father of a child born during the marriage . . .”).

⁹⁰ J.R. Trahan, *Glossae on the New Law of Filiation*, 67 **LA. L. REV.** 387,405 (2007).

⁹¹ *Id.*

⁹² Succession of Brown, 388 So. 2d at 1153.

⁹³ J.R. Trahan, *Glossae on the New Law of Filiation*, 67 **LA. L. REV.** 387, 405 (2007).

⁹⁴ La. Civ. Code Ann. arts. 186 and 189 (2005). The presumption that the husband of the mother is the father of the child applies even when the husband has lived separate and apart from the mother of the child continuously during the three hundred days immediately preceding the birth of the child.

⁹⁵ La. Civ. Code Ann. art. 191 (2005).

⁹⁶ Succession of Mitchell, 323 So.2d 451 (La. 1975).

⁹⁷ *Id.* at 456.

⁹⁸ La. Civ. Code Ann. art. 193 (2005).

⁹⁹ La. Civ. Code Ann. art. 131 (1994).

¹⁰⁰ See *supra* note 3. From 1940 until just before 1970, fewer than 10% of children born were reportedly born out of wedlock. By 1970, that number has risen over 10% and neared 20% by 1980 and neared 30% by 1990. In 2010, 40.8% of children born nationwide were born out of wedlock. National Center for Health Statistics, National Vital Statistics Reports, 2011.

¹⁰¹ See *supra* note 2.

¹⁰² See La. Civ. Code Ann. arts. 195 (2005), 196 (2006), 198 (2005).

¹⁰³ See La. Civ. Code Ann. arts. 197 (2005), 191 (2005). Filiation can also be established by adoption. See, La. Civ. Code Ann. art. 199 (2009); La. Child. Code Ann arts. 1167 et seq.

¹⁰⁴ Fathers who acknowledge children to whom they have no biological connection are protected under Louisiana case law. In Succession of Robinson, 654 So.2d 682, 685 (La. 1995), the Louisiana Supreme Court ruled that, “If a biological relationship did not exist between [father and child], then the acknowledgment was made in contravention of the law . . .” and is without effect.

¹⁰⁵ See La. Civ. Code Ann. art. 54 (2006) (“One who has been an absent person for five years is presumed to be dead. . .”).

¹⁰⁶ J.R. Trahan, *Glossae on the New Law of Filiation*, 67 **LA. L. REV.** 387, 404 (2007).

¹⁰⁷ See La. Civ. Code Ann. art. 190 (allowing successors, heirs and legatees, whose interest is adversely affected by a claim of filiation to institute an action for disavowal).

¹⁰⁸ Smith v. Cole, 553 So. 2d 847 (La. 1989).

¹⁰⁹ *Id.* at 848.

¹¹⁰ *Id.* at 848.

¹¹¹ *Id.* at 854.

¹¹² La. Civ. Code Ann. art. 189 (2005).

¹¹³ *Id.*

¹¹⁴ Succession of Cosse, 608 So.2d 1092, 1096 (La. Ct. App. 1992); Smith v. Cole, 553 So.2d at 850-51.

¹¹⁵ La. Civ. Code Ann. art. 198 (2005).

¹¹⁶ Louisiana courts have long recognized that children may have two fathers, one legal and another biological, both of whom may be held responsible for support of the child and entitled to visitation with the child. See, e.g., Warren v. Richard, 296 So. 2d 813 (La. 1974), Smith v. Cole, Gallo v. Gallo, 861 So. 2d 168 (La. 2003).

¹¹⁷ Current law allows an acknowledgment of paternity to be revoked within sixty days of signing the act, and voided upon proof, by clear and convincing evidence, that the acknowledgment was induced by fraud, duress, material mistake of fact, or error, or that the acknowledging father is not the biological father. La. Rev. Stat. Ann. § 9:392(A)(7)(ii)(b) (2010). The action to void the acknowledgment, however, must be brought within two years of its execution. La. Rev. Stat. Ann. § 9:406(B)(2) (2012).

¹¹⁸ I have no objection to La. Civ. Code Ann art. 197 which allows a child of any age to bring an action to establish paternity. Under the codal articles as proposed, this action would be required only when the child could not get his biological parents to agree to execute an authentic act recognizing their filiation.

¹¹⁹ See La. Civ. Code Ann. art. 196 (2006) (“The presumption can be invoked only on behalf of the child.”).

¹²⁰ La. Civ. Code Ann. art. 198 (2005).

¹²¹ *Id.*

¹²² See the discussion of Article 185 above. Few fathers expect that they would have only one year to establish their paternity. Fewer husbands would hold that expectation.

¹²³ See, e.g., La. Rev. Stat. Ann. § 9:392(A)(7)(ii)(b) (2010) (Current law allows an acknowledgment of paternity to be revoked within sixty days of signing the act, and voided upon proof, by clear and convincing evidence, that the acknowledgment was induced by fraud, duress, material mistake of fact, or error, or that the acknowledging father is not the biological father); La.

Rev. Stat. Ann. § 9:406(B)(2) (2012) (The action to void the acknowledgment, however, must be brought within two years of its execution); La. ex rel. A.L., 34 So. 3d 416, 419-20 (La. Ct. App. 2010) (According to our courts, a non-biological father's acknowledgement was void).

¹²⁴ See, e.g., Succession of Robinson, 654 So. 2d 682 (La. 1995); Matter of Adoption of M.L., 688 So. 2d 1352, 1358 (La. Ct. App. 1997); La. Rev. Stat. Ann. § 9:392(A)(7)(b) (2010).

¹²⁵ La. Civ. Code Ann. art. 198, Comment. (d) (2005).

¹²⁶ Udomeh v. Joseph, 103 So. 3d 343, 355 (La. 2012) (Kimball, C.J., dissenting) (“[T]he state has an interest in requiring parents to conform to societal norms and placing the consequences for nonconformity on the parents . . .”).

¹²⁷ *Id.* at 345.

¹²⁸ *Id.* at 346.

¹²⁹ *Id.*

¹³⁰ Katherine Shaw Spaht, *Who's Your Momma, Who Are Your Daddies? Louisiana's New Law of Filiation*, 67 **LA. L. REV.** 307, 315 (2007) (“[M]ost if not all scholars agree that on average a child who is reared in the home of his or her biological parents united in marriage prospers in ways unattained (sic) by children reared in other family structures.”).