

12-2-2017

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Recommended Citation

Tali Marcus, *Cutting Off the Umbilical Cord—Reflections on the Possibility to Sever the Parental Bond*, 25 J. L. & Pol'y 585 (2017).
Available at: <https://brooklynworks.brooklaw.edu/jlp/vol25/iss2/12>

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CUTTING OFF THE UMBILICAL CORD – REFLECTIONS ON THE POSSIBILITY TO SEVER THE PARENTAL BOND

*Tali Marcus**

Parenthood is a status comprising exclusivity relating to the rights and responsibilities concerning the child. The rights and obligations imbued in the parental status are evident first and foremost during the child's minority. Nonetheless, the status has legal meaning and implications that extend beyond the child's minority and carry on throughout adulthood. By defining parenthood and assigning parental status, the law establishes legal as well as social responsibility towards the child and a bond for life. This article questions the eternal aspect of parenthood and aspires to initiate discussion pertaining to the social and legal conventions that pose parenthood as a binding legal relation and responsibility for life. Today, the law permits the elimination of the parental legal bond in cases of adoption. However, the law is unable to cope with parental void and thus has trouble dealing with relinquishing the parental status in instances that do not involve adoption. This Article's main concern are these instances. The social-legal principles of the parental bond that are taken for granted are re-examined and a new approach for abrogating the parental bond is offered.

INTRODUCTION

The relationship between a parent and a child is vital and prominent to both parties. From the child's perspective, the

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parental relationship supports his proper development and contributes to his education, financial support, and physical and emotional wellbeing. For the parent, parenthood is a path to self-fulfillment. Parenthood enables one “to learn [about oneself], . . . develop [oneself] as a person, and [attain] satisfaction” through which one thrives.¹ However, sometimes the relationship does not fulfill this purpose.

Parenthood is a status comprising exclusive rights and responsibilities concerning the child.² The rights and obligations imbued in the parental status are evident, first and foremost, when the child is a minor. Nonetheless, the status has legal meaning and implications that extend beyond the child’s minority and carry on throughout adulthood.³ The legal system intends the parent-child status to be permanent⁴ and eternal.⁵ By defining parenthood and assigning parental status, the law establishes legal as well as social responsibility and a bond for life. The question thus arises—what are the justifications for, and implications of, establishing a bond for life?

¹ Harry Brighouse & Adam Swift, *Parent’s Rights and the Value of Family*, 117 ETHICS 80, 91–95 (2006).

² Katherine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879, 879, 883 (1984) [hereinafter Bartlett, *Rethinking Parenthood as an Exclusive Status*].

³ Margaret M. Mahoney, *Permanence and Parenthood: The Case for Abolishing the Adoption Annulment Doctrine*, 42 IND. L. REV. 639, 639 (2009). For a thorough development of the idea, see *infra* Part III.

⁴ See Mahoney, *supra* note 3, at 639–640.

⁵ See, e.g., U.S. Nat’l Archives & Records Admin., *Census Records*, NAT’L ARCHIVES, www.archives.gov/research/census (last updated Feb. 1, 2017) (showing that Census Records maintains records of citizens who are considered relatives and it provides details of family members since the first Federal Population Census that was taken in 1790) [hereinafter U.S. Nat’l Archives & Records Admin., *Census Records*]; U.S. Nat’l Archives & Records Admin., *Researching an Individual or Family*, NAT’L ARCHIVES, <https://www.archives.gov/research/native-americans/research-individual> (last updated Jan. 9, 2017) (showing that vital records such as birth certificates are also saved as records by the states and territories. Those records are saved for eternal use; Inheritance Laws employ the personal status in order to allocate a person’s possessions after death). See *infra* Section II.B.

Today, the law permits the elimination of the parental legal bond in cases of adoption.⁶ The law usually consents to such matters in instances where all known parents forfeit their parental rights and responsibilities and surrender the child for adoption.⁷ However, when only one parent wishes to relinquish parental status, the law will not allow it unless another person takes his or her place.⁸ The law is unable to cope with parental void, and thus has trouble dealing with relinquishing the parental status in instances that do not involve adoption. A person cannot be regarded parentless in the eyes of the law, even during adulthood.

My point of departure will be the fact that a person is defined by law as a parent. The Article will not discuss the questions concerning who the law should recognize as a parent, nor the different possible definitions of parenthood. Rather, this Article challenges the social and legal conventions that pose parenthood as a binding legal relationship and responsibility for life and calls to reconsider the parent-child relationship as an everlasting one.

This Article is not arguing for the abolishment of the institution of parenthood altogether, nor is this Article contending that the relationship should end automatically once a child reaches adulthood. Rather, this Article argues that since filial relationships are such a vital part of a person's life—the institution of parenthood in particular having a key role in shaping one's identity—one should have a choice to opt out of a relationship that does not fulfill its purpose. This option should be made possible only under certain circumstances and under the supervision of the courts. The procedure should be tailor-made to these cases and be part of the law governing the definition of parenthood.

⁶ See Mahoney, *supra* note 3, at 640.

⁷ See Katharine K. Baker, *Marriage and Parenthood as Status and Rights: The Growing, Problematic and Possibly Constitutional Trend to Disaggregate Family Status from Family Rights*, 71 OHIO ST. L. J. 127, 154, 154 n. 125 (2010).

⁸ *Id.* at 154 n.125 (stating that a person “cannot effectively relinquish his parental [status] . . . unless the other parent relinquishes it [as well] . . . [E]ven [when] both parents want to relinquish their parental [status],” once the child is old enough, “it is highly unlikely [that] the state would accept their relinquishment.”).

This Article's contribution to the existing scholarship is three-fold. First, reexamining social-legal principles governing the parent-child relationship that are so obvious and taken for granted that we do not pause to think about their relevance and rationale, is important and significant in itself. Second, the Article's critical discussion of the eternal aspect of parenthood offers a novel point of view of the parental bond and challenges the social and legal conventions on this matter. Third, this Article offers a new approach for abrogating the parental bond.

This Article will proceed as follows. Part I describes briefly the parental status and the exclusive rights and responsibilities ascribed to it. Part II examines the legal, social, and symbolic implications of the parent-child status throughout the child's adulthood. Part III discusses the legal options that currently exist to abrogate the parental status. Those options include involuntary termination of the parental status by state intervention and abrogation of the status by choice. Furthermore, this Part will discuss the doctrine of child emancipation, which is an intermediate solution as it does not sever the parent-child status, but still diminishes and restricts the parental control over their child's life by granting the child legal autonomy.⁹ Finally, Part IV considers the case for "cutting off the umbilical cord." This Part suggests an alternative to the existing law which would extend the instances in which the parental bond could be severed. Yet, it does so in a very moderate and restrained way which accounts for concerns that might be raised in opposition to this proposal. This Article does not suggest to annul the parental status altogether when the child reaches adulthood; it merely wishes to raise awareness of the need to facilitate the termination of the parental bond in some instances and recommends that the law should provide means to enable people to do so.

⁹ Barbara Goldberg, "Cutting the Parental Ties": *Emancipation and Child Support in California*, 4 J. JUV. L. 187, 188 (1980); Carol Sanger & Eleanor Willemssen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J. L. REFORM 239, 258-60 (1992).

I. THE PARENTAL STATUS—EXCLUSIVITY, PERMANENCE, RIGHTS AND RESPONSIBILITIES

Parenthood is a status that confers rights and responsibilities regarding the child. Parental rights include, among others, the right to custody of the child, to discipline the child, to make decisions regarding the upbringing of the child, and to decide where the child shall live.¹⁰ Parental obligations include, among other things, the responsibility to support and to care for the child.¹¹ The Supreme Court of the United States has recognized “the interests of parents in the care, custody, and control of their children,” as a fundamental liberty interest protected by the Constitution.¹²

Parenthood has two key elements: exclusivity and permanence. Generally, parenthood is considered an exclusive status.¹³ The law recognizes one set of parents for a child at any given time and these parents are granted exclusive parental rights and duties.¹⁴ Through the rule of exclusivity, the law creates a stark dichotomy between “parents” and “nonparents,” who are considered “strangers” by the law.¹⁵ Only the child’s legal parents can claim rights with respect to the child.¹⁶ The exclusivity principle also

¹⁰ Bartlett, *Rethinking Parenthood As An Exclusive Status*, *supra* note 2, at 884–85 (listing various rights a parent has over the child).

¹¹ *Id.* at 885.

¹² *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

¹³ Bartlett, *Rethinking Parenthood As An Exclusive Status*, *supra* note 2, at 879; Ayelet Blecher-Prigat, *Rethinking Visitation: From a Parental to a Relational Right*, 16 DUKE J. GENDER L. & POL’Y 1, 5 (2009); Matthew M. Kavanagh, *Rewriting the Legal Family: Beyond Exclusivity to a Care-Based Standard*, 16 YALE J. L. & FEMINISM 83, 88–89 (2004); Alison Harvison Young, *Reconceiving the Family: Challenging the Paradigm of the Exclusive Family*, 6 AM. U. J. GENDER & L. 505, 506 (1998).

¹⁴ Bartlett, *Rethinking Parenthood as an Exclusive Status*, *supra* note 2, at 879; Melanie B. Jacobs, *Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents*, 9 J.L. & FAM. STUD. 309, 314 (2007) [hereinafter Jacobs, *Why Just Two?*].

¹⁵ Blecher-Prigat, *supra* note 13, at 5; Jacobs, *Why Just Two?*, *supra* note 14, at 314; Kavanagh, *supra* note 13, at 88–89; Young, *supra* note 13, at 520.

¹⁶ Bartlett, *Rethinking Parenthood as an Exclusive Status*, *supra* note 2, at 883; Blecher-Prigat, *supra* note 13, at 5.

shields parents from the state or third parties intervening in their parenting decisions.¹⁷

The legal system intends the parent-child status to be permanent¹⁸ and eternal, lasting from birth until death and even beyond.¹⁹ Family laws reflect the view that “the stability that results from the maintenance of existing family ties...[is important to] children, their families, and society as a whole.”²⁰ This Article initiates a much-needed discussion pertaining to the permanence aspect of parenthood.

II. THE IMPLICATIONS OF THE PARENT-CHILD STATUS

This Part will discuss the legal and symbolic implications of the parent-child status. The emphasis will be on the implications the relationship has when the child is adult. The part will also discuss, to a lesser extent, the implications of the relationship that are relevant during the child’s minority, yet only those implications that go beyond the parental rights and responsibilities that are described in the previous part and that are usually associated with parenthood.

A. Symbolic

The law has an expressive function.²¹ It conveys messages and makes statements that are important and valuable in and of themselves. Those messages shape the culture and affect “our

¹⁷ Blecher-Prigat, *supra* note 13, at 5–6; Jacobs, *Why Just Two?*, *supra* note 14, at 311; Young, *supra* note 13, at 524.

¹⁸ Mahoney, *supra* note 3, at 639–40.

¹⁹ *Id.*; see sources cited *supra* note 5. By allowing (and sometimes compelling) the distribution of property between parents and their children through inheritance, Inheritance law, in effect, preserves the relationship after death.

²⁰ Mahoney, *supra* note 3, at 643.

²¹ Cass R. Sunstein, *On The Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2022, 2026, 2051 (1996); Carol Weisbrod, *On the Expressive Functions of Family Law*, 22 U.C. DAVIS L. REV. 991, 991–94 (1989).

perception of ourselves and of our relationship with others.”²² The interaction between law and culture is a symbiotic one, where one is both dependent on and influences the other. Law shapes identities, social practices and attitudes, and the meaning of cultural symbols. Yet, law is also a product of society and is shaped by the culture in which it thrives.²³

The parent-child bond is a cultural-social bond as well as a legal one. The meaning of the relationship and its scope have changed throughout the years,²⁴ differing from country to country and across societies.²⁵ The fact that a person is legally considered someone’s parent has personal and social significance that exceeds the one established by law. The parental status and the parent-child bond as defined by law, have a meaning even when no other content is ascribed to them—even when parenthood is stripped of the rights, responsibilities and obligations that are usually attributed to it. The status granted by the law symbolizes a relationship cherished by society, and affects personal identity as well as the way we perceive relationships with others. The parent “title” or “label” has value in and of itself because it signifies a social institution that comes with a bundle of cultural connotations. Because the term “parent” denotes a social institution, it significantly affects the way the parent and the child come to see themselves and the way society sees them.

The law’s expressive function can be illustrated through the struggle for same-sex marriage. When Vermont introduced its Civil Union Statute, it was the first state to confer all the state-created rights and responsibilities of marriage to same-sex couples.²⁶ Same-sex couples who entered into civil unions would

²² Katharine T. Bartlett, *Re-Expressing Parenthood*, 98 YALE L.J. 293, 293 (1988).

²³ Naomi Mezey, *Law as Culture*, 13 YALE J. L. & HUMAN. 35, 46–47 (2001).

²⁴ Zvi Triger, *Introducing the Political Family: A New Road Map for Critical Family Law*, 13 THEO. INQ. L. 361, 364–65 (2012) (stating that “the family has been constantly changing and evolving throughout human history.”).

²⁵ Nicole L. Sault, *Many Mothers, Many Fathers: The Meaning of Parenthood Around the World*, 36 SANTA CLARA L. REV. 395, 395, 397 (1996).

²⁶ Vincent J. Samar, *Privacy and the Debate Over Same-Sex Marriage Versus Unions*, 54 DEPAUL L. REV. 783, 784 (2005).

get all the state created benefits of marriage.²⁷ The only difference was withholding the title “marriage.”²⁸ Proponents of same-sex marriage have objected to the civil union alternative, arguing that withholding the term “marriage” has a substantial meaning.²⁹ They argued that civil unions are a “separate but equal” substitute for marriage and as such do not grant full equality.³⁰ Furthermore, denying same-sex couples the right to marry while giving them the same legal rights associated with marriage marks them as inferior and second-class citizens,³¹ since civil unions do not carry the same social meaning as marriage.³² “Treating [civil unions and marriage] as if they were the same overlooks [the] ways that culture shapes self-esteem, [] individual identit[y],” and the construction of relationships.³³ “Marriage” carries with it “a sense of belonging, . . . of being a part of a community,”³⁴ societal legitimacy, and recognition.³⁵ The choice of name is important “when the law does the labeling.”³⁶

Abrogating the parental status, thus annulling the parent-child bond, has an expressive value. Abrogating the status is a statement

²⁷ The couple could get only state created benefits and only if they were residents of Vermont. Civil unions do not confer the many benefits in the private sector that are available only to married couple. Misha Isaak, “*What’s in a Name?*”: *Civil Unions and the Constitutional Significance of “Marriage,”* 10 U. PA. CONST. L. 607, 626 (2008).

²⁸ *Id.* at 608; Samar, *supra* note 26, at 784.

²⁹ See Isaak, *supra* note 27, at 610; Samar, *supra* note 26, at 793.

³⁰ Isaak, *supra* note 27, at 609.

³¹ Barbara J. Cox, *But Why Not Marriage: An Essay on Vermont’s Civil Unions Law, Same-Sex Marriage, and Separate but (Un)Equal*, 25 VT. L. REV. 113, 135 (2000); Michael C. Dorf, *Same-Sex Marriage, Second-Class Citizenship, and Law’s Social Meanings*, 97 VA. L. REV. 1267, 1275, 1311 (2011); Michael Mello, *For Today, I’m Gay: The Unfinished Battle for Same-Sex Marriage in Vermont*, 25 VT. L. REV. 149, 156 (2000).

³² Samar, *supra* note 26, at 785.

³³ *Id.* at 785.

³⁴ Mello, *supra* note 31, at 252 (quoting Jack Hoffman, *Partnership and Marriage Wouldn’t Ever Be the Same*, RUTLAND HERALD (Jan. 16, 2000)).

³⁵ Sheila Rose Foster, *The Symbolism of Rights and the Costs of Symbolism: Some Thoughts on the Campaign for Same-Sex Marriage*, 7 TEMP. POL. & CIV. RTS. L. REV. 319, 321 (1998); Samar, *supra* note 26, at 793.

³⁶ Mello, *supra* note 31, at 257.

made by law, a message the law communicates to the broader society about when relationships should stop being recognized as parental. It is a symbolic statement that helps the former parent and the former child define and construct their identities. It affects their perceptions of themselves and the perception of their relationships with others. Take for example a parent who sexually abused or assaulted their child. Even if the abusive parent's rights were terminated and there was no contact between the parent and the victim child, the parental status remains—the abuser is still considered the child's parent. In this kind of scenario, the parental title has great legal and social significance. It is reasonable to think that the child would want to abrogate the parent-child bond because the status in and of itself is a symbol that carries great meaning and value. By abrogating the parental status, the law conveys a message regarding certain kinds of behavior that are prohibited in a specific society. Revoking the parental status in such cases can also have a therapeutic effect for the child.³⁷

B. Inheritance

The parent-child bond has significant legal implications in addition to the symbolic and social ones. Succession is a substantial legal aspect affected by the parental bond, persisting throughout the child's life and still relevant in adulthood. The

³⁷ For discussion about “Therapeutic Jurisprudence” see generally, Susan Daicoff, *Apology, Forgiveness, Reconciliation & Therapeutic Jurisprudence*, 13 PEPP. DISP. RESOL. L. J. 131, 134, 153 (2013) (describing “therapeutic jurisprudence” as a development in law “which seeks to make the law a healing profession by exploring its potential to heal individuals, relationships, and society.”); Patricia Monroe Wisnom, *Probate Law and Mediation: A Therapeutic Perspective*, 37 ARIZ. L. REV. 1345, 1352–53 (1995) (defining “therapeutic jurisprudence” as the study of law that incorporates mental health, psychology and related areas to improve the outcomes of law and increase therapeutic consequences); David Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T. M. COOLEY L. REV. 125, 125 (2000) (defining “therapeutic jurisprudence” as “the study of the role of law as a therapeutic agent, [that] focuses on the law’s impact on emotional life and on psychological well-being”); David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 TOURO L. REV. 17, 20 (2008) (exploring the therapeutic jurisprudence developments).

parent-child status has a significant impact on inheritance law on several levels.

Inheritance law is governed by two devices that facilitate the distribution of the decedent's estate: the option to execute a will, and intestate succession.³⁸ When choosing to write a will, a person is using her freedom of testation to decide who her heirs would be and to allocate her property among them the way she sees fit.³⁹ Freedom of testation is not absolute, however, and is restricted by formalities concerning the manner in which the will should be administered, as well as by other doctrines.⁴⁰ When a person dies intestate, meaning without leaving a valid will, their property is distributed according to legal provisions adopted through state law.⁴¹ Intestate laws set default rules for the allocation of property at death, which try to imitate the reasonable person's choice for bequeathing the estate.⁴²

The default rules of intestate law usually consider family members to be the preferred beneficiary of the decedent's estate⁴³—typically spouses, children, and parents.⁴⁴ When a person

³⁸ Shelly Kreiczer-Levy, *The Mandatory Nature of Inheritance*, 53 AM. J. JURIS. 105, 105 (2008).

³⁹ Ray D. Madoff, *A Tale of Two Countries: Comparing the Law of Inheritance in Two Seemingly Opposite Systems*, 37 B.C. INT'L & COMP. L. REV. 333, 334 (2014).

⁴⁰ *Id.* at 333, 334, 345–46; Margaret Ryznar & Angelique Devaux, *Au Revoir, Will Contests: Comparative Lessons for Preventing Will Contests*, 14 NEV. L. J. 1, 1, 9 (2013).

⁴¹ Terin Barbas Cremer, *Reforming Intestate Inheritance for Stepchildren and Stepparents*, 18 CARDOZO J. L. & GENDER 89, 91 (2011); Kreiczer-Levy, *supra* note 38, at 105; Matthew Boehringer, *Intestate Succession for Indigent Parents: A Modest Proposal for Reform*, 45 U. TOL. L. REV. 121, 122, 137 (2013).

⁴² Boehringer, *supra* note 41, at 139; Cremer, *supra* note 41, at 91; Susan N. Gary, *The Probate Definition of Family: A Proposal for Guided Discretion in Intestacy*, 45 U. MICH. J. L. REFORM 787, 789 (2012); Mark Glover, *Rethinking the Testamentary Capacity of Minors*, 79 MO. L. REV. 69, 91 (2014); Kreiczer-Levy, *supra* note 38, at 105; Jennifer Seidman, *Functional Families and Dysfunctional Law: Committed Partners and Intestate Succession*, 75 U. COLO. L. REV. 211, 211 (2004).

⁴³ Boehringer, *supra* note 41, at 122; Cremer, *supra* note 41, at 91–92; Gary, *supra* note 42, at 787; Glover, *supra* note 42, at 91; Madoff, *supra* note 39, at 344.

dies intestate her estate usually passes to her descendants, even if she would have wanted otherwise.⁴⁵ If the deceased does not have children, the estate could go to her ascendants.⁴⁶ Research shows that a large percentage of people in the United States die without writing a will.⁴⁷ There could be various reasons for that, such as the fact that people are reluctant to confront their death. No matter the reason, this fact highlights the crucial role that the parent-child bond plays in the allocation of property through inheritance.

There are some limitations on an individual's testation power when they decide to write a will. In most of the western world and in other countries as well, a person cannot completely disinherit certain family members specified by law. In civil law countries, a decedent's family members may be entitled to a forced share of the decedent's estate.⁴⁸ The "forced share," sometimes referred to as the "reserve share" or "legitim," is a portion of the decedent's estate that the specified family members are entitled to and which the decedent cannot freely distribute.⁴⁹ The decedent can freely

⁴⁴ Boehringer, *supra* note 41, at 122, 137–38; Cremer, *supra* note 41, at 91–92.

⁴⁵ Boehringer, *supra* note 41, at 122, 137–38; Cremer, *supra* note 41, at 91–92; Gary, *supra* note 42, at 791; Seidman, *supra* note 42, at 223.

⁴⁶ Boehringer, *supra* note 41, at 122, 137–38.

⁴⁷ *Id.* at 137; Madoff, *supra* note 39, at 344.

⁴⁸ Ralph C. Brashier, *Disinheritance and the Modern Family*, 45 CASE W. RES. L. REV. 83, 117 (1994); Madoff, *supra* note 39 at 334, 342–43 (stating that under French law, the children are entitled to a reserved share of the estate, and an individual can only distribute the remaining portion); Ryznar & Devaux, *supra* note 40, at 9 (stating that under French law children are entitled to forced share); Ian Sumner & Caroline Forder, *Proposed Revisions of Matrimonial Property Law, a New Inheritance Law and the First Translation of the Dutch Civil Code, Book 1 (Family Law) Into English*, 2004 INT'L SURV. FAM. L. 337, 366 (2004) (discussing forced heirship in the Netherlands); Ryan McLearen, *International Forced Heirship: Concerns and Issues with European Forced Heirship Claims*, 3 EST. PLAN. & CMTY. PROP. L. J. 323, 327 (2011) (stating that in Germany and Italy both children and ascendants are entitled to forced share).

⁴⁹ Aaron Schwabach, *Of Charities and Clawbacks: The European Union Proposal on Successions and Wills as a Threat to Charitable Giving*, 17 COLUM. J. EUR. L. 447, 452 (2011); see Brashier, *supra* note 48, at 117, 120; Madoff, *supra* note 39, at 334, 336–37, 342; Sumner & Forder, *supra* note 48, at 366; McLearen, *supra* note 48, at 325–26.

allocate the remaining portion of the estate.⁵⁰ Civil law countries differ on the size of the portion of forced inheritance, the approach to calculating the size of the estate, and the specific family members that are entitled to the legitim.⁵¹ Nonetheless, they have in common the recognition of the children of the decedent as entitled to a forced share.⁵² Some countries also recognize the decedent's parents as entitled to a forced share, usually when the decedent does not have children.⁵³

⁵⁰ Brashier, *supra* note 48, at 117, 120; Madoff, *supra* note 39, at 334, 336–37, 342; McLearen, *supra* note 48, at 325–26.

⁵¹ See Brashier, *supra* note 48, at 117 (stating that under French law the children are entitled to a reserved share, but the French testator is free to disinherit the surviving spouse); see also Schwabach, *supra* note 49 (describing the difference in the application of forced share doctrine across a range of European countries); McLearen, *supra* note 48, at 327 (stating that under German law, unlike French law, forced heirship are only applicable to “first degree” descendants, thus limiting the reserve portion of the estate to the surviving spouse and to the decedent's children only. Under Italian law children of the testator, the surviving spouse and ascendants (when there are no children alive at the time of testator's death) are entitled to a forced portion of the estate. The children can be legitimate, illegitimate, or adopted). *Id.*; Nikolaos Vervessos & Triantafyllos Stavrakidis, *Company Law and the Law of Succession in Greece*, 67 RHDI 567, 572, 648–649 (2014) (stating that under Greek law only legitimate children (including adopted children) are entitled to a forced share of the estate; the addition of all compulsory shares shall amount to one-half of the estate; the right to a forced share is accorded to the descendants and to the parents of the deceased as well as to the surviving spouse).

⁵² Brashier, *supra* note 48, at 117 (stating that “the French system of testate succession . . . ensures protection for the children of a testator by recognizing the legitime, or portion of the parent's estate of which a child cannot be disinherit without cause.”); Madoff, *supra* note 39, at 334, 343 (stating that under French law, the children are entitled to a reserved share of the estate); see also Schwabach, *supra* note 49, at 451 (stating that in most of the countries of the European Union, forced heirship laws protect children whose parents have left them less than their legally determined share); McLearen, *supra* note 48, at 327 (stating that under German and Italian law children of the testator are entitled to a forced portion of the estate).

⁵³ Schwabach, *supra* note 49, at 454–55, 457, 461 (stating that in Austria, in absence of issue, the ancestors may claim a share; In Belgium, in absence of issue the testator's parents are entitled to forced share, but not other ancestors; In Germany, in absence of descendants and spouse, parents are entitled to forced share; In the Netherlands, Poland, Portugal and Spain, in the absence of an issue, the ancestors are entitled to a forced share); Vervessos & Stavrakidis, *supra* note

Common law countries usually reject the doctrine of forced share.⁵⁴ Yet, some of those countries have devised other limitations on the ability to disinherit family members as well as other dependents.⁵⁵ Common law countries, such as England, New Zealand, Australia, and some Canadian provinces, have devised ways to provide greater protection for family members by enacting family maintenance statutes,⁵⁶ which allow “family members and other dependents [of the decedent] to petition the court to receive more than was [afforded to] them under the . . . will.”⁵⁷ These statutes grant discretion to the courts to make provisions for the maintenance of certain people from the decedent’s estate, even if the decedent has omitted them from the will.⁵⁸

In the United States, the laws of inheritance are administered by the states.⁵⁹ Over half of Americans die intestate, leaving their estate to be distributed according to the law of the state.⁶⁰ Accordingly, the estate would usually go to their children (or other descendants) and spouse, and in some cases to their parents (or other ascendants).⁶¹ In this way, the parent-child bond influences the posthumous distribution of property in a large number of cases.

51, at 649 (stating that under Greek law the parents of the deceased are entitled to a forced share); McLearen, *supra* note 48, at 327 (stating that under Italian law ascendants of the testator are entitled to a forced portion of the estate, when there are no children alive at the time of testator’s death).

⁵⁴ McLearen, *supra* note 48, at 323–24.

⁵⁵ Melanie B. Leslie, *The Myth of Testamentary Freedom*, 38 ARZ. L. REV. 235, 270–71 (1996); Brashier, *supra* note 48, at 123; Kreiczler-Levy, *supra* note 38, at 117; Madoff, *supra* note 39, at 336.

⁵⁶ Brashier, *supra* note 48, at 123 (stating that in England a decedent’s spouse or children may file a claim against the estate if the will does not provide the survivor with a reasonable “financial provision”); Madoff, *supra* note 39, at 336.

⁵⁷ Madoff, *supra* note 39, at 336; Kreiczler-Levy, *supra* note 38, at 117.

⁵⁸ Brashier, *supra* note 48, at 123; Kreiczler-Levy, *supra* note 38, at 117; Leslie, *supra* note 55, at 270; Madoff, *supra* note 39, at 336–37.

⁵⁹ Boehringer, *supra* note 41, at 122; Cremer, *supra* note 41, at 91; Gary, *supra* note 42, at 787; Glover, *supra* note 42, at 91; Kreiczler-Levy, *supra* note 38, at 105; Madoff, *supra* note 39, at 336.

⁶⁰ Madoff, *supra* note 39, at 344.

⁶¹ Boehringer, *supra* note 41, at 122, 137–38; Cremer, *supra* note 41, at 91–92; Gary, *supra* note 42, at 787; Glover, *supra* note 42, at 91; Madoff, *supra* note 39, at 344.

A person can choose to execute a will as a way to allocate her property after her death. In the United States, the doctrine of “freedom of testation” is the governing law of inheritance.⁶² An individual’s right to distribute their property the way they see fit receives great emphasis. At first glance, the freedom of testation seems comprehensive and conclusive. Yet, despite rhetoric supporting freedom of testation, a closer look at the laws of inheritance and at the way courts implement them reveals that there is misconception regarding the scope of testamentary freedom and the effect it actually has on the distribution of decedents’ assets.

Pretermitted heir statutes provide a decedent’s surviving child a share of the estate in situations in which the writing of the will

⁶² Madoff, *supra* note 39, at 335–36. It is interesting to note that Louisiana is the only state that has civil law tradition, and which continues to hold civil law principles, especially in the field of family law. See Neely S. Griffith, *When Civilian Principles Clash with the Federal Law: An Examination of the Interplay Between Louisiana’s Family Law and Federal Statutory and Constitutional Law*, 76 TUL. L. REV. 519, 520 (2001). Thus, Louisiana is the only state with forced inheritance (forty-nine of the fifty states (Georgia being the exception) and the District of Columbia limit the freedom of testation for protecting the surviving spouse. This goal is achieved using the elective share doctrine. See Terry L. Turnipseed, *Community Property v. The Elective Share*, 72 LA. L. REV. 161, 162 (2011). The elective share might be considered a form of forced inheritance. The elective share gives the surviving spouse a choice (an election) either “to take [the]property left [for her] under the will or . . . take the amount specified by the elective [] law instead. *Id.* at 170. The elective share is usually a “fixed fractional portion of the value of the [decedent’s estate.]” Brashier, *supra* note 48, at 101. In the past, Louisiana’s laws have protected all children from disinheritance by their parents. Ralph C. Brashier, *Protecting the Child From Disinheritance: Must Louisiana Stand Alone?*, 57 LA. L. REV. 1, 1–2 (1996). Today, however, the law in Louisiana limits the group of forced heirs to include only children twenty-three years old or younger, or children of any age unable to take care of themselves because of mental incapacity or physical infirmity. See LA. CIV. CODE. ANN. art. 1493(a). The forced heir cannot be deprived of their share in the decedent estate, except in certain circumstances specified by the law. See LA. CIV. CODE. ANN. art. 1494. The reasons for disinheritance are specified in LA. CIV. CODE. ANN. art. 1620–1621, and only when the reason is explicitly expressed in the will. See LA. CIV. CODE. ANN. arts. 1624.

preceded the birth of the child.⁶³ The rationale underpinning these statutes is the belief that parents want to bequeath their property to their children.⁶⁴ The assumption is that disinheritance was not intentional and only took place since the will was written before the child was born and the testator either forgot or did not have the time to update it.⁶⁵

Wills can be contested using formalities, and doctrines such as mental capacity, undue influence, fraud, and public policy.⁶⁶ When testators disinherit family members, courts often use these formalities and doctrines to invalidate the will.⁶⁷ Despite the rhetoric reinforcing the principle of freedom of testation, courts aspire to ensure that testators leave an adequate portion of the estate to their next of kin.⁶⁸ Thus, freedom of testation is, in fact, restricted in cases where the testator deviates from what the courts regard as prevailing moral standards—allocating property to the testator's family.

⁶³ UNIF. PROB. CODE § 2-302 (1969) (amended 2010). Section 2-302 of the Uniform Probate Code deals with “omitted children.” *Id.* The section states that if a testator fails to provide in her will for any of her children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as specified in the code. *Id.* However, the child would not receive a share, if it appears from the will that the omission was intentional or if the testator provided for that child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence. *Id.*; Glover, *supra* note 42, at 92–93.

⁶⁴ This rationale could be deduced from the default rules set by intestate laws which try to imitate the reasonable person's choice for bequeathing the estate. These laws consider children of the decedent to be heirs. *See* Cremer, *supra* note 41, at 91; Gary, *supra* note 42, at 789; Glover, *supra* note 42, at 91; Madoff, *supra* note 39, at 343–44; Boehringer, *supra* note 41, at 137–38.

⁶⁵ UNIF. PROB. CODE § 2-302 (1969) (amended 2010) (stating that the child would not receive a share, “if it appears from the will that the omission was intentional or if the testator provided for [that child] by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.”); Glover, *supra* note 42, at 92–93.

⁶⁶ Leslie, *supra* note 55, at 236–37; Ryznar & Devaux, *supra* note 40, at 1.

⁶⁷ *See* Leslie, *supra* note 55, at 236–37; Madoff, *supra* note 39, at 345.

⁶⁸ *See* Madoff, *supra* note 39, at 345.

“[P]robate courts in the United States [also have] discretionary power to deviate from a testator’s will under . . . family allowance statutes,”⁶⁹ which most states have adopted.⁷⁰ The allowance provides only temporary short-term protection,⁷¹ during the probate period or the administration of the estate.⁷² Yet they provide significant protection against disinheritance for families in need.⁷³ Another protection could be obtained through the use of homestead allowance. The homestead allowance could free certain real estate from creditors, either permanently or for the duration of the surviving spouse’s life or the minority of the children.⁷⁴

Minor children lack the legal capacity to execute a will.⁷⁵ Thus, minor children, unable to distribute their property the way they

⁶⁹ Brashier, *supra* note 48, at 134.

⁷⁰ Mary Ann Glendon, *Fixed Rules and Discretion in Contemporary Family Law and Succession Law*, 60 TUL. L. REV. 1165, 1189 (1986). The Uniform Probate Code makes provisions for family allowance asserting that the decedent’s surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration. UNIF. PROB. CODE § 2-404 (1969).

⁷¹ Brashier, *supra* note 48, at 134.

⁷² Glendon, *supra* note 70, at 1189.

⁷³ *Id.*

⁷⁴ See Deborah A. Batts, *I Didn’t Ask to be Born: The American Law of Disinheritance and a Proposal for Change to a System of protected Inheritance*, 41 HASTINGS L. J. 1197, 1243 n.271 (1990). The Uniform Probate Code recognizes the homestead allowance and asserts that a decedent’s surviving spouse is entitled to a homestead allowance of a certain amount. See UNIF. PROB. CODE § 2-402 (1969). If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to the same amount divided by the number of minor and dependent children of the decedent. *Id.* Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. *Id.*

⁷⁵ See UNIF. PROB. CODE § 2-501 (1969) (“An individual 18 or more years of age who is of sound mind may make a will.”); Brashier, *supra* note 48, at 170; Madoff, *supra* note 39, at 337. The exception being Georgia, where the minimum age for executing a valid will is 14 and Louisiana where the minimum age requirement is 16. Glover, *supra* note 42, at 70, 108, 117–18. There are other exceptions to the testamentary incapacity of minors allowing children to

want, die intestate and their property is allocated to their parents. Essentially, the categorical testamentary incapacity of minors grants forced inheritance to their parents. The forced inheritance of the entire estate is awarded to the parents “regardless of whether they fulfill their duty to support their children [and] . . . irrespective of the size of the estate.”⁷⁶ Often, minor children do not possess many assets. Sometimes, though, minor children can be affluent due to gifts or inheritance or as a result of their efforts which led them to being famous.⁷⁷ Thus, when a child wishes to disinherit a parent, he or she does not have the means to do so.

To conclude, the parent-child status has a significant impact on inheritance law on several levels. First, if a person dies intestate his or her estate usually goes to their descendants, even if they would have chosen otherwise.⁷⁸ If the deceased does not have children, the estate could go to their ascendants.⁷⁹ Second, even if the testator executes a will, in some countries, children and parents have a forced share in the estate.⁸⁰ In other countries, family maintenance laws protect certain family members and other dependents of the decedent against disinheritance.⁸¹ In the United States, Louisiana is the only state that has forced inheritance law.⁸² Yet, pretermitted heir statutes, family allowance statutes, formalities, and doctrines such as mental capacity, undue

execute wills under certain circumstances. *Id.* Those situations include, in some of the states, emancipated children, children who are married and children who are members of the armed forces. *Id.* (listing the age of legal capacity and the exceptions in each state).

⁷⁶ Glover, *supra* note 42, at 109.

⁷⁷ See, e.g., Amanda Massa, *Justin Bieber Leads List of Celebrity 100 Newcomers*, FORBS (May 18, 2011), <https://www.forbes.com/2011/05/16/celebrity-100-11-newcomers-justin-bieber.html> (stating that at the age of 17 Justin Bieber earned 53 million dollars in one year); Sammy Said, *The Top 10 Richest Teen Celebrities*, RICHEST (August 31, 2013), <http://www.therichest.com/rich-list/world/the-top-10-richest-teen-celebrities> (providing a list of rich teen celebrities).

⁷⁸ See sources cited *supra* note 45.

⁷⁹ See Boehringer *supra* note 41, at 122, 137-38.

⁸⁰ See Brashier, *supra* note 48, at 117; Madoff, *supra* note 39, at 342-43; Ryznar & Devaux, *supra* note 40, at 9; McLearn, *supra* note 48, at 325-27.

⁸¹ See *supra* notes 55-57.

⁸² See *supra* note 62.

influence, fraud, and public policy, are used by courts throughout the United States to intervene and change the way the testator chose to allocate the estate in cases of family disinheritance.⁸³

C. Maintenance of Adult Relatives

The parent-child status has implications that are reflected in filial responsibility statutes. It would no doubt come as a surprise to some people that more than half the states in the United States have some kind of filial responsibility statutes.⁸⁴ These statutes create a duty among related adults to support each other if one becomes indigent.⁸⁵ Different countries around the world have filial responsibility statutes concerning the relationships between adult parents and adult children, siblings, and grandparents and grandchildren. The statutes that exist in the United States relate mainly to the relationship between parents and their adult children.⁸⁶

Filial responsibility statutes in the United States create a duty, with some exceptions, for adult children to support their indigent

⁸³ See Madoff, *supra* note 39, at 345–46.

⁸⁴ Christina Leshner, et al., *Who's Bill is it Anyway? Adult Children's Responsibility to Care for Parents*, 6 EST. PLAN. & CMTY. PROP. L. J. 247, 250–51 (2014); Katherine C. Pearson, *Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents*, 20 ELDER L. J. 269, 271, 278, 304–13 (2013) [hereinafter Pearson, *Filial Support Laws in the Modern Era*]; Allison E. Ross, *Taking Care of Our Caretakers: Using Filial Responsibility Laws to Support the Elderly Beyond the Government's Assistance*, 16 ELDER L. J. 167, 168 (2008). For a table of the filial laws according to state, see Katherine Pearson, *Family/Filial Responsibility/Support Statutes in the United States*, PA. ST. UNIV. (updated Mar. 5, 2012), https://pennstatelaw.psu.edu/_file/Pearson/FilialResponsibilityStatutes.pdf [hereinafter Pearson, *Family/Filial Responsibility/Supporting Statutes in the United States*].

⁸⁵ Boehringer, *supra* note 41, at 141; Pearson, *Filial Support Laws in the Modern Era*, *supra* note 84, at 270.

⁸⁶ Seymour Moskowitz, *Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective*, 86 MARQ. L. REV. 401, 422, 425 (2002) (stating that, “[i]n some states the obligation to support [extends] to grandchildren.”) [hereinafter Moskowitz, *Adult Children and Indigent Parents*].

parents.⁸⁷ Those laws are rarely enforced, however.⁸⁸ Some of the states have criminal laws with criminal sanctions for failure to support indigent parents,⁸⁹ some have civil statutes,⁹⁰ and some have both.⁹¹ There is no common law duty to support one's parents;⁹² thus, in states that do not have filial support statutes, an obligation to support one's indigent parent cannot be established. Nevertheless, in some cases, "courts have recognized a duty through the law of contracts."⁹³

In some states, children who have been abused, neglected or abandoned by their parents can be excused from the duty to support.⁹⁴ This exemption is based on the reciprocal theory.⁹⁵

⁸⁷ Pearson, *Filial Support Laws in the Modern Era*, *supra* note 84, at 271; Terrance A. Kline, *A Rational Role for Filial Responsibility Laws in Modern Society?*, 26 FAM. L. Q. 195, 200–01 (1992); Boehringer, *supra* note 41, at 141.

⁸⁸ Leshner, et al., *supra* note 84, at 251; Pearson, *Filial Support Laws in the Modern Era*, *supra* note 84, at 272, 279–80; Ross, *supra* note 84, at 168, 185; Boehringer, *supra* note 41, at 132; Katie Wise, *Caring for Our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 563, 564, 574 (2002).

⁸⁹ Donna Harkness, *What Are Families For? Re-evaluating Return to Filial Responsibility Laws*, 21 ELDER L. J. 305, 321 n. 87 (2013); Moskowitz, *Adult Children and Indigent Parents*, *supra* note 86, at 426; Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 FAM. L. Q. 859, 862–64 (2005); Pearson, *Filial Support Laws in the Modern Era*, *supra* note 84, at 276; Ross, *supra* note 84, at 173–77; Jared M. DeBona, *Mom, Dad, Here's Your Allowance: The Impending Reemergence of Pennsylvania's Filial Support Statute and an Appeal for its Amendment*, 86 TEMP. L. REV. 849, 859, n.89–90 (2014) (listing the relevant statutes).

⁹⁰ Harkness, *supra* note 89, at 321–22 (listing the statutes of the various states); Pakula, *supra* note 89, at 863; Ross, *supra* note 84, at 173–77; DeBona, *supra* note 89, at 859, n. 89, 91 (listing the relevant statutes).

⁹¹ Ross, *supra* note 84, at 174; DeBona, *supra* note 89, at 859 n.89 (listing the relevant statutes).

⁹² Dawson v. Dawson, 12 Iowa 512, 514 (Iowa Super Ct. 1861); Sharpe v. Sharpe, 163 A.2d. 923, 924 (Pa. Super. 1960) (Wright, J., concurring); Pearson, *Filial Support Laws in the Modern Era*, *supra* note 84, at 278; DeBona, *supra* note 89, at 864; Wise, *supra* note 88, at 572.

⁹³ Pakula, *supra* note 89, at 865.

⁹⁴ See Shannon Frank Edelstone, *Filial Responsibility: Can the Legal Duty to Support Our Parents Be Effectively Enforced?*, 39 FAM. L. Q. 501, 504 (2002); Harkness, *supra* note 89, at 325; Leshner, et al., *supra* note 84, at 252;

According to this theory, adult children should provide for their parents when in need since the parents have supported and raised them during their minor years.⁹⁶ Thus, children whose parents abused, neglected or abandoned them are exempt from supporting their indigent parents.

Until the 1960s nearly all states had filial responsibility statutes.⁹⁷ During the first half of the twentieth century, courts often enforced filial support laws.⁹⁸ The Great Depression brought about the initiation of public support system for the elderly.⁹⁹ In the years that followed, the Social Security system, Medicare, and Medicaid reduced the use of these laws.¹⁰⁰ Some attribute the decline in the application of filial responsibility statutes mainly to Medicaid, which prohibited the state from considering the income of applicants' children over the age of twenty-one when determining eligibility.¹⁰¹ Yet, the pendulum might be swinging

Michael Lundberg, *Our Parent's Keepers: The Current Status of American Filial Responsibility Laws*; 11 J. L. & FAM. STUD., 533, 536 (2009); Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J. L. & POL'Y 709, 715, 718 (2001) [hereinafter Moskowitz, *Filial Responsibility Statutes*]; Pakula, *supra* note 89, at 866; Boehringer, *supra* note 41, at 134–35.

⁹⁵ Ann Britton, *America's Best Kept Secret: An Adult Child's Duty to Support Aged Parents*, 26 CAL. W. L. REV. 351, 356 (1990); Boehringer, *supra* note 41, at 141; Edelstone, *supra* note 94, at 504; Kline, *supra* note 87, at 205.

⁹⁶ See sources cited *supra* note 95.

⁹⁷ Britton, *supra* note 95, at 357 (listing the five states that never had filial responsibilities statutes); DeBona, *supra* note 89, at 856; Kline, *supra* note 87, at 196 (stating that five states apparently never adopted such legislation: Florida, Texas, Kansas, Washington, and Wyoming).

⁹⁸ DeBona, *supra* note 89, at 857; Edelstone, *supra* note 94, at 508; Kline, *supra* note 87, at 198; Leshner et al., *supra* note 84, at 248; Ross, *supra* note 84, at 173.

⁹⁹ DeBona, *supra* note 89, at 858; Leshner et al., *supra* note 84, at 250; Ross, *supra* note 84, at 173; John Walters, *Pay Unto Others as They Have Paid Unto You: An Economic Analysis of the Adult Child's Duty to Support an Indigent Parent*, 11 J. CONTEMP. LEGAL ISSUES 376, 376–77 (2001–2002).

¹⁰⁰ See sources cited *supra* note 99.

¹⁰¹ DeBona, *supra* note 89, at 858; Edelstone, *supra* note 94, at 508; Kline, *supra* note 87, at 199–200; Leshner et al., *supra* note 84, at 248–49; Lundberg, *supra* note 94, at 583; Moskowitz, *Filial Responsibility Statutes*, *supra* note 94, at 714–15; Pakula, *supra* note 89, at 861–62.

back towards enforcing filial support laws.¹⁰² “Filial responsibility has gained renewed attention in recent years,”¹⁰³ with some commentators suggesting going back to using these laws.¹⁰⁴ The percent of elderly people in the United States population, as well as in other western countries, continues to increase, and so does average life expectancy.¹⁰⁵ Low saving rates and retirement incomes increase the number of elderly who will be below the poverty level.¹⁰⁶ As baby boomers are reaching retirement age,¹⁰⁷ and the economic reality is incapable of accommodating that,¹⁰⁸ the prospect of retreating to apply filial responsibility laws does not seem so far-fetched.

As these substantive fields illustrate, the legal implications the parental status conveys on both the parent and the child transcend what are usually considered the rights and responsibilities of a

¹⁰² See DeBona, *supra* note 89, at 850, 873.

¹⁰³ Leshner et al., *supra* note 84, at 269.

¹⁰⁴ See, e.g., Lundberg, *supra* note 94, at 587 (asserting that the enforcement of filial responsibility statutes would be beneficial for the society and provide desperately needed relief for our strained public treasury). Furthermore, the commentator states that legislatures should consider reinstating these laws. *Id.*; Pakula, *supra* note 89, at 870–71 (advocating for creating a federal filial support law); Ross, *supra* note 84, at 207–09 (recommending filial responsibility laws should be created and enforced, and advocating for a model or uniform filial responsibility law); Walters, *supra* note 99, at 377–79 (arguing that “uniform national recognition and enforcement of adult’s child filial responsibility to indigent parents is economically more efficient than having Social Security, Medicare and Medicaid bear the burden.”).

¹⁰⁵ See Lundberg, *supra* note 94, at 581; Moskowitz, *Adult Children and Indigent Parents*, *supra* note 86, at 402–03; Andrea Rickles-Jordan, *Filial Responsibility: A Survey Across Time and Oceans*, 9 MARQ. ELDER’S ADVISOR 183, 183–86 (2007); Boehringer, *supra* note 41, at 123; Lara Queen Plaisance, *Will You Still . . . When I’m Sixty-Four: Adult Children’s Legal Obligation to Aging Parents*, 21 J. AM. ACAD. MATRIMONIAL LAW 245, 247 (2008); JENNIFER M. ORTMAN ET AL., U.S. CENSUS BUREAU, AN AGING NATION: THE OLDER POPULATION IN THE UNITED STATES – POPULATION ESTIMATES AND PROJECTION (2014), <https://www.census.gov/prod/2014pubs/p25-1140.pdf>.

¹⁰⁶ See Pakula, *supra* note 89, at 860.

¹⁰⁷ Harkness, *supra* note 89, at 306–07; Boehringer, *supra* note 41, at 123–24; Plaisance, *supra* note 105, at 247; ORTMAN ET AL., *supra* note 105.

¹⁰⁸ Boehringer, *supra* note 41, at 125.

parent towards his minor child,¹⁰⁹ and are relevant during the child's adulthood. The legal options available today for voluntarily abrogating the parental status do not offer a much-needed comprehensive solution.

III. ABROGATION OF PARENTHOOD

Parenthood is conceived as a status for life and beyond, a conception well embedded in the law.¹¹⁰ There is no doubt that the parent-child relationship is essential to both the child and the parent, and is highly valued by society. Yet, sometimes the relationship does not satisfy its purpose. Nevertheless, the law, by and large, does not establish a way to sever the parent-child bond by choice.

The options that currently exist in law to sever the parental status include involuntary termination of the parental status by state intervention and abrogation of the status by choice.¹¹¹ The doctrine of child emancipation is an intermediate solution. It does not sever the parent-child status, nevertheless, it diminishes and restricts the parental control over their child's life by granting the child legal autonomy.¹¹² The growing phenomenon of divorcing fathers petitioning for a genetic testing to undermine their paternity and disestablish it,¹¹³ will not be addressed. This Article is

¹⁰⁹ By referring to something that is usually considered as the rights and responsibilities of a parent towards his minor child, this Article is referring to rights such as the right to the custody of the child, to discipline the child, to make decisions regarding the upbringing of the child, to decide where the child shall live, and obligations regarding the support of the child and care for the child. See generally Bartlett, *Rethinking Parenthood as an Exclusive Status*, *supra* note 2, at 884.

¹¹⁰ See Mahoney, *supra* note 3, at 639–40.

¹¹¹ See *infra* Parts III.A & III.B.

¹¹² See Sanger & Willemsen, *supra* note 9, at 259.

¹¹³ See generally Vanessa S. Brown-Barbour, “*Mama’s Baby, Papa’s Maybe*”: *Disestablishment of Paternity*, 48 AKRON L. REV. 263, 264–65 (2015); Brandon James Hoover, *Establishing the Best Answer to Paternity Disestablishment*, 37 OHIO N.U. L. REV. 145, 145 (2011); Melanie B. Jacobs, *When Daddy Doesn’t Want to be Daddy Anymore: An Argument Against Paternity Fraud Claims*, 16 YALE J. L. FEMINISM 193, 193–94, 199, 216–17

interested in situations in which parents want to abrogate a recognized bond. These fathers, on the other hand, are trying to prove that they were not parents in the first place, that they are not parents at all and have never fit in the definition. Thus, they wish to disestablish paternity.

A. Involuntary Termination of Parental Status by State Intervention

Involuntary termination of parental status is usually referred to as “termination of parental rights,” even though the two are not identical.¹¹⁴ Involuntary termination of parental rights is part of adoption law.¹¹⁵ An essential prerequisite to adoption is termination of parental rights, either by the legal parents’ informed consent or based on grounds for involuntary termination of parental rights.¹¹⁶ “Once parental rights are terminated, [the] child

(2004); Maegan Padgett, *The Plight of a Putative Father: Public Policy v. Paternity Fraud*, 107 W. VA. L. REV. 867, 874 (2005).

¹¹⁴ Theoretically, a parent could lose his parental rights and still be the child’s parent. Such is the case when a parent loses custody rights. The parental status is comprised of rights and duties as well as legal standing. This Part will use the term “termination of parental rights,” which is the term used in literature and in the law. *See generally* Santosky v. Kramer, 455 U.S. 745 (1982); Bartlett, *Rethinking Parenthood as an Exclusive Status*, *supra* note 2, at 886 (stating that “only if the parent abandons the child or seriously violates his parental duties will the state terminate his parental status” and when discussing adoption, stating that “adoption requires these parents’ consent or a court-ordered termination of their rights.”). *Id.* at 895. *See also* Susan B. Hershkowitz, *Due Process and the Termination of Parental Rights*, 19 FAM. L. Q. 245, 282 (1985); James H. Lincoln, *Model Statute for Termination of Parental Rights*, 27 JUV. JUST. 3 (1976); Deseriee A. Kennedy, *Children, Parents & the State: The Construction of a New Family Ideology*, 26 BERKELEY J. GENDER L. & JUST. 78, 78 (2011); Eric V. Meeker, *Termination of Parental Rights: Constitutional Rights, State Interests and The Best Interests of the Child*, 17 J. JUV. L. 82 (1996); Joleen Okun, *Termination of Parental Rights*, 6 GEO. J. GENDER & L. 761, 761 (2005).

¹¹⁵ *See* Bartlett, *Rethinking Parenthood As An Exclusive Status*, *supra* note 2, at 895; Lincoln, *supra* note 114, at 5; Mahoney, *supra* note 3, at 647.

¹¹⁶ David D. Meyer, *Family Ties: Solving the Constitutional Dilemma of the Faultless Father*, 41 ARIZ. L. REV. 753, 771 (1999).

and his or her parents . . . become legal strangers.”¹¹⁷ “The termination of parental rights constitutes a permanent severance of the parent-child relationship.”¹¹⁸

The State has an interest to protect the welfare of its children. Thus, in its capacity as *Parens Patriae*¹¹⁹ the state can intervene in the family.¹²⁰ The state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare.¹²¹ Yet, the state’s power to interfere with parental rights has limitations.¹²² The Supreme Court of the United States has held that the liberty guaranteed by the Fourteenth Amendment denotes also the right of the individual “to marry, establish a home and bring up children . . . and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.”¹²³ Furthermore, several Supreme Court rulings have recognized parents’ fundamental liberty interest in the upbringing, care, custody, and control of their children.¹²⁴ States

¹¹⁷ Louise A. Leduc, *No-Fault Termination of Parental Rights in Connecticut: A Substantive Due Process Analysis*, 28 CONN. L. REV. 1195, 1197 (1996); *Sec’y of Soc. and Rehab. Serv. v. Clear*, 804 P.2d 961, 967 (Kan. 1991) (“A person who has relinquished parental rights through adoption, a voluntary termination of parental rights, or an involuntary severance of parental rights is no longer a parent. These statutory procedures contemplate a complete severance of the child’s ties and relationship with his or her natural parents. The parent whose rights have been severed is relieved of all duties and obligations to the child.”); *C.J.H. v. A.K.G.*, No. M2001-01234-COA-R3-JV, 2002 WL 1827660, at *5 (Tenn. Ct. App. 2002).

¹¹⁸ Hershkowitz, *supra* note 114, at 282.

¹¹⁹ *Parens Patriae* is Latin for “parent of the country” and refers to the power of the state to act as guardian for those who are unable to care for themselves, such as children. BLACK’S LAW DICTIONARY 1269 (4th ed. 1969); WEST ENCYCLOPEDIA OF AMERICAN LAW (2nd ed. 2008).

¹²⁰ *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944); Hershkowitz, *supra* note 114, at 246, 249.

¹²¹ *Prince*, 321 U.S. at 166–67.

¹²² *Stanley v. Illinois*, 405 U.S. 645, 649, 658 (1972); Hershkowitz, *supra* note 114, at 249, 252–54; Okun, *supra* note 114, at 761, 766–67.

¹²³ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

¹²⁴ *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–535 (1925); *Prince*, 321 U.S. 158, 166 (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents.”); *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (“[T]he interest of parents in the care, custody, and control of their

must prove parental unfitness to terminate parental rights.¹²⁵ The Supreme Court has recognized a constitutional right to a fitness hearing before parental rights could be terminated,¹²⁶ and set the burden of proof a state has to meet to justify involuntary termination of parental rights as clear and convincing evidence.¹²⁷

State law regulates the family,¹²⁸ including involuntary termination of parental rights.¹²⁹ Though the grounds for state intervention in the family may vary from state to state, there is a common thread. The grounds of abuse, neglect, dependency, abandonment, and deprivation are common.¹³⁰ Around half the states permit courts to consider parental incarceration or a criminal conviction when deciding whether to terminate parental rights.¹³¹ Many states impose an additional requirement for termination of

children—is perhaps the oldest of the fundamental liberty interests recognized by this Court In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”).

¹²⁵ In dicta: *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Smith v. Org. of Foster Families*, 431 U.S. 816, 862–63 (1977). In some states, the statutes concerning termination of parental rights dictate that parental unfitness should be proved before termination of parental rights could take place. *See, e.g.*, O.R.S. § 419B.502 (“The rights of the parent or parents may be terminated . . . if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward any child.”); U.C.A. 1953 § 78A-6-503(12) (“Wherever possible family life should be strengthened and preserved, but if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.”); *Id.* at § 78A-6-507 (stating the parent’s unfitness as one of the grounds for termination of parental rights).

¹²⁶ *Stanley*, 405 U.S. 645, 649, 658 (1972).

¹²⁷ *Santosky v. Kramer*, 455 U.S. 745, 747–48 (1982).

¹²⁸ Griffith, *supra* note 62, at 520–21, 530; Jill Elaine Hasday, *The Canon of Family Law*, 57 STAN. L. REV. 825, 831 (2004); Hershkowitz, *supra* note 114, at 245.

¹²⁹ Hershkowitz, *supra* note 114, at 246.

¹³⁰ Patricia Lenore Delahoyde, *Termination of Parental Rights*, 8 J. JUV. L. 261, 263–69 (1984); Leduc, *supra* note 117, at 1205–06; Meyer, *supra* note 116, at 771.

¹³¹ Kennedy, *supra* note 114, at 78, 95–96.

parental rights.¹³² The state must show that the detrimental condition is likely to continue in the future.¹³³ Another requirement, which is usually addressed after the grounds for termination have been established, is that the termination is in the child's best interest.¹³⁴

By and large, state law stipulated that termination of a parent's legal relationship with a child requires blameworthy behavior.¹³⁵ "Traditionally, the only widely accepted no-fault ground for terminating [parental rights] was a parent's inability to provide care, [for instance when] a parent's physical or mental disability . . . makes competent [parenthood] impossible."¹³⁶ Only a few jurisdictions provide no-fault grounds for termination of parental rights that go beyond parental fault and incapacity.¹³⁷ Yet, the courts in these jurisdictions have generally interpreted the no-fault statutes narrowly and have read into them a requirement to find some kind of parental culpability.¹³⁸ One example is Connecticut, which permits termination of parental rights on the ground that there is "no ongoing parent-child relationship."¹³⁹ The scope of this ground for termination has been severely limited over

¹³² Delahoyde, *supra* note 130, at 269.

¹³³ *Id.*

¹³⁴ Hershkowitz, *supra* note 114, at 288.

¹³⁵ *Id.* at 284; Meyer, *supra* note 116, at 771, 775.

¹³⁶ Meyer, *supra* note 116, at 778.

¹³⁷ *Id.* (giving New Mexico, Connecticut and New Jersey as examples and stating that traditionally, the only widely accepted "no-fault" ground for terminating parental rights was a parent's inability to provide care, such as in cases where a parent's physical or mental disability makes competent parenting impossible). Other grounds include a situation in which the child has lived and bonded with a new family while the "parent-child relationship" between the child and her biological parents has "disintegrated", as in a New Mexico Statute. *Id.*

¹³⁸ *Id.* at 778–79.

¹³⁹ CONN. GEN. STAT. § 17a-112(J) (2014) ("Parent-child relationship" is defined by law as "the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child."); Leduc, *supra* note 117, at 1196, 1206–07 (arguing that the "no ongoing parent-child relationship" ground for termination of parental rights in Connecticut is unconstitutional); *Id.* at 778.

the years by the Connecticut Supreme Court.¹⁴⁰ Moreover, the constitutionality of no-fault grounds for termination of parental rights is questionable.¹⁴¹ Based on the Supreme Court decisions in *Stanley v. Illinois*¹⁴² and *Santosky v. Kramer*,¹⁴³ the state must prove unfitness by clear and convincing evidence to justify involuntary termination of parental rights.¹⁴⁴ Thus, “no-fault” ground for involuntary termination of parental rights, can be said to violate the due process clause of the Fourteenth Amendment.¹⁴⁵

Though the grounds and procedure for terminating parental rights are defined by state law, federal law also has an influence on the subject matter.¹⁴⁶ First, the state’s power is restricted by the Constitution.¹⁴⁷ Furthermore, there is also federal statutory law concerning adoption. The primary relevant federal law is the Adoption and Safe Families Act of 1997 (“ASFA”).¹⁴⁸ The purpose of the ASFA was to reduce the time children spend in foster care and to encourage states to progress more efficiently

¹⁴⁰ Leduc, *supra* note 117, at 1207. In *In re Juvenile Appeal* (Anonymous), the Connecticut Supreme Court ruled that the “no ongoing parent-child relationship” ground is only appropriate if “the child has no present memories or feelings for the natural parent.” *In re Juvenile Appeal* (Anonymous) 420 A.2d 875, 886 (Conn. 1979). In *In re Jessica M.*, the Connecticut Supreme Court asserted that the statutory language of this ground is ambiguous when applied to noncustodial parents who must maintain their relationship with their children through visitations. *In re Jessica M.*, 586 A.2d 597, 601 (Conn. 1991). In *In re Valerie D.*, the Connecticut Supreme Court ruled that termination of parental rights is inappropriate where the finding of “no ongoing parent-child relationship” directly results from prior custody determination. *In re Valerie D.*, 613 A.2d 748, 769–70 (Conn. 1992) (in this case the child had been in foster care since birth due to her mother’s prenatal drug use).

¹⁴¹ Leduc, *supra* note 117, at 1223; Meyer, *supra* note 116, at 782.

¹⁴² *Stanley v. Illinois*, 405 U.S. 645 (1972).

¹⁴³ *Santosky v. Kramer*, 455 U.S. 745 (1982).

¹⁴⁴ *Santosky*, 455 U.S. 747–48; see *Stanley*, 405 U.S. 649, 658.

¹⁴⁵ Leduc, *supra* note 117, at 1210, 1223; Meyer, *supra* note 116, at 782–785.

¹⁴⁶ Okun, *supra* note 114, at 762.

¹⁴⁷ See *Santosky*, 455 U.S. at 747–48; *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Smith v. Organization of Foster Families*, 431 U.S. 816, 862–63 (1977); *Stanley*, 405 U.S. at 658.

¹⁴⁸ Adoption and Safe Families Act of 1997, Pub. L. 105-89, 111 Stat. 2115; Okun, *supra* note 114, at 762.

towards termination of parental rights in the appropriate instances.¹⁴⁹

This Section presented the severance of the parent-child relationship by using the state's power to intervene in the family and involuntarily terminate parental rights. This Article's main concern, however, are situations in which a child or a parent wishes to terminate the parental status by choice and without having another person adopt the child instead. The next Section, therefore, will discuss the legal means available for abrogating the parental status by choice.

B. Abrogation by Choice

By and large, a parent cannot waive his or her parental status outside the realm of adoption law.¹⁵⁰ A parent may consent to terminate his or her status relationship with a child according to states' laws governing termination of parental rights¹⁵¹ in order to free the child for adoption.¹⁵² An adoptive parent can abrogate the adoption under certain conditions.¹⁵³ Both termination of parental rights and the abrogation of adoption are part of adoption law.¹⁵⁴

Termination of parental rights statutes were "designed primarily for the benefit and protection of minor children."¹⁵⁵ Typically, these laws are used for involuntary termination of parental rights.¹⁵⁶ Nevertheless, the statutes afford voluntary

¹⁴⁹ Meyer, *supra* note 116, at 772; Okun, *supra* note 114, at 762.

¹⁵⁰ Another doctrine for voluntary relinquishment of parental status by parents uses "safe-haven" laws that allow the parents of newborns to leave them anonymously in assigned locations and have immunity from prosecution. Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 COLUM. L. REV. 753, 754–55 (2006).

¹⁵¹ The court has to make sure that the parent has voluntarily and knowingly consented to the termination. See *In re Finnegan–Cole P.*, No. F04CP12009647A, 2013 WL 870229, at *2 (Conn. Super. Ct. Jan. 30, 2013).

¹⁵² Mahoney, *supra* note 3, at 640.

¹⁵³ See *infra* notes 183–190 and accompanying text.

¹⁵⁴ See *supra* note 115; Mahoney, *supra* note 3, at 640, 656–657; C.J.H. v. A.K.G., No. M2001-01234-COA-R3-JV, 2002 WL 1827660 (Tenn. Ct. App. Aug 9, 2002).

¹⁵⁵ Mahoney, *supra* note 3, at 640.

¹⁵⁶ See *id.*

termination of parental rights as well.¹⁵⁷ “[T]hese . . . statutes [foresee the] two primary [situations] in which [a] court may accept a parent’s voluntary [relinquishment] of his or her [parental status].¹⁵⁸ First, [a] parent [could] agree to terminate [his] status in order to free a child for adoption by another adult.”¹⁵⁹ Such is the case when the non-custodian parent agrees to waive his parental status so the spouse or partner of the custodian parent could adopt the child. “Second, a parent may consent to [terminate] his [parental status] as to a child who has been adjudicated dependent . . . within the child welfare system, [regardless of whether adoption by another person] is planned.”¹⁶⁰

There are other situations in which termination of parental rights statutes could be applied. Legal databases reveal scattered cases involving parents who seek to terminate their status not related to pending adoption welfare proceedings.¹⁶¹ The common thread among these cases is the paramount consideration given to the best interest of the child.¹⁶² Courts in many of the cases emphasized the importance of child support as a factor in the

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*; *State ex. rel. Sec’y of Soc. & Rehab. Serv. v. Clear*, 804 P.2d 961, 966 (Kan. 1991) (“The State’s primary goal for all children whose parents’ parental rights have been terminated is placement in a permanent family setting After parental rights have been terminated, the court may grant custody of the child for adoption proceedings or for long-term foster care, if it does not appear that adoption is a viable alternative.”).

¹⁶¹ The Texas Court of Appeals stated that the relevant provision is “rarely used” and that it is most commonly used when the birth mother wants to place her baby for adoption. *In the Interest of J.K.B. and J.D.B.*, 439 S.W.3d 442, 444 (Tex. App. 2014) (quoting *In the Interest of T.S.S.*, 61 S.W.3d 481, 483, 483 n.1 (Tex. App. 2001)); *Dockery v. State of Texas*, No. 03-05-00713-CV, 2006 WL 3329794 (Tex. App. Nov. 14, 2006).

¹⁶² *In re Bruce R.*, 662 A.2d 107, 117 (Conn. 1995); *In re Finnegan-Cole P.*, No. F04CP12009647A, 2013 WL 870229, at *2 (Conn. Super. Ct. Jan. 30, 2013); *In the Interest of J.L.W.*, 496 N.W. 2d 280, 281 (Iowa Ct. App. 1992); *C.J.H. v. A.K.G.*, No. M2001-01234-COA-R3-JV, 2002 WL 1827660, at *5 (Tenn. Ct. App. Aug. 9, 2002); *In the Interest of T.S.S.*, 61 S.W.3d 481, 483–84 (2001); *Dockery*, 2006 WL 3329794, at *1; *In re Michael I.O.*, 551 N.W.2d 855, 857 (Wis. Ct. App. 1996).

decision.¹⁶³ Some courts denied the petition to terminate parental rights on the grounds that such termination extinguishes parental support obligations, and that absent other factors in favor of termination (such as harm to the child if termination is denied), it would not be in the best interest of the child.¹⁶⁴

Not all states allow the application of termination statutes outside the context of adoption. In Tennessee, although the Court of Appeals examined the best interest of the child in the matter of *C.J.H. v. A.K.G.*,¹⁶⁵ it also concluded that none of the statutory procedures for relinquishment of parental rights would be available to the father.¹⁶⁶ In this case, a child was born after a brief affair and the father and mother did not have any relationship following that affair.¹⁶⁷ The father met his monetary obligations, but did not see his daughter since her birth, or attempt to see her, and had no interest in establishing a relationship with her.¹⁶⁸ “The mother and father submitted a joint petition to terminate the father’s parental rights[.]”¹⁶⁹ “[The] [m]other testified that . . . she understood the impact of the decision [and that] . . . she was more than adequately employed to financially care for the child and . . . had strong family support to assist her.”¹⁷⁰ The Tennessee Court of Appeals denied the petition.¹⁷¹ Considering the statutory framework, the court asserted that “[a]lthough [the] statutes allow, in some circumstances, for a voluntary surrender of parental rights . . .

¹⁶³ *In re Bruce R.*, 662 A.2d. at 117; *C.J.H.*, 2002 WL 1827660, at *2; *In re Michael I.O.*, 551 N.W.2d. at 857.

¹⁶⁴ See *In re Bruce R.*, 662 A.2d. at 108–09 (1995); *C.J.H.*, 2002 WL 1827660, at *7–9; *In re Michael I.O.*, 551 N.W.2d. at 858. It is interesting to note, that the one case in which financial consideration and the child’s loss of support were not given such a high credence, involved a same-sex couple. The facts of this case are not so different from other cases in which courts denied the petition to terminate the parental rights of one of the parents. Compare *In re Finnegan–Cole P.*, 2013 WL 870229, at *3 (involving a lesbian couple), with *C.J.H.*, 2002 WL 1827660, at 7–9 (involving a heterosexual couple).

¹⁶⁵ *C.J.H.*, 2002 WL 1827660, at *2.

¹⁶⁶ *Id.* at *8.

¹⁶⁷ *Id.* at *1.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at *9.

those circumstances appear to be present only in the context of an adoption.”¹⁷² “However, [the court found that] there [was] no statutory authority for use of these procedures outside the context of an adoption or a plan for an adoption.”¹⁷³ In another case, *In the Matter of Shawanda R.*, brought before the Family Court of Kings County, New York, a father petitioned for judicial surrender of a sixteen-year-old child.¹⁷⁴ The petition was supported by the child and the mother.¹⁷⁵ The court held that it did not have the authority to approve a surrender under the circumstances presented in this case.¹⁷⁶ After the approval of judicial surrender was denied, the mother requested that on consent of all the parties, the father be allowed to move the court to terminate his paternal rights.¹⁷⁷ In this regard, the court held that the father did not have standing to initiate the judicial termination of his own parental rights.¹⁷⁸

In the case of *Dockery v. Texas*, brought to the Texas Court of Appeals, a father’s petition to terminate his parental rights over his adult nineteen-year-old son was denied.¹⁷⁹ The father asserted that his son was an adult and that both of them did not want any relationship with one another.¹⁸⁰ The court called attention to the fact that “[a]t the hearing, [the father] made it clear that one of his purposes in seeking a termination was to eliminate his child support arrearage[,]” and that his sister in her testimony supported that.¹⁸¹ Yet, considering the court indicated that even if the trial court were to grant the father voluntary termination, “that termination would not alter his child support arrearage[,]”¹⁸² it seems that the father’s statements at the hearing regarding his

¹⁷² *Id.* at *7.

¹⁷³ *Id.*

¹⁷⁴ *In re Shawanda R.*, 841 N.Y.S.2d. 436, 438 (N.Y. Fam. Ct. 2007).

¹⁷⁵ *Id.* at 438.

¹⁷⁶ *Id.* at 439.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 441.

¹⁷⁹ *Dockery v. State*, No. 03-05-00713-CV, 2006 WL 3329794, at *1–2 (Tex. App. Nov. 14, 2006).

¹⁸⁰ *Id.* at 2.

¹⁸¹ *Id.*

¹⁸² *Id.* at 3.

support arrearage should not have been a factor in deciding this case.

Adoptive parents who wish to sever their parental status have two courses of action. First, they could petition to end their parental status using termination of parental rights statutes.¹⁸³ Second, they could nullify the adoption decree in certain circumstances by filing a petition under adoption laws.¹⁸⁴ Adoptive parents can petition the court to annul the adoption based on fraud, misrepresentation, or procedural flaws in the adoption proceedings.¹⁸⁵ In states that have no abrogation provision in their adoption codes, the courts may accommodate adoptive parents' petitions to set aside final adoption decrees using the court's inherent power to correct their own past mistakes.¹⁸⁶

Most petitions made by adoptive parents to abrogate the adoption fall into one of two categories.¹⁸⁷ The first concerns adoptive stepparents who seek to terminate the parental status following a divorce from the child's custodial parent.¹⁸⁸ The second includes adoptive parents who allege fraud against the individual or agency that placed the child for adoption.¹⁸⁹

Generally, the statutory grounds for adoption annulment do not take into consideration the welfare of the child.¹⁹⁰ Since the intention of adoption laws is to create a parent-child relationship that is equivalent to the relationship between the child and the parents to whom he was born,¹⁹¹ some commentators argue that

¹⁸³ *In re the Termination of the Parental Rights of Edward Landt to J.J.L.*, No. C3-96-1836, 1997 WL 207601, at *1 (Minn. Ct. App. 1997) (1997); *In re interest of D.C.M.*, 443 N.W.2d 853, 854-55 (Minn. Ct. App. 1989); *Linan v. Linan*, 632 S.W.2d 155, 155-56 (Tex. App. 1982).

¹⁸⁴ Mahoney, *supra* note 3, at 656-57 (stating that "[c]urrently, the adoption codes in nearly two-thirds of the states include judicial annulment provisions, which permit designated persons, including the adoptive parents, to petition to set aside a final adoption decree.").

¹⁸⁵ *Id.* at 657, 661.

¹⁸⁶ *Id.* at 664.

¹⁸⁷ *Id.* at 672-73; Elizabeth N. Carroll, *Abrogation of Adoption by Adoptive Parents*, 19 FAM. L. Q. 155, 159 (1985).

¹⁸⁸ Carroll, *supra* note 187, at 159; Mahoney, *supra* note 3, at 672.

¹⁸⁹ Carroll, *supra* note 187, at 159; Mahoney, *supra* note 3, at 672-73.

¹⁹⁰ Carroll, *supra* note 187, at 156-57; Mahoney, *supra* note 3, at 641, 652.

¹⁹¹ Carroll, *supra* note 187, at 158.

adoptive parents should have only the legal options available to biological parents to abrogate parenthood.¹⁹² Others assert that the guidelines for abrogation of adoption should be strictly defined in legislation, stating the circumstances under which an abrogation would be allowed, setting a time limit, and establishing the best interest of the child as the ground rule.¹⁹³

The right of children to sever the parent-child relationship is an even more complicated legal issue. This question was addressed in a famous case, *Kingsley v. Kingsley*, where a minor child petitioned the court to terminate his parents' parental rights.¹⁹⁴ The *Kingsley* case has become known as the case of the child who "divorced" his parents.¹⁹⁵ The media has mislabeled the case as "divorce" of a child from his parents whereas in fact, this case was no more than a common case of termination of parental rights combined with an adoption proceeding.¹⁹⁶ What was special about

¹⁹² Mahoney, *supra* note 3, at 669, 674 (arguing that the abrogation of adoption doctrine, as it is construed today, is discriminatory against adoptive children).

¹⁹³ Carroll, *supra* note 187, at 174.

¹⁹⁴ *In re Gregory Kingsley*, No. JU90-5245, 1992 WL 551484, at *1 (Fla. Cir. Ct. Oct. 21, 1992).

¹⁹⁵ Lydia Warren, *The Boy Who DIVORCED His Parents: 20 Years After 12-Years-Old Legally Split From His Family, He Reveals How He Regrets Never Reconciling With His Mother Before She Died*, DAILY MAIL (Dec. 13, 2012), <http://www.dailymail.co.uk/news/article-2247696/Shawn-Russ-Boy-divorced-parents-12-speaks-out.html>; see Anthony DePalma, *Mother Denies Abuse of Son Suing to End Parental Tie*, N.Y. TIMES (25 Sept. 1992), <http://www.nytimes.com/1992/09/25/us/mother-denies-abuse-of-son-suing-to-end-parental-tie.html?src=pm> (stating that "some conservatives . . . said it would lead to thousands of frivolous lawsuits by unhappy children seeking to 'divorce' their parents"); Opinion, *Gregory Needed the Divorce*, N.Y. TIMES (Sept. 29, 1992), <http://www.nytimes.com/1992/09/29/opinion/gregory-needed-the-divorce.html>; Boy, 12, in Court Seeking 'Divorce' from Parents: Family: Mother Denies her Son's Allegations of Abuse, Abandonment. Impact of Outcome Appears Unclear, L.A. TIMES (Sept. 25, 1992), http://articles.latimes.com/1992-09-25/news/mn-1194_1_foster-family; Boy is Granted 'Divorce' from Natural Parents, L.A. TIMES (Sept. 26, 1992), http://articles.latimes.com/1992-09-26/news/mn-868_1_foster-parents.

¹⁹⁶ Scott A. Cannon, *Finding Their Own "Place to Be": What Gregory Kingsley's and Kimberly Mays' "Divorces" From Their Parents Have Done for Children's Rights*, 39 LOY. L. REV. 837, 839 (1994).

this case was that a minor child brought the suit in his own name.¹⁹⁷ Eleven-year-old Gregory filed a petition for termination of his parents' parental rights seeking adoption by George and Elizabeth Russ.¹⁹⁸ Gregory's father consented to termination of his parental rights and to the adoption, however his mother opposed termination.¹⁹⁹ The Florida Circuit Court found that the minor child had legal standing to pursue termination of the parent-child relationship.²⁰⁰ Furthermore, the court found that termination of parental rights was in the best interest of the child and that it was established by clear and convincing evidence.²⁰¹ On appeal, the court agreed with Gregory's mother that according to the law, a minor lacks the legal capacity to initiate an action for termination of parental rights.²⁰² However, the appellate court found the error to be a harmless one because four other petitions were filed on Gregory's behalf.²⁰³ In addition, the court characterized the "disability of non-age" as procedural because such defect can be cured by the subsequent appointment of a next friend or guardian ad litem.²⁰⁴ Thus, some commentators argue that, although a minor in Florida does not have standing to file a petition to terminate parental rights on his own behalf, the procedural requirement that a guardian ad litem will file the petition in the minor's name seems to have no real substance.²⁰⁵

Although it seems that, at least in Florida, a minor child could initiate a termination of parental rights suit by appointing an adult

¹⁹⁷ *Id.* at 839.

¹⁹⁸ *In re Gregory Kingsley*, 1992 WL 551484, at *1, *5.

¹⁹⁹ *Id.* at *1.

²⁰⁰ *Id.*

²⁰¹ *Id.* at *4.

²⁰² *Kingsley v. Kingsley*, 623 So.2d 780, 783 (Fla. Dist. Ct. App. 1993).

²⁰³ *Kingsley*, 623 So.2d at 785 (discussing that separate petitions for termination of parental rights were filed on behalf of Gregory by the foster father, the guardian ad litem, the Department of Health and Rehabilitative Services, and the foster mother).

²⁰⁴ *Id.* at 785.

²⁰⁵ Cannon, *supra* note 196, at 847; Kerry Lorraine McBride, *A Minor's Right to "Divorce" His or Her Parents: Fundamental Liberty Interest and Standing of a Minor who is Dependent on the Courts to Bring Termination of Parental Rights Proceedings*, 17 J. JUV. L. 68, 75 (1996).

representative, one should remember that in order for the petition to be granted, the statutory grounds for termination should be proved by clear and convincing evidence.²⁰⁶ In Gregory Kingsley's case, the trial court found clear and convincing evidence of abandonment and neglect.²⁰⁷ Thus, even in this unique case, the termination of parental rights took place in the contextual framework of adoption law and procedure. There is no clear procedure allowing a child who wishes to sever the parental bond with his parents to do so outside the realm of adoption law.

Twigg v. Mays, another famous case in Florida, concerned Kimberly Mays, a minor who had been switched at birth.²⁰⁸ Kimberly filed a petition against her "biological parents" to "sever all ties with them."²⁰⁹ The petition came in response to the suit filed by her biological parents to be declared her biological parents and her natural guardians, and to be awarded custody.²¹⁰ The court found that Kimberly had standing to sue on her own behalf.²¹¹ The court found that "forced visitation [was] likely to produce mental, physical, or emotional harm of a lasting nature to [Kimberly]."²¹² Furthermore, the court concluded that even the adjudication of paternity and the declaration of her as the plaintiffs' biological child would be detrimental to her.²¹³

No doubt, this case was unique.²¹⁴ The minor filed the countersuit to terminate all ties with the parents she never knew up until the trial had started.²¹⁵ The purpose of the countersuit was to preserve her family ties and the relationship she had with the only

²⁰⁶ *Santosky v. Kramer*, 455 U.S. 745, 747–48 (1982); *In re Kingsley*, 1992 WL 551484, at *1.

²⁰⁷ *In re Kingsley*, 1992 WL 551484, at * 1–2.

²⁰⁸ *Twigg v. Mays*, No. 88-4489-CA-01, 1993 WL 330624, at *1–2 (Fla. Cir. Ct. Aug. 18, 1993).

²⁰⁹ *Twigg*, 1993 WL 330624, at * 1; Cannon, *supra* note 196, at 849.

²¹⁰ *Twigg*, 1993 WL 330624, at *3.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 5–6.

²¹⁴ *Id.* at 3 (stating that "the factual situation in this case is certainly unique", and that "neither counsel for the parties nor the Court has been able to find an appellate decision anywhere which is precisely on point.").

²¹⁵ *Id.* at *2; Cannon, *supra* note 196, at 850.

parents she knew her entire life.²¹⁶ Thus, a general rule cannot possibly be learned from this exceptional case.

Regarding the abrogation of adoption by the adopted child, “Vermont and West Virginia allow the adoptee to bring an action to abrogate the adoption within one year after reaching majority.”²¹⁷ Note, this is an exception relevant only in these two states and is applicable only to adoptees who have reached adulthood, not to minors. Since the intention of adoption laws is to create a parent-child relationship that is equivalent to the relationship between the child and the parents to whom he was born,²¹⁸ one can wonder why adoptees have this option, while biological children do not.

The provisions allowing the voluntary termination of parental rights are mainly intended for situations that are part of the adoption scheme,²¹⁹ although there are some cases in which the parents’ petition to terminate their rights is alien to adoption.²²⁰ Yet, not all states allow the application of termination statutes outside the realm of adoption. Furthermore, termination statutes are not suitable for dealing with other situations. In addition, it seems that there is no clear procedure allowing a child who wishes

²¹⁶ See *Twigg*, 1993 WL 330624, at *5 (The court has ruled that the evidence is clear that Robert Mays is the minor’s psychological parent and the Plaintiffs are seen by her as a constant source of danger to her father and to her family relationship).

²¹⁷ Kathleen M. Lynch, *Adoption: Can Adoptive Parents Change Their Minds?*, 26 FAM. L. Q. 257, 269 (1992); Carroll, *supra* note 187, at 173.

²¹⁸ See Carroll, *supra* note 187, at 158.

²¹⁹ *C.J.H. v. A.K.G.*, No. M2001-01234-COA-R3-JV, 2002 WL 1827660, at *7 (Tenn. Ct. App. Aug. 9, 2002); Mahoney, *supra* note 3, at 647.

²²⁰ *C.J.H.*, 2002 WL 1827660, at *7 (identifying that voluntary termination of parental rights only occurs “in the context of an adoption.”). The Texas Court of Appeals stated that the relevant provision is “rarely used” and that it is most commonly used when “the birth mother wants to place her baby for adoption.” *In the Interest of J.K.B. and J.D.B.*, 439 S.W.3d 442, 444 (Tex. App. 2014) (quoting *In the Interest of T.S.S.*, 61 S.W.3d 481, 483, 483n.1 (Tex. App. 2001)); *Dockery v. State of Texas*, No. 03-05-00713-CV, 2006 WL 3329794 (Tex. App. Nov. 14, 2006); *In re Bruce R.*, 662 A.2d 107, 117 (Conn. 1995); *In re Finnegan–Cole P.*, No. F04CP12009647A, 2013 WL 870229, at *2 (Conn. Super. Ct. Jan. 30, 2013); *In the Interest of J.L.W.*, 496 N.W. 2d 280, 281 (Iowa Ct. App. 1992); *Dockery*, 2006 WL 3329794, at *1; *In re The termination of Parental Rights of Michael I.O.*, 551 N.W.2d 855, 857 (Wis. Ct. App. 1996).

to sever the parental bond with his parents, to do so. A different procedure should be formulated for dealing with situations not involving the welfare system or adoption. The provisions for the severance of the parent-child status should be enacted as part of the laws that define and establish legal parenthood.²²¹

C. Emancipation

“Emancipation [is a] process by which minors attain legal adulthood before reaching the age of majority.”²²² The doctrine of child emancipation does not sever the parent-child status. Nevertheless, it diminishes and restricts parental control over their child’s life by granting the child legal autonomy.²²³ The adult status minor children achieve through emancipation also usually means that, “their parents are no longer responsible for [their] support.”²²⁴ Emancipation orders are not permanent.²²⁵ In some states, an emancipation order may be revoked if the circumstances change and the child has no means of support.²²⁶

A child who reaches the age of majority is emancipated automatically.²²⁷ In addition, the emancipation doctrine establishes

²²¹ See Section IV.C.

²²² Sanger & Willemsen, *supra* note 9, at 240.

²²³ *Id.* at 258–260; Goldberg, *supra* note 9, at 188.

²²⁴ Sanger & Willemsen, *supra* note 9, at 241; Lauren C. Barnett, *Having Their Cake and Eating It Too? Post-Emancipation Child Support as a Valid Judicial Option*, 80 U. CHI. L. REV. 1799, 1808, 1811, 1835 (2013) (stating that for many centuries the prevailing jurisprudence has held that when a child is emancipated his parental support ceases and that the notion that emancipation and child support are mutually exclusive is still prevailing, while contending that an emancipation order should not automatically terminate a child support obligation and that in the proper cases a child should continue getting support from his parents even if he is awarded emancipation). *But see* Diamond v. Diamond, 283 P.3d 260, 272 (N.M. 2012) (holding that a minor could be emancipated for certain purposes while reserving the right to seek support from her parents).

²²⁵ Barnett, *supra* note 224, at 1828.

²²⁶ *Id.* at 1828–29; Chadwick N. Gardner, *Don’t Come Cryin’ to Daddy! Emancipation of Minors: When is a Parent ‘Free at Last’ From the Obligation of Child Support?*, 33 U. LOUISVILLE J. FAM. L. 927, 936 (1994-1995).

²²⁷ Gardner, *supra* note 226, at 930–31.

categories of emancipated minors: married minors, minors on active duty in the armed forces, and minors emancipated by court order.²²⁸ Most states have statutes codifying the rules of emancipation.²²⁹ The rest of the states continue to grant emancipation based on common law.²³⁰

Generally, the statutes require the emancipation to be in the best interest of the child in order to be granted.²³¹ Most states have a minimum age of sixteen for emancipation.²³² In addition, states impose other requirements, such as requiring the petitioner to demonstrate the ability to live on his own and manage his own affairs.²³³ Some states, such as “Montana and Vermont, require minor petitioners to show that [they are] pursuing a high school diploma or graduation equivalent.”²³⁴

²²⁸ Barnett, *supra* note 224, at 1802; Sanger & Willemssen, *supra* note 9, at 258 (regarding the law in California).

²²⁹ Barnett, *supra* note 224, at 1803 (stating that 18 states today do not have statutes concerning emancipation).

²³⁰ *Id.* at 1803.

²³¹ *Id.* at 1818; Brieanne M. Billie, *The “Lost Boys” of Polygamy: Is Emancipation the Answer?*, 12 J. GENDER RACE & JUST. 127, 140 (2008) (stating that in Utah the child emancipation statute establishes that the court must determine by clear and convincing evidence that emancipation is in the best interest of the child). At least one commentator supports the notion that courts should consider the best interests of the parents in addition to those of the child in emancipation proceedings, for example, see S. Elise Kert, *Should Emancipation Be for Adolescents or for Parents?*, 16 J. CONTEMP. LEGAL ISSUES 307, 308–310 (2007) (contending that “statutory emancipation might prove a windfall for a parent who has little or no control over a teenager” and “that emancipation of a minor may benefit the parents does not necessarily make it a bad thing” and that “statutory emancipation laws can work to secure the right both of minors seeking independent legal status and of parents seeking to protect themselves against acts of their teenage child for whom they are legally responsible but no longer responsible in fact.”).

²³² T. Christopher Wharton, *Deserted in Deseret: How Utah’s Emancipation Statute is Saving Polygamist Runaways and Queer Homeless Youths*, 10 J. L. & FAM. STUD. 213, 220 (2007); Sanger & Willemssen, *supra* note 9, at 261 n. 96 (stating that California is the only state that authorizes emancipation for 14 years old, in all the other states the age minimum is 16).

²³³ Sanger & Willemssen, *supra* note 9, at 245–46; Wharton, *supra* note 232, at 220.

²³⁴ Wharton, *supra* note 232, at 221.

State statutes differ regarding who may initiate emancipation—in some states either the parent or the child can initiate the procedure, while in other states only the child can do so.²³⁵ In many cases, parents petition the court to declare their children legally emancipated, thereby removing the obligation of support.²³⁶ Even in states where only a child could initiate emancipation, parents can play an important role in encouraging emancipation. Though emancipation was intended to empower mature minors through official recognition of their actual independence, in effect, the process is sometimes initiated due to the parents' will.²³⁷ An empirical study on the use of emancipation in two northern California counties found that while in some cases emancipation provided independent teenagers with legal authority appropriate to their life situations, in many other cases it was used by parents to end responsibility for ordinary teenagers who lacked experience or desire to live independently.²³⁸

D. Conclusion

The options that exist currently to sever the legal parental bond include involuntary termination of parental rights by state intervention²³⁹ and abrogation by choice.²⁴⁰ This Article's main concern are situations in which a parent or a child (either minor or adult) wishes to terminate the parental status by choice. A parent can consent to terminate his status relationship with his child according to states' laws governing termination of parental rights²⁴¹ in order to free the child for adoption.²⁴² An adoptive parent can abrogate the adoption under certain conditions.²⁴³ Both

²³⁵ Barnett, *supra* note 224, at 1804–1805.

²³⁶ Gardner, *supra* note 226, at 927.

²³⁷ Sanger & Willemsen, *supra* note 9, at 241.

²³⁸ *Id.* at 242.

²³⁹ See discussion, *supra* Section III.A.

²⁴⁰ See discussion, *supra* Section III.B.

²⁴¹ See *In re Finnegan–Cole P.*, No. F04CP12009647A, 2013 WL 870229, at *2 (Conn. Super. Ct. Jan. 30, 2013) (stating that the court has to make sure that the parent has voluntarily and knowingly consented to the termination).

²⁴² Mahoney, *supra* note 3, at 640.

²⁴³ See *supra* notes 183–190 and accompanying text.

termination of parental rights and the abrogation of adoption are part of adoption law.²⁴⁴ In addition, it seems that there is no clear procedure allowing a child who wishes to sever the parental bond with his parents to do so.²⁴⁵ Today, the law does not provide an adequate way to sever the parental bond.

IV. THE CASE FOR CUTTING THE UMBILICAL CORD

The law should enable an individual to opt out of a relationship that is unfulfilling or harmful. The parent-child relationship is among the few legal relationships a person cannot choose to sever. Taking into consideration that society perceives this relationship as something very meaningful in one's life, the disparity between the notion of parenthood and the reality of one's real life experience intensifies the sense of detriment. Currently, the law does not provide an adequate way to sever the legal bond. This Article suggests guidelines for severing the parent-child status and proposes that the provisions be enacted as part of the laws that define and establish legal parenthood

A. Why What the Law Has to Offer Today is Not Enough

The questions that should be asked regarding the permanent nature of parenthood concern the relevance and rationale in our day and age for preserving the parent-child relationship for life. In the past, the extended family and the community were a common filial form.²⁴⁶ Today, in most of the western world the nuclear family and alternative family formations,²⁴⁷ which usually do not

²⁴⁴ Bartlett, *Rethinking Parenthood As An Exclusive Status*, *supra* note 2, at 895; Lincoln, *supra* note 114, at 5; C.J.H. v. A.K.G., No. M2001-01234-COA-R3-JV, 2002 WL 1827660 (Tenn. Ct. App. Aug. 9, 2002); Mahoney, *supra* note 3, at 647, 656–57.

²⁴⁵ See discussion, *supra* Section III.B.

²⁴⁶ Kris Franklin, "A Family Like Any Other Family:" *Alternative Methods of Defining Family Law*, 18 N.Y.U. REV. L. & SOC. CHANGE 1027, 1035 (1990 – 91).

²⁴⁷ The nuclear family usually refers to a married heterosexual couple and their biological children. Bartlett, *Rethinking Parenthood As An Exclusive Status*, *supra* note 2, at 879; Triger, *supra* note 24, at 365. By alternative family

include the parent-adult child bond, prevail.²⁴⁸ That is not to say that the bond between a parent and his or her adult child does not exist or is not meaningful, only that those family ties usually do not prevail as part of the “central” or “main” family cell and the parties do not share the same household. Children were once considered the property of their father,²⁴⁹ and were important as a work force on the family farm and as a means to distribute property through inheritance.²⁵⁰ During the twentieth century, attitudes towards children and children’s place in the family and society changed,²⁵¹ and emphasis was placed on the parents’ duty to support, take care and educate the child.²⁵² The best interest of the child has become the prevailing principle governing legal decisions pertaining to the child.²⁵³

If the purpose of the parental status is to assign someone the responsibility and duty to support the child until majority and to prepare the child for life in society, why doesn’t the status cease automatically as soon as the child reaches majority? After all,

formations, this Article refers to single parenthood, cohabitation, same-sex couples and their children, married heterosexuals who decide not to have children at all, and community parenting. *See generally* Laura T. Kessler, *Community Parenting*, 24 WASH. U. J.L. & POL’Y 47 (2007) (describing community parenting).

²⁴⁸ Barbara Bennett Woodhouse, “*Who Owns the Child?*”: *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995, 1037–39, 1045–46 (1992); Franklin, *supra* note 246, at 1033–1049; J. Thomas Oldham, *What Does the U.S. System Regarding Inheritance Rights of Children Reveal About American Families?*, 35 FAM. L. Q. 265, 271 (1999) (stating that “Americans are much more inclined to move about the country and are less tied to a ‘home’ than people from many other countries; it may well be that it is therefore more common, once American children become adults, for them to live far from their parents”).

²⁴⁹ Woodhouse, *supra* note 248, at 1037, 1045–46; *see* Triger, *supra* note 24, at 366.

²⁵⁰ Franklin, *supra* note 246, at 1034–35.

²⁵¹ Shahar Lifshitz, *Neither Nature Nor Contract: Toward an Institutional Perspective on Parenthood Essay*, 8 LAW & ETHICS HUM. RTS. 297, 307–308 (2014).

²⁵² Bartlett, *Rethinking Parenthood As An Exclusive Status*, *supra* note 2, at 885.

²⁵³ Carroll, *supra* note 187, at 156–57; Lifshitz, *supra* note 251, at 307–308; Mahoney, *supra* note 3, at 665.

parents' legal control over their children does stop when the child reaches adulthood. The answer might be that parenthood is more than just a means to serve the interests of the child and society in taking care of the child, namely that it has significance and value in and for itself. People value the parent-child relationship.²⁵⁴ Parenthood is a meaningful part of life. It is a unique intimate relationship that has a special value and which encompasses an emotional bond. A well-established emotional bond will probably sustain for life. If that is the case, and most people in society value their parental relationship and conceive it as a relationship for life, then it will be reasonable to maintain the legal status for life. Yet, this justification does not explain why there is no way out of the relationship in cases that merit it.

Individuals are free to make their own choices regarding their life (under some limitations). Autonomous individuals have some control over their intimate relationships by selecting with whom to form the intimacy and how to shape the relationship. Intimate relationships are an essential part of meaningful life. This is especially true in the domain of family law. One of the most fundamental rights is being able to decide with whom to pursue intimate relationships and whom to consider family.²⁵⁵ These decisions reflect and shape one's identity. A person should have a say about whom he wants as part of his family. Parents choose their spouse or partner and have a choice (at least to some extent) whether to bring a child into the world. This decision might bestow responsibility to raise and support the child until he or she is able to stand on his own, but it does not necessarily justify a commitment for life. Furthermore, even when a person decides to bring a child into the world, there is no guarantee what the child will grow up to be and how the parent-child relationship will develop. The parent cannot possibly knowingly consent to a relationship for life with a person that does not yet exist. This is all

²⁵⁴ Batts, *supra* note 74, at 1197 (stating that "the sanctity and inviolability of the parent-child bond as a fundamental concept imbedded in America's social and social structure."); Brighouse & Swift, *supra* note 1, at 90–95.

²⁵⁵ The Supreme Court of the United States has recognized that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40 (1974); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

the more so regarding children. Children do not choose to come into the world, do not choose their parents, and do not consent to the relationship.

The law should enable an individual to opt out of a relationship that is unfulfilling and sometimes even harmful, or from a relationship that exists in the legal sphere but not in real life. This is especially true when the child is an adult, but it is not confined to that. When it comes to a relationship that society perceives as something so meaningful in one's life, the disparity between the notion of parenthood and the reality of one's real life experience intensifies the sense of detriment. Currently, the law does not provide an adequate way for a person who wishes to sever the legal bond to do so.

Family law has glorified the number two, creating links among sex, marriage and procreation, and conceptualizing each as a practice for two.²⁵⁶ Departure from the optimal parental number involves criticism.²⁵⁷ Though the law recognizes single parenthood at the time the child is born (for example when a single mother uses sperm donation), the law usually does not allow a parent to abrogate his or her parental status without someone else taking his or her spot, thus leaving the child with only one parent,²⁵⁸ let alone leaving a person parentless. There appears to be no reasonable explanation for the reluctance of the law to render an adult person parentless.

It seems that even if a solution of some kind could be found using termination statutes, it would not be an adequate one. The situations that are the aim of this article are foreign to termination

²⁵⁶ Susan Frelich Appleton, *Parents By The Number*, 37 HOFSTRA L. REV. 11, 11 (2008–2009); Sacha M. Coupet, “Ain’t I A Parent?": *The Exclusion of Kinship Caregivers from the Debate Over Expansions of Parenthood*, 34 N.Y.U. REV. L. & SOC. CHANGE 595, 618 (2010); Melanie B. Jacobs, *More Parents, More Money: Reflections on the Financial Implications of Multiple Parentage*, 16 CARDOZO J. L. & GENDER 217, 220 (2009–2010).

²⁵⁷ Appleton, *supra* note 256, at 12.

²⁵⁸ See, e.g., *In re Michael I.O.*, 551 N.W.2d. 855, 858 (Wis. Ct. App. 1996) (“Cindy testified that there is no foreseeable stepparent adoption of Michael. ‘While the vicissitudes of life place many children in one-parent circumstances, it is generally better for children to have two parents.’” (quoting *A.B.*, 151 Wis.2d at 322, 444 N.W.2d at 419)).

statutes. A full consideration should be given to the possibility to sever the parental status outside the realm of adoption law. The procedure should be different than the one in adoption cases—a procedure tailor-made to these cases. In addition, the provisions should be part of the law governing the definition of parenthood.

In the last decades, the children's rights doctrine has developed and expanded extensively.²⁵⁹ As a result, different legal systems award children rights and standing to voice their opinion in matters related to them according to the age of the child and his or her development. A minor should, by extension, also have the legal right to petition for termination of parental rights, applying the same standards. One of the arguments that is being raised is that a child has the right to be cared for by his or her parents.²⁶⁰ This argument should be taken into consideration when reflecting on the possibility to sever the parental bond upon the will of a parent, inasmuch as it should be taken into account when considering a child's right not to be considered the son or daughter of a certain person.

If the child is the one desiring abrogation and the child is a minor, most states will not allow him to petition the court for terminating parental rights. Even if the child does have standing (or is able to petition the court with the help of a guardian ad litem), he or she would likely have to prove fulfillment of the grounds set by law for terminating parental rights without the parents' consent. That is not an easy task, especially since the grounds for termination must be proved through clear and convincing evidence. In addition, there will be situations in which there will be a good reason to terminate the legal bond, but which do not fit any of the grounds for terminating parental rights recognized by law. The law should address those situations as well.

When the petitioning child is an adult, there are no established designated proceedings to sever the parent-child relationship. Appropriate provisions should be made for affording the severance of the parental status for adult children. These provisions should

²⁵⁹ Lifshitz, *supra* note 251, at 307–308; Woodhouse, *supra* note 248, at 1055.

²⁶⁰ The International Convention On The Right Of The Child § 7 (1989).

apply both to cases where the adult child is the petitioner and to cases where the parent of an adult child is petitioning.

In exceptional cases, the law should permit a petitioning parent to abrogate his or her parental status when the child is a minor. This option is available today in certain cases of consent for adoption and in some states in other situations as well.²⁶¹ Yet, there are no comprehensive structured proceedings for petitioning the court to sever the parental status in cases where no adoptive parent is about to step in instead of the petitioner. Denial of access to the courts precludes parent-initiated severance even in cases where the court might determine that the child's best interest would be served by such a result.

B. The Risk of Exploitation or Misapplication of the Procedure

Without a doubt, some people will intuitively oppose the proposition that the parental bond is not eternal and could be terminated. The social convention that perceives parenthood as a status for life is rooted and grounded in our culture. Others will base their objections on concrete justifications, such as concern of exploitation in order to evade financial responsibilities or slippery slope arguments (such as that the possibility to abrogate the parental status would lead to the destruction of the family unit, the deterioration of family values, or the abolition of the parental status altogether).

Parenthood is conceived as a natural bond for life. Yet, parenthood is culturally constructed;²⁶² hence, the meanings of parenthood and of the parent-child relationship have changed over the years and are different across societies.²⁶³ "Cultural

²⁶¹ See generally Mahoney, *supra* note 3, at 640; *State ex. rel. Sec'y of Soc. & Rehab. Serv. v. Clear*, 248 Kan. 109, 116 (Kan. 1991) ("The State's primary goal for all children whose parents' parental rights have been terminated is placement in a permanent family setting . . . After parental rights have been terminated, the court may grant custody of the child for adoption proceedings or for long-term foster care, if it does not appear that adoption is a viable alternative.").

²⁶² Sault, *supra* note 25, at 399.

²⁶³ *Id.*

constructions are based on human beliefs, values, and ideologies that change over time.”²⁶⁴ Thus, the meaning ascribed to parenthood today could change in the years to come.

Slippery slope arguments are employed often as part of a counterargument to a proposed change in the law. A slippery slope argument is constructed in the following manner: “Even if a legal action ‘A’ today . . . wouldn’t be that bad . . . it should be opposed because it will increase the [probability] of a . . . worse legal action ‘B’ in the future.”²⁶⁵ Here, the argument will be that even if abrogation of the parent-child relationship in exceptional cases would not be that bad, it could lead to much worse outcomes such as the destruction of the family unit, the deterioration of family values, and abolition of the parental status.

Slippery slope arguments can be established on two grounds:²⁶⁶ 1) a political/psychological ground, contending that although the two situations are distinguishable, public opinion will change following action A (abrogation of the parental status) to allow action B (the destruction of the family unit, the deterioration of family values, or abolition of the parental status altogether); and 2) a logic ground, according to which the two situations are not intrinsically different and thus should be treated the same.

According to the slippery slope arguments, even if allowing the possibility to abrogate the parental bond outside the realm of adoption law could be acceptable, it should be opposed because it may lead to a harmful event. The detrimental or dangerous events in this case could include the destruction of the family unit, the deterioration of family values or abolition of the parental status altogether. The argument is a political/psychological one, stating that though the two actions are distinguishable, in practice it is possible that once abrogation of the parental bond would be available, various actors in the legal system will eventually end up not distinguishing between them.²⁶⁷

²⁶⁴ *Id.* at 407.

²⁶⁵ Eugene Volokh, *Same-Sex Marriage and Slippery Slopes*, 33 HOFSTRA L. REV. 1155, 1156 (2005).

²⁶⁶ *Id.*; Dale Carpenter, *Bad Arguments Against Gay Marriage*, 7 FLA. COASTAL L. REV. 181, 208–10 (2005).

²⁶⁷ Volokh, *supra* note 265, at 1156.

Allowing means to abrogate the parental bond in cases that merit it would not lead to any of the harsh consequences at the bottom of the slippery slope. The argument for abrogation of the parental status is indeed, in a way, an argument for liberalization of the rules regarding parenthood and the parent-child relationship. Yet the argument does not call for elimination of the parental status altogether. Various possibilities already exist today for terminating the parent-child bond, nonetheless those possibilities did not bring about the abolition of parenthood, the destruction of the family unit, or deterioration of family values.

Parenthood is a very solid and valued institution in the American society and there is no apparent reason to believe it would be abolished. In addition, the family unit is a fundamental part of our society. Since the definition of “family” and its composition could change over time, a question could be raised as to who will be considered a part of the “family.” Yet, it seems that the “family unit” will continue to be one of the building blocks of society no matter what constitutes it.

Allowing the abrogation of the parental status would also not lead to deterioration of family values. First, it would be reasonable to believe that the legal abrogation of the parental status would merely mirror the nature of the relationship in real life. The essence of parenthood is the intimate relationship created and maintained between a parent and a child. Thus, if there are instances in which such a relationship never developed, or has ceased to exist, a possible interpretation could conclude that parenthood in such a case is meaningless and void since it does not fulfill its purpose. Second, values and beliefs change over time. Family values have changed a great deal during the last decades and will most likely continue to change in the future. Allowing legal abrogation of the parental bond would not be the cause for a change in family values. In addition, it seems highly unlikely that people in their multitudes will flow to the courts seeking to terminate the parental bond. Ultimately, the fear of deterioration of family values is merely political rhetoric that surfaces each time a suggestion for modifying family law arises.

Another concern that critics may point to is the fear that some will exploit the abrogation process in order to evade financial responsibilities. The possibility to sever the parental bond could be

exploited to renounce responsibility of a person towards his minor child or towards his elderly parent who needs help and support. As a consequence, the burden to support the person in need will fall on the state and thus on society as a whole. Courts are already concerned by the financial issues in termination of parental rights cases.²⁶⁸ Those concerns should not be ignored or treated lightly. The petition should prove to be authentic, should fulfill legal requirements, and pass the scrutiny of the courts.

Many other rules and laws may be abused and exploited, yet the solution cannot be their elimination. The legal requirements and the discretion given to the courts serve as safeguards against exploitation. However, legislators and courts should be careful not to create a categorical rule barring the abrogation of parental status every time the abrogation ends the financial support to the child from that parent. Since a minor child is entitled to support from both his or her parents, the child would obviously lose that support from the parent with whom the severance occurs. Thus, creating a categorical rule barring the abrogation of parental status every time financial support comes up renders the process meaningless. Rather, there should be a case-by-case examination. There could be instances that would merit the abrogation of the parental status, even if it means that the state will ultimately assume the financial burden. The state should not force an intimate relationship and a status entailing such a relationship on someone who does not want it. Another optional response for the concern about the financial support could be to condition the abrogation of parenthood on the payment of a sum of money or on continued financial support of an affixed amount. Yet, this solution should be applied on a case-by-case basis. It should be applied with caution as to not make the proceedings for abrogation redundant.

²⁶⁸ See *In re Bruce R.*, 662 A.2d 107, 117 (Conn. 1995); *C.J.H. v. A.K.G.*, No. M2001-01234-COA-R3-JV, 2002 WL 1827660, at *2 (Tenn. Ct. App. Aug. 9, 2002); *In re Michael I.O.*, 551 N.W.2d 855, 857 (Wisc. Ct. App. 1996).

*C. Proposals for Extending the Possibility to Sever the
Parent-Child Bond*

This Article is not advocating for the abolishment of the institution of parenthood. Nor is it arguing that the parent-child relationship should end as soon as the child enters adulthood. This Article only claims that there should be a way to terminate the relationship, beyond the option ascribed by adoption laws, in the exceptional cases that warrant it; a way that would be regulated by the state with safeguards against exploitation. The suggestions presented here for extending the possibility to sever the parent-child status are not meant to be comprehensive, but rather serve to facilitate discussion on these important legal issues.

The law should have provisions allowing the severance of the parent-child status in situations that extend beyond adoption laws. Those provisions should not be a part of adoption laws. Instead, they should be enacted as part of the laws that define and establish legal parenthood, and which ascribe the rights and responsibilities conferred on parents regarding their children. The possibility to sever the parental status should be regulated and governed by the state. Either the parent or the child should be able to initiate the procedure and petition the court to abrogate the parent-child status. The procedure could be initiated during the child's minority as well as during the child's adulthood, however different criteria should be drafted for each phase of the child's life taking into account the child's age, the actual maturity of the child, who initiated the process, and the mental capacity of both the parent and the child. A distinction should be made between the stage of minority and the stage of adulthood.

When the child is an adult, deference should be given to both the parents' and child's wishes and aspiration. The Supreme Court of the United States has dictated that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.²⁶⁹ The ability to make one's own decisions regarding these fundamental matters is deeply rooted in the American system. Thus, there should be a compelling reason

²⁶⁹ *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40 (1974); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

for not allowing two competent adults to decide to terminate their parent-child relationship. One ought to also remember that the child did not consent to enter this relationship in the first place.²⁷⁰ Therefore, when both the parent and the child wish to sever the bond and they are both competent adults, their wish should, in general, be granted. The meaning and permanence of the procedure should be thoroughly explained to them by the court. When both the parent and the child are competent adults and only one of them wishes to sever the bond, they should first be directed to mediation in order to try and solve their differences. If the mediation does not bear fruits, the court should make its decision after ensuring that the petition was authentic and was filed in good cause, and after examining the justifications given by each side. Sometimes there may also be a strong public or state interest that should be taken into consideration as well.

When the petition involves a minor, a different consideration ought to be made. The age of the minor child and his maturity should be taken into account. A mature enough child should be heard and his wishes should be taken into account. In such proceedings, an attorney ad litem should be appointed to represent the minor child. A distinction should be made between cases in which the child has initiated the proceedings and cases where the parent has filed the petition. When the child has filed the petition, a careful examination should be made to ensure that the petition reflects the child's authentic will and not someone else's, and that the child understands the proceedings and the consequences.

Regardless of who initiated the proceedings, the best interest of the child should prevail. Yet, it seems that sometimes courts confuse the best interest of the child with the interests of the state. Such appears to be the case in some of the instances the court refused to grant termination of parental rights based on financial considerations.²⁷¹ When a parent is not a part of the child's life and the child does not recognize him as his or her parent, and the other

²⁷⁰ A presumption can be made maintaining that the parent wanted to bring the child into the world. Yet, this assertion is not always true. In addition, even in circumstances that the parent wanted to bring the child into the world, the parent could not have known who the child will grow up to be and how their relationship would turn out to be.

²⁷¹ See sources cited and accompanying text, *supra* notes 163–67.

parent consents to the petition, sometimes it would be in the best interest of the child to sever the parental status. That is the case especially if the other parent can support the child by him or herself. However, even if the financial burden will fall partly on the state, sometimes it would be in the best interest of the child to abrogate the parental bond. I am not saying that financial considerations should not be taken into account. Nonetheless, the weight given to them should not override all other considerations.

Reviewing courts should have broad discretion to reach a decision on a case-by-case basis, using the guidelines that would be outlined by the legislature. Granting discretion to the courts to decide on a case-by-case basis could disrupt legal certainty. Yet, in family law in general,²⁷² and all the more so in this kind of sensitive matter, flexibility is very important. The law should not give categorical answers to a given situation. Legislative guidelines should include different parameters for courts to consider. Interests of the state could play a part, as long as they do not supersede other important considerations. The law must not be afraid of creating a parental vacuum in cases that merit it. Special consideration should be given to situations in which the child or the parent is mentally incompetent and are lacking legal capacity (not based on age). Particular criteria should be drafted to deal with cases like this.

The consequence of granting a petition to abrogate the parental status is a complete severance of the parent-child relationship and bond. The severance is permanent, though the law should allow revocation of the decree for a limited time and under certain circumstances specified by law.

Autonomous individuals should have some control over their intimate relationships by selecting with whom to form the intimacy, by shaping the relationship, and by deciding when to end it. The decision with whom to pursue an intimate relationship and who to consider family reflects and shapes one's identity. Thus, the

²⁷² For example: Cases concerning children, such as custody cases and child support, are decided on a case-by-case basis taking into account the facts of the specific matter and the best interests of the children involved. "The Best Interests of the Child" standard is a flexible one, that changes over time and is often recruited by opposing sides at the same time. See Appleton, *supra* note 256, at 63–64.

law should enable an individual to opt out of a parent-child relationship that is unfulfilling, harmful, or that exists in the legal sphere but not in real life. The provisions regarding the abrogation of the parental bond should be part of the laws that define and establish legal parenthood and should be regulated and governed by the state. The possibility to petition for the abrogation of the parental bond should be available to both the parent and the child. The procedure could be initiated during the child's minority as well as during the child's adulthood, albeit different criteria would apply.

CONCLUSION

The matter in question, undeniably, should not be taken lightly. The social convention that perceives parenthood as a status for life is rooted and grounded so deep in our culture, that it seems that challenging it would constitute the undermining of fundamental perceptions in our society. Furthermore, there are concerns and drawbacks that should be sorted out and resolved. Yet, that being said, an option should be made possible for an individual to terminate an undesirable relationship.

Family relationships play a very meaningful role in individuals' lives. Thus, access to family status-label and to its expressive value is very important to people.²⁷³ This claim works the other way around as well: since family relationships play a crucial part in our lives, people aspire to have their family status reflect their actual relationships and real-life experiences. Once their family status indicates something that does not accurately represent their life and emotional state, the disparity could be unsettling.

There are instances in which it would be appropriate to allow a parent to waive his parental status, or to allow a child to abrogate the parental bond with the person considered his or her parent. The law, by not administering a way to sever the bond, is "chaining" the parent and the child together for life in an unbreakable knot.

²⁷³ *Id.* at 68 (stating regarding a court decision, that "the label 'parent' mattered, because the law makes such title important."); Baker, *supra* note 7, at 132.

The parent and the child do not have a say in the matter, though it affects them their entire life and concerns one of the most intimate and self-identifying relationships a person has in life. Hence, exceptions to the rule of parenthood as a status for life should be made, and a legal procedure for revoking the parental bond under the regulation of the state should be established.