12-2-2017

Cutting Off the Umbilical Cord—Reflections on the Possibility to Sever the Parental Bond

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Available at: https://brooklynworks.brooklaw.edu/jlp/vol25/iss2/12

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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
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?

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. 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. However, when only one parent wishes to relinquish parental status, the law will not allow it unless another person takes his or her place. 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.

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

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. Parental obligations include, among other things, the responsibility to support and to care for the child. 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.

Parenthood has two key elements: exclusivity and permanence. Generally, parenthood is considered an exclusive status. The law recognizes one set of parents for a child at any given time and these parents are granted exclusive parental rights and duties. Through the rule of exclusivity, the law creates a stark dichotomy between “parents” and “nonparents,” who are considered “strangers” by the law. Only the child’s legal parents can claim rights with respect to the child. 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.
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).
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.\textsuperscript{17}

The legal system intends the parent-child status to be permanent\textsuperscript{18} and eternal, lasting from birth until death and even beyond.\textsuperscript{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.”\textsuperscript{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.

\textbf{A. Symbolic}

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

\textsuperscript{17} Blecher-Prigat, \textit{supra} note 13, at 5–6; Jacobs, \textit{Why Just Two?}, \textit{supra} note 14, at 311; Young, \textit{supra} note 13, at 524.

\textsuperscript{18} Mahoney, \textit{supra} note 3, at 639–40.

\textsuperscript{19} \textit{Id.}; see sources cited \textit{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.

\textsuperscript{20} Mahoney, \textit{supra} note 3, at 643.

perception of ourselves and of our relationship with others.” 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.

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, differing from country to country and across societies. 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. Same-sex couples who entered into civil unions would

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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.”).
get all the state created benefits of marriage.\textsuperscript{27} The only difference was withholding the title “marriage.”\textsuperscript{28} Proponents of same-sex marriage have objected to the civil union alternative, arguing that withholding the term “marriage” has a substantial meaning.\textsuperscript{29} They argued that civil unions are a “separate but equal” substitute for marriage and as such do not grant full equality.\textsuperscript{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,\textsuperscript{31} since civil unions do not carry the same social meaning as marriage.\textsuperscript{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.\textsuperscript{33} “Marriage” carries with it “a sense of belonging, . . . of being a part of a community,” societal legitimacy, and recognition.\textsuperscript{34} The choice of name is important “when the law does the labeling.”\textsuperscript{35}

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

\textsuperscript{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).

\textsuperscript{28} Id. at 608; Samar, supra note 26, at 784.

\textsuperscript{29} See Isaak, supra note 27, at 610; Samar, supra note 26, at 793.

\textsuperscript{30} Isaak, supra note 27, at 609.


\textsuperscript{32} Samar, supra note 26, at 785.

\textsuperscript{33} Id. at 785.

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

\textsuperscript{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.

\textsuperscript{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

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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. 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. 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. When a person dies intestate, meaning without leaving a valid will, their property is distributed according to legal provisions adopted through state law. 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.

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

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).
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.\textsuperscript{45} If the deceased does not have children, the estate could go to her ascendants.\textsuperscript{46} Research shows that a large percentage of people in the United States die without writing a will.\textsuperscript{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.\textsuperscript{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.\textsuperscript{49} The decedent can freely

\textsuperscript{44} Boehringer, supra note 41, at 122, 137–38; Cremer, supra note 41, at 91–92.

\textsuperscript{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.

\textsuperscript{46} Boehringer, supra note 41, at 122, 137–38.

\textsuperscript{47} Id. at 137; Madoff, supra note 39, at 344.

\textsuperscript{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 I (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).

\textsuperscript{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.\textsuperscript{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.\textsuperscript{51} Nonetheless, they have in common the recognition of the children of the decedent as entitled to a forced share.\textsuperscript{52} Some countries also recognize the decedent’s parents as entitled to a forced share, usually when the decedent does not have children.\textsuperscript{53}

\textsuperscript{50} Brashier, \textit{supra} note 48, at 117, 120; Madoff, \textit{supra} note 39, at 334, 336–37, 342; McLearen, \textit{supra} note 48, at 325–26.

\textsuperscript{51} See Brashier, \textit{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, \textit{supra} note 49 (describing the difference in the application of forced share doctrine across a range of European countries); McLearen, \textit{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). \textit{Id}; Nikolaos Vervessos & Triantafyllos Stavrakidis, \textit{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).

\textsuperscript{52} Brashier, \textit{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 disinherited without cause.”); Madoff, \textit{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, \textit{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, \textit{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).

\textsuperscript{53} Schwabach, \textit{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, \textit{supra} note
Common law countries usually reject the doctrine of forced share. Yet, some of those countries have devised other limitations on the ability to disinherit family members as well as other dependents. 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, 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.” 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.

In the United States, the laws of inheritance are administered by the states. Over half of Americans die intestate, leaving their estate to be distributed according to the law of the state. Accordingly, the estate would usually go to their children (or other descendants) and spouse, and in some cases to their parents (or other ascendants). 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.


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; Kreiczer-Levy, supra note 38, at 117.

58 Brashier, supra note 48, at 123; Kreiczer-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; Kreiczer-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 statues 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.
preceeded the birth of the child. The rationale underpinning these statutes is the belief that parents want to bequeath their property to their children. 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.

Wills can be contested using formalities, and doctrines such as mental capacity, undue influence, fraud, and public policy. When testators disinherit family members, courts often use these formalities and doctrines to invalidate the will. 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. 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,” which most states have adopted. The allowance provides only temporary short-term protection, during the probate period or the administration of the estate. Yet they provide significant protection against disinheription for families in need. 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.

Minor children lack the legal capacity to execute a will. 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 disinheriance.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.
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; McLearen, 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 disinheretance.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.


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

Some of the states have criminal laws with criminal sanctions for failure to support indigent parents, some have civil statutes, and some have both. There is no common law duty to support one’s parents; 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.”

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

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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).


93 Pakula, supra note 89, at 865.

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

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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; Lesher et al., supra note 84, at 248; Ross, supra note 84, at 173.

99 DeBona, supra note 89, at 858; Lesher 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; Lesher 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.\textsuperscript{102} “Filial responsibility has gained renewed attention in recent years,”\textsuperscript{103} with some commentators suggesting going back to using these laws.\textsuperscript{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.\textsuperscript{105} Low saving rates and retirement incomes increase the number of elderly who will be below the poverty level.\textsuperscript{106} As baby boomers are reaching retirement age,\textsuperscript{107} and the economic reality is incapable of accommodating that,\textsuperscript{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

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\textsuperscript{102} See DeBona, \textit{supra} note 89, at 850, 873.
\textsuperscript{103} Lesher et al., \textit{supra} note 84, at 269.
\textsuperscript{104} See, \textit{e.g.}, Lundberg, \textit{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. \textit{Id.}; Pakula, \textit{supra} note 89, at 870–71 (advocating for creating a federal filial support law); Ross, \textit{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, \textit{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.”).
\textsuperscript{106} See Pakula, \textit{supra} note 89, at 860.
\textsuperscript{107} Harkness, \textit{supra} note 89, at 306–07; Boehringer, \textit{supra} note 41, at 123–24; Plaisance, \textit{supra} note 105, at 247; ORTMAN ET AL., \textit{supra} note 105.
\textsuperscript{108} Boehringer, \textit{supra} note 41, at 125.
parent towards his minor child, 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. 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. 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. The growing phenomenon of divorcing fathers petitioning for a genetic testing to undermine their paternity and disestablish it, 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.

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. Involuntary termination of parental rights is part of adoption law. 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. “Once parental rights are terminated, [the] child


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); Deserree A. Kennedy, *Children, Parents & the State: The Construction of a New Family Ideology*, 26 BERKELEY J. GENDER L. & JUST. 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. & JUST. 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.

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

The State has an interest to protect the welfare of its children. Thus, in its capacity as Parens Patriae the state can intervene in the family. The state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare. Yet, the state’s power to interfere with parental rights has limitations. 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.” Furthermore, several Supreme Court rulings have recognized parents’ fundamental liberty interest in the upbringing, care, custody, and control of their children.


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.


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

State law regulates the family,\textsuperscript{128} including involuntary termination of parental rights.\textsuperscript{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.\textsuperscript{130} Around half the states permit courts to consider parental incarceration or a criminal conviction when deciding whether to terminate parental rights.\textsuperscript{131} Many states impose an additional requirement for termination of

\textsuperscript{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.”); \textit{Id.} at § 78A-6-507 (stating the parent’s unfitness as one of the grounds for termination of parental rights).

\textsuperscript{126} Stanley, 405 U.S. 645, 649, 658 (1972).


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

\textsuperscript{129} Hershkowitz, \textit{supra} note 114, at 246.


\textsuperscript{131} Kennedy, \textit{supra} note 114, at 78, 95–96.
The state must show that the detrimental condition is likely to continue in the future. 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.

By and large, state law stipulated that termination of a parent’s legal relationship with a child requires blameworthy behavior. “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.” Only a few jurisdictions provide no-fault grounds for termination of parental rights that go beyond parental fault and incapacity. 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. One example is Connecticut, which permits termination of parental rights on the ground that there is “no ongoing parent-child relationship.” 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. Based on the Supreme Court decisions in Stanley v. Illinois and Santosky v. Kramer, the state must prove unfitness by clear and convincing evidence to justify involuntary termination of parental rights. Thus, “no-fault” ground for involuntary termination of parental rights, can be said to violate the due process clause of the Fourteenth Amendment.

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

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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.


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

146 Okun, supra note 114, at 762.


towards termination of parental rights in the appropriate instances.\textsuperscript{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.

\textbf{B. Abrogation by Choice}

By and large, a parent cannot waive his or her parental status outside the realm of adoption law.\textsuperscript{150} A parent may consent to terminate his or her status relationship with a child according to states’ laws governing termination of parental rights\textsuperscript{151} in order to free the child for adoption.\textsuperscript{152} An adoptive parent can abrogate the adoption under certain conditions.\textsuperscript{153} Both termination of parental rights and the abrogation of adoption are part of adoption law.\textsuperscript{154}

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

\textsuperscript{149} Meyer, supra note 116, at 772; Okun, supra note 114, at 762.

\textsuperscript{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, \textit{Infant Safe Haven Laws: Legislating in the Culture of Life}, 106 COLUM. L. REV. 753, 754–55 (2006).


\textsuperscript{152} Mahoney, supra note 3, at 640.

\textsuperscript{153} See infranotes 183–190 and accompanying text.


\textsuperscript{155} Mahoney, supra note 3, at 640.

\textsuperscript{156} See id.
termination of parental rights as well.\textsuperscript{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].\textsuperscript{158} First, [a] parent [could] agree to terminate [his] status in order to free a child for adoption by another adult.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{161} The common thread among these cases is the paramount consideration given to the best interest of the child.\textsuperscript{162} Courts in many of the cases emphasized the importance of child support as a factor in the

\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{159} Id.
\textsuperscript{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.”).
\textsuperscript{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. \textit{In the Interest} of J.K.B. and J.D.B., 439 S.W.3d 442, 444 (Tex. App. 2014) (quoting \textit{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).
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.\textsuperscript{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 \textit{C.J.H. v. A.K.G.},\textsuperscript{165} it also concluded that none of the statutory procedures for relinquishment of parental rights would be available to the father.\textsuperscript{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.\textsuperscript{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.\textsuperscript{168} “The mother and father submitted a joint petition to terminate the father’s parental rights[.]”\textsuperscript{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.”\textsuperscript{170} The Tennessee Court of Appeals denied the petition.\textsuperscript{171} Considering the statutory framework, the court asserted that “[a]lthough [the] statutes allow, in some circumstances, for a voluntary surrender of parental rights . . .

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    \item \textsuperscript{163} \textit{In re Bruce R.}, 662 A.2d. at 117; \textit{C.J.H.}, 2002 WL 1827660, at *2; \textit{In re Michael I.O.}, 551 N.W.2d. at 857.
    \item \textsuperscript{164} See \textit{In re Bruce R.}, 662 A.2d. at 108–09 (1995); \textit{C.J.H.}, 2002 WL 1827660, at *7–9; \textit{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. \textit{Compare In re Finnegan–Cole P.}, 2013 WL 870229, at *3 (involving a lesbian couple), \textit{with C.J.H.}, 2002 WL 1827660, at 7–9 (involving a heterosexual couple).
    \item \textsuperscript{165} \textit{C.J.H.}, 2002 WL 1827660, at *2.
    \item \textsuperscript{166} Id. at *8.
    \item \textsuperscript{167} Id. at *1.
    \item \textsuperscript{168} Id.
    \item \textsuperscript{169} Id.
    \item \textsuperscript{170} Id.
    \item \textsuperscript{171} Id. at *9.
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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.
175 Id. at 438.
176 Id. at 439.
177 Id.
178 Id. at 441.
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.\textsuperscript{183} Second, they could nullify the adoption decree in certain circumstances by filing a petition under adoption laws.\textsuperscript{184} Adoptive parents can petition the court to annul the adoption based on fraud, misrepresentation, or procedural flaws in the adoption proceedings.\textsuperscript{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.\textsuperscript{186}

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

Generally, the statutory grounds for adoption annulment do not take into consideration the welfare of the child.\textsuperscript{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,\textsuperscript{191} some commentators argue that

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  \item \textsuperscript{184} Mahoney, \textit{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.”).
  \item \textsuperscript{185} Id. at 657, 661.
  \item \textsuperscript{186} Id. at 664.
  \item \textsuperscript{187} Id. at 672–73; Elizabeth N. Carroll, \textit{Abrogation of Adoption by Adoptive Parents}, 19 FAM. L. Q. 155, 159 (1985).
  \item \textsuperscript{188} Carroll, \textit{supra} note 187, at 159; Mahoney, \textit{supra} note 3, at 672.
  \item \textsuperscript{189} Carroll, \textit{supra} note 187, at 159; Mahoney, \textit{supra} note 3, at 672–73.
  \item \textsuperscript{190} Carroll, \textit{supra} note 187, at 156–57; Mahoney, \textit{supra} note 3, at 641, 652.
  \item \textsuperscript{191} Carroll, \textit{supra} note 187, at 158.
\end{itemize}
adoptive parents should have only the legal options available to biological parents to abrogate parenthood. 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.

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. The *Kingsley* case has become known as the case of the child who “divorced” his parents. 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.

What was special about

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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).


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 Lizabeth 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.  


199 Id. at *1.  

200 Id. at *4.  

201 Id. at *4.  


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.  

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. In Gregory Kingsley’s case, the trial court found clear and convincing evidence of abandonment and neglect. 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. Kimberly filed a petition against her “biological parents” to “sever all ties with them.” 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. The court found that Kimberly had standing to sue on her own behalf. The court found that “forced visitation [was] likely to produce mental, physical, or emotional harm of a lasting nature to [Kimberly].” 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.

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

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. 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.” 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, 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, although there are some cases in which the parents’ petition to terminate their rights is alien to adoption. 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

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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).


218 See Carroll, supra note 187, at 158.


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.\footnote{See Section IV.C.}

\section*{C. Emancipation}

“Emancipation [is a] process by which minors attain legal adulthood before reaching the age of majority.”\footnote{Sanger & Willemsen, supra note 9, at 240.} 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.\footnote{Id. at 258–260; Goldberg, supra note 9, at 188.} The adult status minor children achieve through emancipation also usually means that, “their parents are no longer responsible for [their] support.”\footnote{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).} Emancipation orders are not permanent.\footnote{Barnett, supra note 224, at 1828.} In some states, an emancipation order may be revoked if the circumstances change and the child has no means of support.\footnote{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).}

A child who reaches the age of majority is emancipated automatically.\footnote{Gardner, supra note 226, at 930–31.} In addition, the emancipation doctrine establishes

\begin{itemize}
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  \item \footnote{Sanger & Willemsen, supra note 9, at 240.}
  \item \footnote{Id. at 258–260; Goldberg, supra note 9, at 188.}
  \item \footnote{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).}
  \item \footnote{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).}
  \item \footnote{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

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228 Barnett, supra note 224, at 1802; Sanger & Willemsen, 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 & Willemsen, 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 & Willemsen, 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. In many cases, parents petition the court to declare their children legally emancipated, thereby removing the obligation of support. 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. 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.

D. Conclusion

The options that exist currently to sever the legal parental bond include involuntary termination of parental rights by state intervention and abrogation by choice. 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 rights in order to free the child for adoption. An adoptive parent can abrogate the adoption under certain conditions. 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.
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. 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. 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. Today, in most of the western world the nuclear family and alternative family formations, which usually do not

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245 See discussion, supra Section III.B.


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.\textsuperscript{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,\textsuperscript{249} and were important as a work force on the family farm and as a means to distribute property through inheritance.\textsuperscript{250} During the twentieth century, attitudes towards children and children’s place in the family and society changed,\textsuperscript{251} and emphasis was placed on the parents’ duty to support, take care and educate the child.\textsuperscript{252} The best interest of the child has become the prevailing principle governing legal decisions pertaining to the child.\textsuperscript{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,
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. 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. 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. Departure from the optimal parental number involves criticism. 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, 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

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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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{259} Lifshitz, \textit{supra} note 251, at 307–308; Woodhouse, \textit{supra} note 248, at 1055.

\textsuperscript{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. 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; hence, the meanings of parenthood and of the parent-child relationship have changed over the years and are different across societies.

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." 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." 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: 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.

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264 Id. at 407.
265 Eugene Volokh, Same-Sex Marriage and Slippery Slopes, 33 Hofstra L. Rev. 1155, 1156 (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. 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.

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. 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

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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. 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. 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

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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.

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, 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

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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. 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.