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Social Implications of Laws Pertaining to Paternity Proceedings in the Far Western States

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SOCIAL IMPLICATIONS OF LAWS PERTAINING
TO PATERNITY PROCEEDINGS IN
THE FAR WESTERN STATES

by
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of Loyola University in Partial Fulfillment of
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CHAPTER I

INTRODUCTION

The purpose of this thesis is to assess the social implications of paternity proceedings in order to determine their punitiveness and protectiveness in regard to the mother, father, and child; and to study the effectiveness of the laws in terms of meeting the needs of these three persons.

In searching through the various types of available literature it has not been possible to find previous studies attempting to evaluate the social implications of the paternity proceedings. There is little existing literature on the subject. Most of the available material comes from the early writings of persons such as Grace Abbott¹ and Sophonisba Breckinridge.² Many of the laws in existence have been on the books unrevised for many years.

¹ Grace Abbott, The Child and The State, Chicago, 1938, II.

² Sophonisba Breckinridge, The Family and The State, Chicago, 1934.

This particular thesis is part of a larger project covering the country in geographical sections. This thesis will cover a group of eight states in the far western area. The states to be covered are California, Washington, Oregon, Nevada, Utah, Arizona, Montana, and Idaho.

This study will be a social analysis rather than a legal study. Various legal studies have been done by persons such as Vernier³ and Schatkin.⁴

The method chosen for this study include an examination of the existing state statutes and decision; scanning legal and social literature for background; submission of letters to the various state departments for information concerning the laws and social service departments; and reference to the Uniform Illegitimacy Law.

³ Chester Vernier, American Family Laws, Stanford, 1936, IV.

⁴ Sidney Schatkin, Paternity Proceedings, New York, 1947.

CHAPTER II

AN ANALYSIS OF THE PATERNITY PROCEEDINGS AS THEY RELATE TO THE MOTHER

In this chapter the paternity proceedings will be discussed as they relate to the mother. This analysis will include a discussion of the complaint procedure; the evidence; the support provisions; and the custody of the child.

The complaint in most states is generally brought by the mother of the child. It is possible in some jurisdictions for the complaint to be brought by the mother's parents, guardian, or in case the child is in danger of becoming a public charge by public officials. In the states of Arizona¹ Nevada,² and Oregon³ the complaint is brought by the mother or public officials.

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1. Arizona Code Annotated, 1939, Section 27-403
 2. Nevada Compiled Laws, 1929, Section 3411-7
 3. Oregon Compiled Laws Annotated, 1940, Section 28-901.

The state of Washington⁴ provides that the complaint may be filed by the mother, her parents, or public officials. Utah⁵ and Montana⁶ permits only the mother to bring the complaint. California and Idaho have no paternity proceedings and the ordinary method of bringing a complaint is followed.⁷

The time allowed for bringing the complaint differs among the various states. The usual procedure is to bring the complaint during the pregnancy or after the delivery of the child. Of the eight states studied six follow this procedure. They are Utah, Washington, Nevada, Montana, Oregon and Arizona.

⁴ Remington's Revised Statutes of Washington Annotated, 1932, Section 1970.

⁵ Utah Code Annotated, 1953, Section 77-60-1.

⁶ Revised Codes of Montana Annotated, 1947, Section 94-9901.

⁷ Schatkin, American Family Laws, 208

Provisions limiting the time within which the complaint may be brought varies from six months to four years. The usual time and that which is suggested by the Uniform Illegitimacy Act is two years. Of the eight states studies it was found that Nevada⁸ and Washington⁹ have a two year statutory limitation, Arizona¹⁰ one year and Utah¹¹ four years. This limitation holds true unless paternity has been established. The time that the father may be absent from the state is not computed in the time limit.

In Arizona the law allows the public officials to bring pressure upon the mother in having her name the father of her child. It is possible in Arizona for the Justice of the Peace to summon the mother and under oath, have her reveal the name of the father and other necessary facts. The warrant is

8 Nevada Compiled Laws, 1929, Section 3436-32.

9 Remington's Revised Statutes of Washington Annotated, 1932.

10 Arizona Code Annotated, 1939, Section 27-402.

11 Utah Code Annotated, 1953, Section 77-60-16.

then issued and the proceedings are the same as if the mother made the complaint.¹²

The usual method bringing the complaint against the father is to make the complaint in writing to the Justice of the Peace who in turn issues the warrant. The states of Washington,¹³ Arizona,¹⁴ Oregon¹⁵ and Montana¹⁶ follow this method while the statutes of Utah¹⁷ and Nevada¹⁸ do not specify that the complaint must be in writing.

In reviewing the statutes of the eight states covered in this study little information has been found regarding evidence. This is clearly expressed in the words of Vernier:

Whether the defendant must be shown to be the father by a preponderance of evidence or by evidence which proves the accusation to be true beyond all reasonable doubt is a question which is not specially covered by any bastardy statute. According to the great weight of authority the proceedings are considered to be essentially of a civil nature. Where such is the case,

¹² Arizona Code Annotated, 1939, Section 27-405.

¹³ Remington's Revised Statutes of Washington Annotated, 1932.

¹⁴ Arizona Code Annotated, 1939, Section 27-405.

¹⁵ Oregon Compiled Laws Annotated, 1940, Section 28-901.

¹⁶ Revised Codes of Montana Annotated, 1947, Section 94-9901.

¹⁷ Utah Code Annotated, 1953, Section 77-60-1.

¹⁸ Nevada Compiled Laws, 1929, Section 3414-10.

of course a preponderance of evidence is sufficient. This is clearly the case in those jurisdictions which provide that the trial is to be conducted as in other civil cases.¹⁹

In the states of Utah and Nevada it is found that the mother and father are competent witnesses and their credibility is left to the jury. The Nevada statute further provides that the parents cannot be compelled to give evidence. In the state of Oregon a mother must testify.

Nevada law states that the mother's testimony at the preliminary hearing, reduced to writing, is admissible as evidence if the mother is dead, insane, or cannot be located.²⁰ Similar evidence is acceptable in Oregon²¹ and Washington²².

Oregon statute provides that there may be no conviction upon the uncorroborated evidence of the mother. In a decision rendered in Oregon in 1932 corroboration was interpreted to mean, evidence that is of some substantial fact or circumstance, which independent of her testimony tends to connect the defendant with the commission of the act. It may be direct or

19 Vernier, American Family Laws, 212.

20 Nevada Compiled Laws, 1929, Section 3422.

21 Oregon Compiled Laws Annotated, 1940, Section 28-905.

22 Remington's Revised Statutes of Washington Annotated, 1932, Section 1979-7.

circumstantial and however slight, must tend to identify the defendant as the guilty party.²³

Other rules of evidence include the blood test and evidence of resemblance.

The blood test is used to exclude paternity. The California Supreme Court held a blood test exclusion to be a mere item of evidence which may be considered or disregarded by the jury as it sees fit. In the case of *Aris vs Kalensnikoff* in 1937, the California Supreme Court adjudged the defendant the father of the child although excluded by the blood test. The court held there was ample evidence to support the findings of parentage.²⁴ In the December issue of 1939 of the *Harvard Law Review* this decision was called a striking miscarriage of Justice.

After paternity has been admitted or established at trial the main provision of judgment or order relates to the support of the child.

Historically, bastardy proceedings were closely connected with poor relief. The English statute of 18 Elizabeth, which became the pattern for subsequent colonial legislation was primarily intended to relieve the parish from the burden of supporting bastard children;

²³ Oregon Compiled Laws Annotated, 1940, (State ex rel Dickerson vs Tokstad 139 ore. 63; Sp 2d 86).

²⁴ Annotations to Deering's Civil Code of California, 1950, (*Aris vs Kalensnikoff* 74 Pac 2'd 1043).

under it the institution of proceedings were confined to the action of public authorities and the liability was placed on mother and reputed father alike. Under the present prevailing type of statute, proceedings may generally be instigated by the mother, but frequently the poor authorities are given power to bring the action concurrently with the mother or in case the mother fails to act. The low maximum limits to the sum which may be ordered to be paid for the child's support, and the smallness of the sums actually awarded when no limit is specified also indicate that the statutes still retain considerable flavor of the poor law.²⁵

The amount of money paid for support of an illegitimate child varies from ten to forty dollars a month in some states and in other states from fifty to three hundred and fifty dollars a year. An admendment in Utah in 1951 changed the support order from a maximum amount to a reasonable sum for support maintenance and education of such child until the child reaches his eighteenth birthday.²⁶ Nevada and Washington state that the judgment shall be for annual amounts as directed by court until the child reaches sixteen years of age. Oregon sets a limit of not less than one hundred nor more than three hundred and fifty dollars for the first two years, and not less than one hundred and fifty dollars nor more than five hundred for each year until the child reaches age of fourteen years.²⁷

²⁵ Vernier, American Family Laws, 207.

²⁶ Utah Code Annotated, 1953, Section 77-60-7.

²⁷ Oregon Compiled Laws Annotated, 1940, Section

Oregon justifies this method of support since the cost of maintenance increases as the child grows older, and the mother is less able to support the child during infancy. Montana statutes allows the court to set the amount but do not specify any age limit. California is unique with it's provisions for support. The law provides that a child is entitled to support in a style and condition consonant with the position in society of it's parents.²⁸ In a decision in 1947 a child was given an allowance of one hundred and twenty-five dollars a month when it was proved that the father was earning seven hundred dollars a day in a Chinese Lottery.²⁹ In a similar case in 1947 a child was allowed seventy-five dollars a week³⁰.

Several states have statutes that allow for compromise and settlement. In Nevada and Oregon a settlement can be made by the mother only with the court approval. In Oregon the approval must be obtained from a Juvenile Court. Arizona allows settlement only when made between a public official and putative father.³¹ In Utah the putative father may settle with the mother

²⁸ Annotated to Deering's Civil Code of California, 1950, Section 196a.

²⁹ Annotated to Deering's Civil Code of California, 1950, (Wong vs Wong 80 c a 2d 391.)

³⁰ Annotated to Deering's Civil Code of California, 1950, (Berry vs Chaplin 169 P 2d 453).

³¹ Arizona Code Annotated, 1939, Section 27-407.

by a payment of not less than five hundred dollars. The prosecuting attorney in Washington may dismiss the case if provisions for support are adequate. Idaho allows for a dismissal of the case if adequate provisions are made.

In a majority of states the money is paid to the mother or public officials. Utah provides that the money be paid to a guardian and Nevada provides that the money be paid to a trustee if the mother does not reside within the jurisdiction of the court.

Many states hold the father liable for the mother's pregnancy and confinement expenses. This provision is made by statute in the states of Nevada, Washington, Idaho, Arizona, Oregon and Utah.

Nevada is the only state of the eight studied that holds the father responsible for burial expenses in case of the child's death.

The Uniform Illegitimacy Act holds that both parents are responsible for the necessary maintenance, education, and support of their illegitimate children. The Uniform Illegitimacy Act was written by Professor Ernest Freud in 1922 and proposed to the individual states as a model act. Nevada is the only one of the eight states studied to have accepted the Uniform Illegitimacy Act and therefore includes this provision. A

California decision in 1920 held it was the mutual obligation of both the mother and father to support and educate their child.³²

Of the eight states studied six have statutes regarding the custody of the illegitimate child. Idaho grants equal rights of custody to the mother and father. In case of death, abandonment or refusal by one party to take custody of the child, the other is entitled to it. Utah law says the father of the child shall not have the right to it's custody or control. Utah law says the father of the child shall not have the right to it's custody or control, if the mother wishes custody until it is ten years old unless the mother is not a suitable person. If she is not a fit person then custody is vested in the father or other reputable person or institution. Montana, California, and Arizona grant custody to the mother.

In this chapter a social analysis of the paternity proceedings have been presented as they relate to the mother in the eight states covered by this study. In order to show the punitiveness or protectiveness of these laws and how effective they are in meeting the mother's needs the analysis included a discussion of the complaint procedure, the evidence, the support provisions, and the custody of the child.

³² Annotations to Deering's Civil Code of California, 1950, (Marini vs Demartini 45 C A 418 187 P. 985).

CHAPTER III

AN ANALYSIS OF THE PATERNITY PROCEEDINGS AS THEY RELATE TO THE FATHER

In this chapter the paternity proceedings will be considered as they relate to the father. This consideration will include a review of the basis of the legal system of these eight states; the nature of the proceedings; the court hearing; and the evidence employed and admitted.

The Common Law was brought to this country from England. This law was based upon the custom of the realm, court decisions and established precedents which changed through the years.¹ The states of Oregon, Washington, Nevada, Utah, Arizona, Idaho and Montana were originally Common Law states. The Common Law was then superseded by Statutory Law. These states now have a Statutory Law or a combination of both Statutory and Common Law. Most of the statutes are derived from the Common Law or give further emphasis to it.

¹ Abbott, The Child and the State, 3.

The state of California derived it's law from the Spaniards and therefore began with a code system as the basis of it's laws. The Spanish Code has since been superseded by statutes. Roscoe Pound tells us that "in California only the institution of the community property remains to tell us that the Spanish Law once obtained in that jurisdiction."²

Idaho and California are the only states of the eight studied who have not adopted specific laws with respect to paternity proceedings.³

The paternity proceedings as found in the states which have specific laws combine aspects of both civil and criminal law. Civil law involves a private wrong. It is usually thought of as an injury to person or property. Criminal law involves a wrong against the state. The person involved only brings the complaint and serves as a witness. In civil actions only a preponderance of evidence is necessary but in criminal action it is necessary to prove the person guilty beyond all reasonable doubt.

In a majority of states the paternity proceedings are preponderantly civil in nature. Nevada, California, Montana, Washington, Oregon, Arizona, and Utah proceed in this direction.

² Roscoe Pound, Spirit of the Common Law, Boston 1921.

³ Schatkin, Paternity Proceedings, 208.

The complaint is brought by the mother or third person. The purpose is not to punish the father but to obtain support for the child. Only a preponderance of evidence is necessary. In Idaho it is deemed to be a criminal procedure.⁴ Idaho law held that begetting a illegitimate child was a misdemeanor. This law was held unconstitutional in 1931.⁵

The combination of both civil and criminal law is seen in many of the states studied. In Utah, Montana and Washington the Proceedings are brought in the name of the state. In Nevada, Washington and California if the father fails to support the child he may be punished and sent to jail. In Oregon if the father fails to support he can be committed to the county jail or work house.⁶

The Uniform Illegitimacy Act provides that both a summons and a warrant may be used to bring the father before the court to answer the complaint. The summons is used in civil cases and the warrant in criminal matters. The warrant demands that an officer of the law bring the man in to answer the charge. The summons permits the man to voluntarily come in and discuss

⁴ Ibid.

⁵ Idaho Code Annotated, 1947, (State vs Wilmont, 51 Ida. 233).

⁶ Oregon Compiled Laws Annotated, 1940, Section 28-906.

the charges brought against him, Nevada is the only one of the eight states studied to permit a summons with the consent of the complainant.⁷ If the complainant fails to give her consent a warrant is issued.

The purpose of the preliminary hearing is to examine the complainant and review the evidence. Following this examination the Justice will either discharge the defendant or if there is probable cause to believe the defendant is the father of the child to bind him over with sufficient surety to the higher court. Nevada, Oregon, Arizona, Utah, and Idaho follow this procedure. In California and Montana there is no preliminary hearing.⁸

If the defendant fails to put up a bond or other security in Arizona, Utah, Nevada and Washington he may be committed to the county jail. Oregon may send the reputed father to the work house if he fails to put up bond.⁹

In Utah after a man has been in the county jail he can be discharged from jail for insolvency or inability to give bond.¹⁰ Oregon allows a man to apply for discharge to the county after ninety days.¹¹ He can then be recommitted thirty days later.

7 Nevada Compiled Laws, 1929, Section 3415-11.

8 Vernier, American Family Laws, 209.

9 Ibid.

10 Utah Code Annotated, 1953, Section 77-60-8.

11 Oregon Compiled Laws Annotated, 1940, Section 28-907

Arizona provides that after being in jail for ninety days a court hearing may be held to determine defendants ability to pay. If he is unable to pay he is discharged.¹² In Nevada if there is a default in payment the man is committed to jail and after one year is discharged.¹³ This is based on the law of the insolvent debtors. The insolvency laws are generally statutory provisions by which the property of the debtor is surrendered for his debts. He is then discharged from all further liabilities.

Trial is by jury only if requested in Nevada, Oregon, and Washington. The trial in Oregon may be private if requested by either party.¹⁴ In Montana, Utah, Arizona, California, and Idaho the trial is by jury as in any ordinary action.

The objective of paternity proceedings is to determine if the defendant is the father of the child. It is up to the state and complainant to prove this by a preponderance of the evidence. The defendant has a right to a trial by jury in all eight states studied.

12 Arizona Code Annotated, 1939, Section 27-411.

13 Nevada Compiled Laws, 1929, Section 3427-23.

14 Oregon Compiled Laws Annotated, 1940, Section 28-905.

CHAPTER IV

AN ANALYSIS OF THE PATERNITY PROCEEDINGS AS THEY RELATE TO THE CHILD

In this chapter the paternity proceedings will be considered as they relate to the child. This will include a consideration of the social connotation of terminology; resemblance as evidence; the legitimation process; indemnification; and the availability of social services.

Under the common law the status of the child born out of wedlock was described as *Filius Nullius*, *Filius Populi*, *Heres Nullis* which meant he was considered the child of no one, the child of the people, and no one's heir. He was kin to no one. He was not even considered the lawful child of his own mother and could not inherit from her. He could not inherit real property from his own issue. He had no heirs but those of his own body. If he died without lawful issue, any real or personal property he possessed escheated to the crown. He was legally turned adrift at birth, thrown upon the parish for support and cared for like any other vagrant or poor person. He could not acquire foster parents, for adoption was unknown to the common law.¹

The first name attached to these children was that of bastard and carried with it all the above social connotations. This name was carried over to our American laws when common law was brought to this country from England. This harsh word was modified in many states and in some statutes to illegitimate

¹ Schatkin, Paternity Proceedings, 28.

child, child born out of wedlock, and natural child. According to Black's Law Dictionary,² illegitimacy meant that which is contrary to law; usually applied to children born out of wedlock. A natural child is an illegitimate child of parents both of whom at the time of the child's birth had capacity to marry.³ Black also distinguishes natural children as illegitimate children who have been acknowledged by their father.

Of the eight states studied it was found that the term bastard was still used in Utah and Montana, and gradual changes made in the other states toward use of the designation illegitimate or born out of wedlock.

The state of Arizona stands alone in it's desire to protect the child and has admended it's statute on illegitimate children to read "... all children declared legitimate. Every child is the legitimate child of its natural parents and is entitled to support and education as if born in lawful wedlock!"⁴

The California statute refers to the child as a illegitimate child. Arizona and Nevada statutes define the child as being born out of wedlock. The statutes of Oregon, Washington,

² Henry Campbell Black, Black's Law Dictionary, St. Paul, 1933, 917.

³ Black, Dictionary, 321.

⁴ Arizona Code Annotated, 1939, Section 27-401.

and Idaho referred to the child as both illegitimate and born out of wedlock.

A California decision in 1916 decided that a legitimized child would be designated as a child or children when those words referred to a child or children legitimately born.⁵

Resemblance as evidence has been admissable in many states. This has caused much controversy. Professor Wigmore appears to stand out as an authority on this matter. He takes the position that the sound rule of evidence is to admit the fact of similarity of specific traits, however presented, provided the child is in the opinion of the trial court old enough to possess settled features or other corporal indications.⁶

Of the eight states studied only Oregon, Utah and California specifically include resemblance as evidence.

In 1908 Oregon permitted the exhibition of an infant three months old⁷ and in 1928 a child of fourteen months was exhibited.⁸

⁵ Annotated to Deering's Civil Code of California, 1950, (Wolf vs. Gall 32 C A 286, 163 P 346 350.)

⁶ John H. Wigmore, Evidence, University of Chicago, 1935, 400.

⁷ Oregon Compiled Laws Annotated, 1940, (Anderson V Aupperle 51 O R 556).

⁸ Oregon Compiled Laws Annotated, 1940, (State V Russell 64 OR 247).

In 1924 Utah accepted as evidence in paternity proceedings the testimony of the mother and sister of the complainant who testified as to the resemblance between the child and the defendant.⁹

In California, not only was the exhibition of a child of less than six months permitted¹⁰ but photographs were allowed to show resemblance.¹¹ In a California decision in 1946 the exhibition of the mother, child, and father in front of the jury was allowed for purposes of comparison.¹²

It was held in the federal court that a child may be exhibited when old enough to possess settled features, and the jury should be instructed that evidence of resemblance must be reproduction of characteristics peculiar to the alleged father.¹²

Under common law in order to legitimate a child it was necessary for nuptials to have proceeded the birth of the child.¹³ It was also held that if a marriage is void the

⁹ Utah Code Annotated, 1953, (State V Anderson 630 171, 224 P 442).

¹⁰ Annotated to Deering's Civil Code of California, 1950, (People vs Richardson 161 Cal 552).

¹¹ Annotated to Deering's Civil Code of California, 1950, (Matter of Jessup, 81 Cal 408).

¹² Fillipone V US (1924) 2 F. (2d) (D.C.).

¹³ Joseph Madden, Persons and Domestic Relations, St Paul, 1931, 337.

children of such marriage are illegitimate.¹⁴ These rules have been greatly modified by statutes. Statutes have been passed in many states to legitimize the child by several different methods. A child may be legitimized by subsequent marriage of it's parents; by subsequent marriage and being taken into the family; public acknowledged by the father as his own, receiving it into the family, and otherwise treating it as if legitimate; and by written acknowledgment.

In Washington, California, Utah, Oregon, Montana, and Idaho an illegitimate child is legitimized by the subsequent marriage of it's parents.

Arizona statute provides two methods of legitimating a child born out of wedlock. This is accomplished either by petitioning the court by the mother or by acknowledgment by the father.¹⁵

California, Idaho, Utah, and Nevada statutes provide that a child may be legitimated for all purposes by the father when he publicly acknowledges it as his own, receiving it as such into his family, and otherwise treating it as if legitimate.

In California a child may bring an action against its alleged father to establish paternity.¹⁶

¹⁴ Ibid.

¹⁵ Arizona Code Annotated, 1939, Section 27-210.

¹⁶ Annotated to Deering's Civil Code of California, 1950, (Pasquale vs Pasquale (1933) 219 C 408, 27 P2d 76).

In reviewing the paternity proceedings as they were presented in preceeding chapters it becomes apparent that if maintainance for the child is secured the possibility of his becoming a public charge will be avoided. It was observed previously that paternity proceedings were closely connected with the system of poor relief. It was shown that the primary purpose was to relieve the parish from supporting illegitimate children. Many of our present state statutes still retain the flavor of the poor laws allowing public officials to instigate proceedings with the mother, or in the case she fails to act, without her.

The important part indemification plays is clearly shown in the Arizona statute in which it is stated that the purpose of bringing action was to fix the father's legal obligation to support the child.¹⁷

The states of Arizona, Utah, Washington, Oregon, and Nevada may order the defendant to give bonds with sureties which will indemify the county as to maintance of the child.

The Washington¹⁸ and Utah¹⁹ statutes state that a bond must be given to the state to show faith in payment.

17 Arizona Code Annotated, 1939, Section 27-401.

18 Remington's Revised Statutes of Washington Annotated 1932, Section 1978.

19 Utah Code Annotated, 1953, Section 77-60-8.

Montana statute allows for a lien upon real property of the defendant for payment.²⁰

In Arizona if the defendant fails to make his payments the court may order him to show if he is earning or is capable of earning sufficient money to meet the judgment.²¹

Nevada, Oregon, Utah, Washington, and Idaho allow for compromise and settlement only after the court determines that the amount is sufficient and approves it.

In an attempt to discover information regarding the availability of social services in the eight states studied, letters were sent to the larger cities in each state. Two questions were asked. Did the city or county have a social service department attached to their courts that becomes involved in paternity proceedings and how did these departments function under the law? Was it a requirement for the unwed mother to file charges against the reputed father before placing an application for Aid to Dependent Children? Answers were received from seven out of the eight states. The seven states answering did not have a social service department attached to the court nor was it required that an unwed mother file charges against the father before being permitted to place an application

94-9903. 20 Revised Codes of Montana Annotated, 1947, Section

21 Arizona Code Annotated, 1939, Section 27-412.

for Aid to Dependent Children.

In this chapter the paternity proceedings have been considered as they relate to the child in the eight states covered by this study. In order to show the punitiveness or protectiveness of these laws and how effective the laws are in meeting the child's needs the consideration concerned itself with the social connotations of terminology, resemblance as evidence, the legitimation process, idemification, and the availability of social service.

CHAPTER V

CONCLUSION

This study consisted of a close examination of paternity proceedings in the far western states to the end of determining how well the statutes fulfilled the needs of the three parties to the action, the mother, the father, and the child. No effort was made to evaluate the legal aspects as the study was entirely social in nature. The far western states considered in this study were California, Oregon, Washington, Nevada, Utah, Arizona, Montana, and Idaho. All of the states, with the exception of California and Idaho, had statutes properly described as paternity statutes.

The common law was found to be the basis of the legal systems of all of the states with the exception of California. Under the common law, little individual consideration was given the parents of an illegitimate child, and, little effort was made to protect the child. The illegitimate child was without status or rights. As the basis of the legal systems of most of the states, the common law dictated the courts' attitudes toward the illegitimate child. It was then necessary to remedy the harshness of the common law rule by

the passage of definite paternity statutes.

The Uniform Illegitimacy Act, recommended to the states as a standard, has been the most recent effort to consider some of the social aspects of this type of legislation. It should be noted that more than thirty years have passed since this Act was offered to the states for their consideration. Perhaps one of the most socially minded innovations, in the area of this study was the recent Arizona amendment abolishing the concept of illegitimacy.

Even though paternity proceedings are generally considered to be civil action, i.e., person versus person, many aspects of criminal method have been applied to the proceedings. For example, Idaho considers the begetting of an illegitimate child a punishable offense. It has also been shown that in six of the eight states, a public official may join with the mother in bringing the complaint. The criminal aspect has also been shown in the use of warrants in seven of the states studied, rather than the summons which is common to civil procedure.

Seven of the eight states allow for settlement and compromise. This is socially desirable as it provides for maintenance without the trauma of a court hearing, and still satisfies the purpose of paternity proceedings, which is the support of the child.

Of the eight states studied, six make provision for preliminary hearings. This practice would seem good because it offers an opportunity for settlement, and, protects the father from irresponsible charges.

Also in the matter of the court hearing, it has been shown that California and Utah have allowed the child to be displayed during the court hearing for the purpose of determining resemblance. Probably the courts have been motivated in accepting this type of evidence by the real difficulty of finding proof in this type of an action. In one state, Utah, the resemblance is determined by the hearsay evidence of a person who has observed the child and the father. It would seem that the former practice would be quite undesirable in that resemblance would be limited if the child were very young, and subjecting an older child to the experience of a court hearing could be very damaging. It has also been noted that only one state, Oregon, provides for the public to be excluded from the court hearing. Such provisions would seem desirable because of the nature of the testimony necessary to the hearing.

Since the purpose of the laws on paternity proceedings have been to provide for the maintenance of the illegitimate child, the support provisions were considered closely. Support was left to the discretion of the court in all

but one of the states, namely Oregon. This would seem a socially desirable thing in that the court might then consider the child's needs, the father's ability to pay, and the mother's ability to contribute to the child's support. The effort to establish joint responsibility for the support of an illegitimate child was a marked effort of the Uniform Illegitimacy Act. In California, support is determined by an appraisal of the father's mode of living or income. This seems desirable in that the child might benefit by an increased standard of living, however, it might also be considered a penalty for the father. A majority of the states provided for the support to be paid to the court or a third party. This, in a measure, secures the payments, and contributes to their regularity. It also eliminates the possibility of subsequent contacts between the parents who probably would be at odds because of the court hearing.

It has been shown that the length of the payments vary from fourteen years in Oregon to eighteen years in Utah. It would seem valuable for the payments to continue until the child becomes eighteen years of age thus affording him an opportunity to complete high school.

The mother was regarded as the natural custodian of her illegitimate child in seven of the eight states considered in this study. The remaining, state, Idaho, gives custody jointly to the mother and father once paternity has been

established through court proceedings.

The available social services were a natural concern in a study of this kind. Inquiries were sent to all of the states and it was found that social services are not ordinarily available to parties in a paternity action. It was also learned through these inquiries that the mother is not required to initiate paternity proceedings in order to secure Aid to Dependent Children benefits for her illegitimate child. Since the emotional impact of paternity actions is presumed to be very great for all three parties, social services would probably be instrumental in meeting the needs of the parties.

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