1953

Social Implications of Laws Pertaining to Paternity Proceedings in the North Eastern Seaboard States

Vera Schwartz
Loyola University Chicago

SOCIAL IMPLICATIONS OF LAWS PERTAINING TO PATERNITY PROCEEDINGS IN THE NORTH EASTERN SEABOARD STATES

by

Vera Schwartz

A Thesis Submitted to the Faculty of the School of Social Work of Loyola University in Partial Fulfillment of the Requirements for the Degree of Master of Social Work

June

1953

TABLE OF CONTENTS

Chapter		Page
I.	INTRODUCTION	1
II.	AN ANALYSIS OF PATERNITY PROCEEDINGS AS THEY RELATE TO THE MOTHER	5
	A. Complaint Procedure	5
	B. Evidence	9
	C. Support Provisions	14
	D. Custody	22
III.	AN ANALYSIS OF PATERNITY PROCEEDINGS AS THEY RELATE TO THE FATHER	25
	A. Basis of the Legal System	25
	B. Nature of the Proceedings	26
	C. Court Hearing	28
	D. Evidence Employed and Admitted	34
IV.	AN ANALYSIS OF PATERNITY PROCEEDINGS AS THEY RELATE TO THE CHILD	37
	A. Social Connotations of Terminology	37
	B. Resemblance as Evidence	39
	C. Legitimation Process	42
	D. Indemnification	47
V.	CONCLUSION	49
BIBLIOGRAPHY		57

CHAPTER I

INTRODUCTION

Purpose. The purpose of this study will be to analyse the laws with respect to paternity proceedings of the North Eastern Seaboard States, with stress on the social implications of these statutes. In doing this study, three particular objectives will be kept in mind. The first is to point up the degree of punitiveness or protectiveness which characterizes paternity proceedings in a group of states in a particular geographic area. The second is to determine the effectiveness of these laws in terms of the needs of the three parties in an action, namely, the unmarried, the illegitimate child, and the putative father. The third is to view the desirable aspects of these laws and evaluate social attitudes and implications in existing legislation.

Need. The need for a comparative analysis of the statutes in paternity proceedings closely associated with social problems and resources has long been felt. The United States Children's Bureau has interested itself in the matter of protection for illegitimate children since 1915. Regional Child

Welfare Conferences held in 1920 brought about a request to the National Commissioners on Uniform State Laws to formulate a law which could be presented to all the states for their consideration.[1] The National Conference of Commissioners on Uniform State Laws at their meeting in Cincinnati in 1921, proposed a complete code of the law concerning illegitimate children, regulating status rights as well as the obligation of support. However, at a meeting in San Francisco in the following year, the National Conference of Commissioners on Uniform State Laws, the committee dropped the entire section dealing with status rights, concentrating all efforts upon provisions that responded to urgent social demands. The Uniform Illegitimacy Law finally formulated in 1922 by Ernst Freund was substantially adopted by seven states in the country and has served as a basis for subsequent revision in the existing statutes of other states.[2]

As Sophonsiba Breckinridge pointed out in 1934, the social worker seems compelled to fall back on the process of the law in bastardy proceedings, with very little social treat-

---

1 A. Madorah Donahue, "Children of Illegitimate Birth Whose Mothers Have Kept Their Custody", Children's Bureau Publication, Washington, D.C., No. 190, 3.

2 Chester G. Vernier, American Family Laws, IV, Stanford University, 1936.

ment for the persons concerned.[3] Since 1934 numerous other authors such as Grace Abbott have expressed similar views, but to the writer's best knowledge this type of study has not been made.[4]

Focus. This study is a part of a total study of all the paternity proceedings of the United States. Particular geographic areas were assigned to the members of the group in order to point up sectional similarities and differences. It was thought that the peculiarities of a given geographic area would be of greater significance than a random selection of states for study.

Scope. This particular study includes the following states: Connecticut, Delaware, Maine, Massachussetts, New Hampshire, New York, Rhode Island, and Vermont. Study of the Uniform Law and statutes in other states were included to gain a broader knowledge and background as a basis for a comparison with the New England statutes.

Nature. While a legal comparison of the paternity proceedings of the various states has already been made by Vernier, a study of these statutes in the light of their social

---

3 Sophonsiba P. Breckinridge, The Family and the State, Chicago, 1934, 415-476.

4 Grace Abbott, The Child and the State, II, Chicago, 1934, 493-606.

implications, is not available. In an effort to bring out the social implications, the writer will point up court decisions, the laws themselves, social surveys, and limited information about the use of social service departments connected with paternity proceedings in some of the states. Essentially, this study attempts to determine the extent to which these eight state statutes fulfill the intent of the law which provides for the protection and promotion of the individual's well-being.

Method. The method chosen for this study will include an examination of the existing statutes and court decisions, scanning legal and social literature for background, and communicating with the various state departments for information in connection with paternity proceedings.

CHAPTER II

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

In this chapter the general aspects of the paternity proceedings as they relate to the mother will be discussed. These points include the complaint procedure, the admissibility of evidence, support provisions, and the custody of the child.

Complaint Procedure. Under colonial legislation, which followed the poor relief laws of England, the institution of proceedings was confined to the action of the public authorities, and the liability was placed upon the mother and the 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 either concurrently with the mother or separately in case the mother fails to act.[1] Examination of the complaint procedures in the statutes of the New England States points up the following.

---

1 Vernier, American Family Laws, 208,209.

Massachussetts is the only one of the eight states in which there is no paternity proceeding under the usual procedure. Prosecutions under the code known as the bastardy acts are criminal proceedings. However, there is a procedure entitled "the voluntary complaint, examination and accusation which states that a certain woman charging a man with being the father of a child likely to be born a bastard, and stating when and where the child was begotten sworn by the complainant" is sufficient complaint and accusation under the bastardy act.[2]

Special statutory provision is the case of the death of the mother before trial is made in Maine which provides that in such a case the administrator of the deceased mother may prosecute.[3] In Rhode Island, if the complainant dies, proceedings do not abate, but the director of public aid to the town or person appointed by the public welfare commission may complain.[4] In New York, in case the mother dies or becomes insane or cannot be found in the jurisdiction, the complaint may be brought by the child acting through a guardian or next of kin. If the

---

2 Annotated Laws of Massachussetts, 1952, Chapter 273, Section 11-12.

3 Revised Statutes of Maine, 1944, Chapter 153, Section 33.

4 Public Laws of the State of Rhode Island, 1950, Chapter 424, section 11.

mother dies after complaint is made, the child is substituted so that the proceedings do not abate. In New York State, the proceedings may also be instituted by a representative of a charitable orgainzation.[5]

Statutes for Connecticut, Delaware, New Hampshire, New York, Rhode Island, and Vermont explicitly provide that overseers of the poor or directors of public welfare or the like have the right to file complaint providing that the child is or is likely to become a public charge. Maine and Massachussetts are the only two in this group which do not make specific provisions for this by law.

Delaware's statute in regard to the instigation of a proceeding is unique among these states in so far as the statute provides that the complaint can be made "by any other person", as well as mother and trustees of the poor. The state of Delaware shall assume the duty to provide funds necessary for the extraditing of any person charged with this offense.[6]

In accordance with the statutes, the mother's residence shall determine the place of jurisdiction in Connecticut, Maine, Rhode Island and Vermont; whereas in the state of Dela-

---

5 Baldwins New York Consolidated Laws, Annotated, 1948, Article 8, Section 125.

6 Revised Code of Delaware, 1935, Chapter 3559, Section 12.

ware, jurisdiction is in whatever place the mother and child are at time of the complaint. Massachussetts provides for jurisdiction in either the residence of the father or mother, while in the state of New Hampshire, there is provision for jurisdiction in the locality where the accused resides or in the locality where the charge is committed. New York provides for jurisdiction in the place where the putative father resides or is found, even if the child is born outside of the state.

As for the statute of limitations, only three of the eight aforementioned states set these forth in the paternity proceedings. In Connecticut, no complaint of bastardy shall be brought after three years from the birth of the child born out of wedlock. Rhode Island specifies the same limitation plus the added specification of two years after termination of payment for the support of the child. In New York,"A proceeding by the mother therefore must be brought within two years after the birth of the child unless paternity has been acknowledged by the father in writing or by furnishing of support."[7]

However, the father might maintain his natural child or contribute to its support for the limited time specified in the statute and then discontinue his payments. This was so in

---

7 Sidney B. Schatkin, Disputed Paternity Proceedings, New York, 1947, 397.

a case in which the court adjudged the defendant guilty and paternity was established, since the putative father supported the child during the two year period in which the proceeding might have been instituted.[8]

Section sixty of the New York City Criminal Courts Act confers upon the Court of Special Sessions exclusive jurisdiction to declare paternity proceedings as a vehicle for "bringing suit." In so doing, even in the absence of an acknowledgment of paternity, the Welfare Commissioner has the added right to bring suit on behalf of any child under the age of sixteen who is or liable to be a charge of the public.

Basic similarities in these proceedings include, in the main, the parties who have the right to complain, while the differences revolve around the circumstances as to time and place. The prevalence in the statutes conferring the right to instigate proceedings by the overseer of the poor of a child who is or is likely to become a public charge aids in acheiving the primary goal of the legislators which is to save the public from the expense of supporting an illegitimate child.

Rules of evidence are closely tied in with the complaint procedure, as they go hand in hand. As a matter of fact the examination of the complainant under oath is a prerequisite

---

8 Ibid, 68: Williams V. Amann, 1943, 33 At(2a) 633.

in the eight states' statutes, which in itself, constitutes an integral part of the evidence. The rules of evidence making parties incompetent to testify are almost obsolete.

According to the English courts, an unmarried mother has considerable more difficulty in establishing a prima facie case than in our courts. If she does not show in advance that she has corroborative evidence, her testimony is inadmissible. The general prohibition which barred the husband and wife from testifying to non-access had no basis in common law as conceded by most law writers, but rather in the dictum handed down by Lord Mansfield in 1777. In the case of Goodright V. Moss, Lord Mansfield stated:

> The law of England is clear that a declaration of a father or mother cannot be admitted to bastardize the issue born after marriage. It is a rule founded on decency, morality and policy that they shall not be permitted to say after Marriage that they have no connection and therefore, that the offspring is spurious. [9]

As a result of application of this rule, many charges and exceptions were made as specifically in the case of annulment. Consequently, Wilfred Hooper commented on the present state of the Lord Mansfield rule in England as follows: "In this patchwork shape the rule survives, a curious relic of that antiquated principle which excluded the evidence of all those who knew most

---

9 Schatkin, Paternity Proceedings, 107.

about the case.[10]

New Hampshire is one of the ten states in the United States which still adheres to this rule in affiliation proceedings barring the mother and the father from testifying as illustrated in a decision in 1879.[11] In the other seven states under study, the mother's testimony is admissible.

In Vermont the woman may be compelled to testify at trial, but not until thirty days after the delivery, unless disqualified by a conviction of crime; but her testimony may not be used against her in a criminal prosecution, except for perjury.[12]

In Delaware, the Justice of the Peace on his own knowledge may cause the mother to be brought before him and require her to discover the father on oath or else to give bond to indemnify the trustees of the poor, and otherwise commit the mother to jail.[13]

The statutes of the states of Delaware, Maine, and Rhode Island provide that in the case of the mother's death or inability to appear at the preliminary hearing, her deposition

---

10 Wilfred Hooper, The Law of Illegitimacy, London, 1911, 202.

11 Schatkin, Paternity Proceedings; Melvin V. Melvin, 58, New Hampshire, 569, Ar. 42, Rep. 695, 1879, 109.

12 Vermont Statutes Revisions, 1947, Section 3271.

13 Revised Code of Delaware, 1935, Chapter 3467, Section 17.

can be admitted as evidence.

In New York State, unlike the other states, in the absence of statutory requirements, corroboration of the mother's testimony in an affiliation proceedings is not necessary to establish a prima facie case.

In Connecticut, on the other hand, a woman must file a certificate from a reputable physician stating she is pregnant even before she files a complaint against the putative father. In the event that the selectmen sue, this certificate is not essential.[14] In Massachussetts, the sworn complaint made before the magistrate, stating when and where the child was begotten, sworn by the complainant is admissible in evidence.[15] In both Connecticut and Massachussetts, constancy in accusation is not necessary, except as evidence.

In Vermont, the statute points out that the filing of a birth certificate shall not be evidence to prove the identity of the father, as the name of the father on the birth certificate may not have been properly identified.[16]

An interesting feature of the law of evidence is the accusation in travail. Historically, this action in the ex-

---

14 General Statutes of Connecticut, 1949, Section 818.

15 Annotated Laws of Massachussetts, 1952, Ch. 273, Section 11.

16 Vermont Statutes Revisions, 1947, Ch. 84, Sec.1751.

tremity of labor, was necessary in the New England States, either as a basis of the action or to establish an exception to the then existing rule, rendering parties incompetent to testify.[17]

Statutes of Connecticut, Delaware, Maine, and Massachussetts provide for filing of a declaration before the trial accusing the putative father during the period of travail. According to Delaware's statute, if a mother is dead at the time of hearing or trial, her declaration made in time of travail and persevered in as her dying declaration, shall be evidence.[18]

Maine's statute, provides that the right to bring paternity proceedings is dependent upon the mother having made an accusation in travail.[19] In line with this, the statute has a unique provision set forth in an amendment to the law, that in case of a caesarian operation, it is sufficient if the mother makes the accusation to a doctor or nurse within five days prior to the performance of the operation.[20]

In Massachussetts a court decision illustrated that

---

17 Vernier, American Family Laws, 212.

18 Revised Code of Delaware, 1935, Chapter 3571, Section 24.

19 Revised Statutes of Maine, 1944, Chapter 153, Section 28.

20 Revised Statutes of Maine, 1944, Chapter 153, Section 27.

evidence given by the mother during her travail against the putative father is admissible.[21]

The social implications of the laws relating to evidence point up the punitive attitude toward the mother, reaching its epitome in compelling the mother to act as a witness. While this may serve to protect the interest of the mother and the welfare of the child, the main concern of the lawmakers is to save the public from the expense of the care and support of the child born out of wedlock.

Under common law, the child born out of wedlock was turned adrift at birth, thrown upon the parish for support, and cared for like any other poor person or vagrant. The unfortunate child was entitled to support from neither the father nor the mother. The financial burden to the parish helped to bring about the Poor Law Act of 1576 of England. This was the first statute requiring both the father and the mother to support their illegitimate offspring. This has been the parent a act of all Anglo-American legislation to secure support for the child born out of wedlock.[22]

Examination of the eight state statutes shall point out the present legal responsibility of the mother and the

---

21 Annotated Laws of Massachussetts, 1952: Gallary V. Holland, 8 (15g), 50.

22 Schatkin, Paternity Proceedings, 27-28.

father for support and maintenance of illegitimate children.

In all the states under study the Statutes provide that the adjudged father has responsibility for the support and also, provides that the mother has a share in contributing toward the support of the child. However, the Rhode Island statute has the special provision that the Juvenile Court shall adjudge him father of said child and shall order him to pay either into the court or to such person as may be designated by the court.[23]

There is possible reference to the mother's share in the responsibility in the Connecticut code which states that the court shall ascertain the lying-in and nursing expenses of the child and order the defendant to pay half thereof to the complainant.[24] There is the implication that the other half may be paid by the mother or else by the state.

In the state of Massachussetts, the court not only orders the defendant to pay for pregnancy and confinement costs, but also for the funeral expense, in case the child is born dead or dies later.[25]

---

23 Public Laws of the State of Rhode Island, 1950, Chapter 424, Section 2.

24 General Statutes of Connecticut, 1949, Section 8180.

25 Annotated Laws of Massachussetts, 1952, Chapter 273, Section 13.

The statute in the state of New York is the same as the code of Massachussetts in regard to the father's liability to pay expenses of the mother's pregnancy and confinement, but both parents are liable for the child's funeral expenses.

The statute in the state of Delaware explicitly mentions the amount to be paid for expenses incurred during pregnancy, delivery, and after birth care. The code provides that the defendant shall pay a certain sum to the physician who attended the mother during her delivery not less than twenty dollars nor more than thirty dollars; a sum for lying-in expenses not less than twenty-five dollars nor more than forty dollars. It is further stated that these sums shall be made in the discretion of the Justice having regard to the circumstances of the defendant.[26]

Statutes in the states of Maine, and Vermont, like Rhode Island provide that the father shall be responsible for all expenses incurred or arising during pregnancy and for the cost of confinement, within what the court deems just.

However, in the codes of Maine[27] and Vermont[28] the

---

26 Revised Code of Delaware, 1935, Chapter 3568, Section 16.

27 Revised Statutes of Maine, 1944, Ch.153, Sec.29.

28 Vermont Statutes Revisions, 1947, Section 3273.

adjudged father is charged for maintenance "with the assistance of the mother."

The statute in the state of New York provides that the adjudged father and mother shall have equal rights to provide support. The court has the right to assess any property which the mother or father may own as a source for getting support for the child.[29]

Statutory provisions for the support of legitimate children in the states of Delaware, New Hampshire, and Massachussetts are applicable for the support of illegitimate children in these states. In Delaware the law states that "any parent who without lawful excuses or wilfully neglects or refuses to provide for support and maintenance of his legitimate or illegitimate child under sixteen is guilty of a misdemeanor."[30]

The code of New Hampshire provides that if father wilfully neglects or refuses to maintain his children under sixteen, or those under twenty-one incapable of supporting themselves, he is guilty of a crime. The mother who separates herself without cause from her children is held guilty the same way.[31]

---

29 Baldwin's New York Consolidated Laws Annotated, 1948, Article VIII, Sections 120, 122, 132.

30 Delaware Sessions Law, 1927, chapter 191, 568.

31 Public Laws of New Hampshire, 1928, Chapter 290, Section 4.

In the statute of Massachussetts there is a provision that "any father or mother who without cause deserts his minor child and leaves him without making reasonable provision for support and who abandons and leaves such child in danger of becoming a public charge is guilty of a misdemeanor."[32] This law which covers support by both parents for legitimate children is applicable only to the father in relation to illegitimate children. The court's jurisdiction and competency in holding the adjudged father for the support of an illegitimate child although the mother was in another state where the child was begotten and born was upheld in the case of Com V Dormis.[33]

The factor of age and manner in which the support is given to children born out of wedlock shall now be considered. Support for these purposes is generally terminated when the child reaches the age of sixteen. Codes in the states of Delaware, New Hampshire, and New York provide for support up to sixteen, while the codes of New Hampshire[34] and Rhode Island[35] have a special provision to give support up to twenty-one years

---

32 Massachussetts General Laws, 1932 Chapter 273, Section 1-16.

33 Annotated Laws of Massachussetts, 1952: Com V. Dormis, 239, Mass; 592, 193, N.E. 363.

34 Public Laws of New Hampshire, 1928, Cjapter 290, Section 4.

35 Public Laws of the State of Rhode Island, 1949, Section 2.

of age for those who are incapable of supporting themselves. Paternity statutes in New York have a unique provision in stating that if a child passes sixteen on the date of final adjudication of paternity, due to successive appeals and motions for new trials by the defendant, the courts jurisdiction to enter an order is not defeated, and the order may be retroactive. Support may be assessed against the defendant from date of the commencement of the trial to the date that the child reached sixteen.[36]

The code in the state of Maine provides for support prior to judgement as well as for the period thereafter. In Connecticut, the court has discretion to set the age limit. The code in the state of Vermont determines the age factor in terms of the child's ability to support himself, while in Massachussetts, the code interprets all minors as entitled to support. Rhode Island is alone in providing for support up to the age of eighteen. The phrase "support and education" are found in the statutes of Rhode Island as well as New York.[37]

This is reflective of the Uniform Illegitimacy Act which holds that both parents are responsible for necessary

---

36 New York City Crimianl Court Act, 1947, Section 61.

37 PUBLIC Laws of the State of Rhode Island, 1950, Chapter 424, Section 13.

maintenance, education and support of their children.

The exact amount of support which is given is specified only in the state of Delaware, in which the court may order the defendant to pay not less than fifteen nor more than forty dollars per month.[38]

The code of Massachussetts[39] provides that the amount of support should be given in proportion to the ability to give; in Connecticut, New Hampshire, New York, and Rhode Island it provides that the amount which the court deems reasonable or proper for maintenance should be awarded. It is well settled that support will be ordered according to the financial capacity of the putative father in the state of New York.

As already pointed out, in Vermont[40] and Maine,[41] support is given "with the assistance of the mother", and, in line with this, there is provision in the code for monies to be paid to the overseer. Any compromise settlement between the mother and father cannot be made without the participation of the overseer to protect the state and the child.

---

38 Revised Code of Delaware, 1935, Chap.3563, Sec.16.

39 Annotated Laws of Massachussetts, 1952, Chap. 273, Section 15.

40 Vermont Statutes Revisions, 1947, Section 3284.

41 Revised Statutes of Maine, 1944, Section 30.

In the states of Connecticut, Delaware, and New York, the code designates the mother as a possible party to whom money for support of the child can be given directly if she gives security for the support of the child. In Connecticut, the code states that if mother doesn't use the money for the support of the children, it shall be paid to selectmen. It is also stated that consent of selectmen is necessary to relieve the father from liability about any compromise.[42] The code of Delaware provides for payment to a guardian as a substitute for the mother. The code in the state of New York includes the possibility of payment to a trustee if mother resides outside of the state. Also, there is an unique provision relevant to settlement which provides that any compromise must be approved by courts after the overseer reviews it.[43] In Rhode Island the code provides that the money be paid to the court or to a person designated by the court. There is no mention as to whom the money may be paid in the codes of New Hampshire and Massachussetts, although in the latter a compromise settlement may be made by the official who brought the complaint. The official may compromise with the accused, and of course, use the money

---

42 General Statutes of Connecticut, 1949, Section 8180, 8181.

43 Baldwin's New York Consolidated Laws Annotated, 1948, Article VIII, Section 128.

for the support of the child.

Weekly payments are provided for in the states of Connecticut and New York. Delaware and Rhode Island provide for payments at periodic intervals. There is no mention of the frequency of payments in the statutes of the remaining states namely, Maine, Massachussetts, New Hampshire, and Rhode Island.

It has been pointed out that particularly in the area of support, the paternity proceedings show no tendency to permit the father to evade responsibility. In the area of custody neither the right nor the responsibility has been delegated to the father under common law. In 1883 the English courts conceded that the natural relationship between the mother and child gave rise to the mother's right of custody which was held to be superior to the right of the putative father. Our own common law stems from this, and the majority of the states follow this rule of custody.[44]

Vermont and Massachussetts are the only two states in this group which have made statutory provisions for custody.

In Massachussetts, the jurisdiction may make such order as may be expedient relative to the care and custody of

---

44 Schatkin, Paternity Proceedings, 31.

the child and may revise it from time to time in accordance with the welfare of the child.[45]

In Vermont the statute provides that the mother of an illegitimate minor shall be guardian of such child until another is appointed.[46]

It might also be noted that in the city of New York[47] the Department of Welfare has the responsibility

> to provide care in a family free or boarding home or in an institution for any child born out of wedlock and for his mother as for any other person in need of public assistance and care during pregnancy and during and after delivery, when in the judgement of such commissioner of public welfare officer needed care cannot be provided in the mother's own home.

Although there are few states in which statutory provisions in the paternity proceedings cover the right of custody of the child after birth, seven of the New England States have statutes directly related to the custody during pregnancy, or concealment by the mother of the death of the illegitimate child.

The codes of Maine, Massachussetts, New Hampshire, and Rhode Island have the most commonly adopted provision that a woman who conceals the death of any issue of her body which if

---

45 Annotated Laws of Massachussetts, 1952, Ch.273, Section 14.

46 Vermont Statutes Revisions, 1947 Ch 159, Sec 3293.

47 Social Welfare Laws, New York, 1951, Art. 6, Section 398.

born alive would be illegitimate, so that it may not be known whether the child born alive or murdered, is guilty of a crime.

According to the New York statute it is a criminal offense for any woman to conceal the stillbirth of a child which if born alive would be a illegitimate or to conceal the death of such issue under two years of age. In New York the second offense is punishable by a term of from two to five years in a penitentiary.

This chapter has covered the complaint procedure, statements of evidence, support and custody provisions of the paternity laws as they relate to the mother.

CHAPTER III

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

This chapter shall cover the following points in relation to the paternity proceedings, namely, the basis of the legal system, and the nature of the proceedings as they relate to the father.

The common law of England is the basis for the common law which exists in practically all of our states. Common law is an unwritten law which has been developed by judges in the application of the customs of the country to individual cases. Gradual changes in political thinking and social reforms have brought about changes in the common law decisions. The Roman law has influenced British and American law only in so far as many of the legal terms are in Latin.[1]

Statutory law which is strictly adhered to and supersedes common law has been combined with common law to form the basis of the legal system for paternity proceedings in the eight

---

1 Abbott, The Child and the State, 3.

states under study.[2]

This is perhaps highlighted in the area of the rights of custody of the illegitimate child. Under the common law, the history of the child can be traced from "filius millius" or nobody's child through stages where neither the mother nor the father had the right to custody. Up until 1883, the English courts did not concede that the natural relationship between the mother and the child gave rise to the mother's right to custody.[3] This common law decision has been confirmed by statutes in many states. In 1937 in the state of New York the law authorized the grant of a monthly allowance to the indigent unwed mother to enable her to maintain her child in her own home.

An examination of the statutes in paternity proceedings indicates that the proceedings are unique, in some respects resembling a civil action and in others a criminal action. This mixed nature of the proceeding was discussed by the Massachussetts Supreme Court, whose comments according to Schatkin can apply with equal force to the affiliation proceedings in New York

> This process being neither wholly civil nor criminal, but having many of the features and incidents of each, we are left to determine from the manner in which the legislature has treated it whether they intended to include it in the one or the other class of suits. And they might well in

---

2 John S. Bradway, Law and Social Work, Chicago, 1929, 43.

3 Breckinridge, The Family and the State, 415.

some respects, treat it as civil, and in others as criminal suit.[4]

There are some civil and some criminal characteristics in the proceedings which are illustrated in the states under study.

In Massachussetts, the defendant is prosecuted criminally for fornication and bastardy,[5] and in Delaware the proceeding is also in the name of the state.[6] In a criminal action, the prosecution is always in the name of the People. Extradition which is confined to criminal prosecution is also included in the codes of Massachussetts and Delaware. In all the other states the proceedings are in accordance with civil practice, namely instituted in the name of the mother, child's guardian, or some other designated person.

The broad interpretation in regard to the statute of limitations in which the Department of Welfare of the city of New York is permitted to bring suit up until the child's sixteenth birthday is unique.[7] This is not only so in comparison with

---

4 Schatkin, Paternity Proceedings, 48.

5 Annotated Laws of Massachussetts, 1952, Chapter 273, Section 12.

6 Revised Code of Delaware, 1935, Section 3559, Section 12.

7 New York Criminal Court Act, Article V, Section 64, (1).

the statutes in the other states under study, but particularly, since the hearing is in the court of Criminal Sessions. A five year limitation is customary in criminal proceedings in New York State.

Rhode Island provides that the testimony of the witnesses may be taken by deposition, which is peculiar to civil action.[8]

Schatkin points out that a salient feature in the common law view of crime is that a person in order to be convicted must be proved guilty beyond a reasonable doubt. This is not the case in establishing paternity, he goes on to say, but rather it is sufficient that the proof be "clear and convincing" as in the case of Comm V. Ryan.[9]

The probation feature is a typical criminal characteristic of the paternity proceedings in all the states, and in substance it may be said that the procedure more closely resembles a civil procedure, while the enforcement of the law more closely resembles a criminal procedure.

Under the prevailing type of statutes most of the paternity proceedings are divided into a preliminary hearing and a trial. Similar provisions are made in the Uniform Illeg-

---

8 Public Lawsof the State of Rhode Island, 1950, Chapter 3571, Section 24.

9 Schatkin, Paternity Proceedings:Com. V Ryan, 1933.

itimacy Act. Massachussetts is the only one of the eight states under study which has no provisions for a preliminary hearing.

In the states of Connecticut, Delaware, Maine, New Hampshire, and Vermont, the jurisdiction over the preliminary hearing in the proper district court is conferred upon the Justice of Peace who issues the warrant for the arrest of the accused. In the state of New York, excluding New York City, the jurisdiction is also with the county judge or Justice of Peace, whereas in the city of New York, affiliation proceedings come before the criminal court of Special Sessions.[10] In New York City a summons may be personally served upon the defendant instead of a warrant if the complainant consents.

The state of Rhode Island has an unusual provision in the code which provides that the Juvenile Court issue the warrant for the arrest of the putative father.[11] If the mother has not yet been delivered of the child, the Juvenile Court may continue complaint for the preliminary hearing or trial until the child is born. Timing the trial with the birth of the child is a typical procedure, although a decision is the state of New

---

10 Schatkin, Paternity Proccedings, 45.

11 Public Laws of the State of Rhode Island, 1950, Chapter 424, Section 1.

York upheld a proceeding during a pregnancy as constitutional.[12] It may be noted that if the Department of Welfare is filing suit, the mother must be at least five months pregnant.

After service of process the preliminary hearing takes place at which time the defendant may plead either guilty or not plead at all, and is adjudged the putative father. On the other hand, if the accused pleads not guilty, and if there is probable cause, the court demands a bond or recognizance with dufficient sureties to secure the defendant's appearance for trial. In the event of failure to give the bond, which is required, the accused is committed to jail to be held to answer the complaint. Bond given at this time does not carry any obligations for the accused to have this bond used for payment of judgment toward support.

The Rhode Island statute is unlike other in that there is statutory provision for a voluntary acknowledgement by the father.[13]

In the state of Massachussetts the ordinary method of instituting a criminal action is followed in paternity proceedings. The court's adjudication may grant a new trial in one

---

12 Schatkin, Paternity Proceedings, 69:Thomsen V. Elliott, 152, Misc. 188.

13 Public Laws of the State of Rhode Island, 1950, Chapter 424, Section 16.

year permitting the mother to sue upon the judgment of another state. The defendant may appeal from the district court to the superior court and from that to the supreme judicial court.[14]

The question of fact as to the guilt or innocence of the defendant is decided at the trial. Trial by jury is provided for in Maine without any qualifications while in the states of Connecticut, New Hampshire, and Vermont, trial by jury results from the request by either party. In Delaware, where paternity is denied, the court without further pleading orders the matter to be tried by a jury at the bar.[15] The jurisdiction of Rhode Island provides for a trial by jury unless it is waived.[16] According to the Massachussetts statute in cases where the entire jury is waived, any part thereof may be waived and a trial by eleven jurors under such circumstances is valid.[17] While in the state of New York there is a provision for a trial by jury, in the city of New York the law states that the trial is to be by the court without a jury and may exclude the public.

---

14 Annotated Laws of Massachussetts, 1952, Chap. 273, Section 12.

15 Revised Code of Delaware, 1935, Chapter 3568, Sec. 21.

16 Public Laws of the State of Rhode Island, 1949, Chapter 424, Section 5.

17 Annotated Laws of Massachussetts, 1949: Conn V. Lawless, 258, 154, N.E., 753.

In the code of Connecticut and New York there is a provision that either side may appeal. In New York if the defendant is adjudged not the father after trial, the complainant may appeal from the determination.[18] The defendant may appeal from an order of filiation. Recognizance similar to that provided for in preliminary hearings is required in the higher courts, which in turn may be used toward enforcing judgment for the payment of support of the child. It is customary that the costs of the procedure are paid by the father if paternity is established, otherwise by the county in which the procedure originated.

As already pointed out, the rights of the father to testify as a competent witness in these proceedings is similar to the right of the mother in Connecticut, Delaware, Maine, Massachussetts, and New York. The code of Rhode Island provides that depositions may be used before the district court or superior courts. There are no statutory provisions as regards the rules of evidence in the state of New Hampshire for father or mother. The jurisdiction of Vermont does not include provision for the father as a witness although the mother is compelled to testify.

In the jurisdiction of Massachussetts, a respondent is

---

18 New York City Criminal Court Act, Art. V, Sec. 76.

considered a competent witness. He is instructed by the court of his right to testify. The fact that in a case the respondent did not testify and deny the complainant's testimony may be regarded as corroborative of the complainant's testimony by the jury.[19]

Affiliation has long been the only proceeding in New York State where both the husband and wife are competent to testify to non-access and thus illegitimatize the child born to a married woman. This too was held only in New York City up until August 1939, when the Domestic Relation code was amended to bring about uniformity in the state.

The New York State jurisdiction provides that a defendant may move to dismiss the complaint upon the grounds that a prima facie case has not been established as in the case of Comm V. Arvay.[20] The motion for rearguement was denied. Then the defendant must decide to rest on the complainant's case or offer his defense. According to the New York City code,[21] the defendant is not compelled to testify, but the defense may consist of testimony by others. At the end of the hearing, the

---

19 Annotated Laws of Massachussetts, 1950: Gallary V Holland, 81 (15 Gray), 50.

20 Schatkin, Paternity Proceedings, 70: Comm V. Arvay, 241, App. Div. 691.

21 New York City Criminal Courts Act, Art. V, Section 67(1).

defendant may renew the motion to dismiss the case on the grounds that clear, convincing, and satisfactory proof of paternity has not been adduced.

In the area of inadmissible evidence, the New York jurisdiction has made several points.

1. Hearsay statements made in the presence of the defendant and contradicted by him are inadmissible. The defendant's failure to deny the third person's statements indicates an admission of the correction as shown in the case of U.S. V Lanza.[22]

2. An admission of acknowledgment by the defendant orally or in writing without additional independent proof is insufficient to warrant the granting of a filiation order.

3. An admission of paternity which the court later allows the defendant to withdraw and proceed to trial is not admissible when the case is tried.

The states of Maine, New York,and Rhode Island are three of the eight under study which use blood tests as a scientific rule of evidence which excludes paternity.

The New York State code which was the first to introduce the use of blood tests, states that the court on motion of the defendant, shall order the mother, her child and the defen-

---

22 Schatkin, Paternity Proceedings, 79: U.S. V Lanza, 1936, 85F (2d), 544, 548.

dant to submit to one or more blood grouping tests by a duly qualified physician to determine whether or not the defendant can be excluded as the father of the child, and the results of such tests may be received in evidence, but only in cases where definite exclusion is established.[23]

In substance the Rhode Island statute has the same provision for the blood grouping test as New York, and Maine with the additional provision that whenever the court orders such blood tests to be taken and one of the parties shall refuse to submit to such test, this fact shall be disclosed at the trial unless good cause is shown to the contrary.[24]

Maine, like New York, provides that the blood grouping test can only be submitted to on the motion of the respondent.[25]

In New York expert anthropological testimony can be offered to disprove paternity, and therefore can only be introduced by the father. In one of the early paternity proceedings, a number of physicians were permitted to give their opinion as to whether a child displaying all the racial features of the white race, whose mother was a very light mulatto could have

---

23 Baldwin's New York Consolidated Laws Annotated, 1948, Article VIII, Section 126 a.

24 Public Laws of the State of Rhode Island, 1950, Chapter 424, Section 8.

25 Revised Statutes of Maine, 1944, Chapter 153, Section 34.

been begotten by a very dark Negro who was charged with its paternity.[26]

This concludes that portion of the legal system and paternity proceedings as they relate to the father.

---

26 Schatkin, Paternity Proceedings, 127: Comm!rs V. Whistelo (1808), 3, Wheel, Criminal Case, 194.

CHAPTER IV

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

This chapter shall cover the laws as they relate to the child pertinent to the social connotations of terminology, resemblance as evidence, the legitimation process and indemnification, as well as a cursory survey of the availability of social services to the unwed mother.

The terms "bastard" and "illegitimate" still retain the unfavorable implications associated with these terms under the common law of England. The child had no legal status and a most humiliating social position. Through gradual legal and social reforms, the present terminology "born out of wedlock" reflects a more enlightened and encouraging attitude toward the child.

Black's definition of illegitimacy as one "born out of wedlock" is the term most popularly used in the statutes under this study.[1]

---

1 Harvey Campbell Black, Black's Law Dictionary, St. Paul, 1933, 917.

In 1925, the New York legislature prohibited the use of the term bastard or illegitimate child in any judicial proceeding and required that the term "born out of wedlock" should be used instead. The statutes of Maine, Rhode Island, and Vermont also refer to the illegitimate child as the child born out of wedlock.

In 1930 Honorable W. Brice Cobb, now Justice of the Domestic Relations Court of New York, suggested that the sixteenth century term "natural child" be used to describe the child born out of wedlock, and it was adopted.[2] "Natural child" is interpreted as one whose real parents have not married each other, and in this way may include a married woman who is separated from her husband. This connotation is included in the Connecticut statutes, in which the illegitimate child is explicitly described as a child "born out of lawful matrimony." As used in the Uniform Illegitimacy Act, the term "wedlock" refers to the status of the man and his wife, and not the the status of the wife and her paramour in which there is no marital relationship.

In Delaware and Massachussetts the word "bastardy" is in disfavor and the term "illegitimacy" is used in the statutes. However, the New Hampshire statute still uses the term "bastard".

A decision in the New York Court of Appeals recognized

---

2 Schatkin, Paternity Proceedings, 4.

the fact that the terms "natural child", "illegitimate child", "bastard", "child bonn out of wedlock", and "child born out of lawful matrimony" are interchangeable terms which refer exclusively to the status of the child.[3]

Decisions in Connecticut,[4] Maine,[5] and Massachussetts,[6] have pointed out that the natural child is included in the interpretation of the word "family".

It is interesting to note that in a Federal Court decision, the terms "child", "children", "next of kin", and "dependents" have been interpreted to include the natural child.[7] However, as yet, Arizona and North Dakota are the only two states in our country in which there is no legal distinction between legitimate and illegitimate children.[8]

Under English common law, evidence of resemblance, both testimonial and by exhibition of the child, has been rel-

---

3 Schatkin, Paternity Proceedings, 6: Vincent V. Roehler(1940), 248, N.Y., 260, 30, N.E. (2), 587.

4 Ibid, 41: Piccinim V. Conn. Light & Power Co. art. 330, (1919), 93 Conn. 423, 106.

5 Ibid; Scott's case(1918), Maine 436, 104, art. 794.

6 Ibid,41: Gutta's case(1920), 236 Mass, NE 889.

7 Ibid,41: Western Union Tel. Co. V. McGill CCCA, 8th Civ. (1983), 57 Fed. 699, 70121 LRA, 818.

8 Vernier, American Family Laws, 155.

atively insignificant since the eighteenth century as compared to the period prior to this date.

Evidence of resemblance is still admissible in some jurisdiction in our country and may be shown either through the actual presence of the child in court or through the testimony of the witnesses.

In New York there is a clear cut rule that evidence of resemblance is inadmissible and incompetent. Concerning this type of case for excluding the witness, Surrogate Foley in Estate of Wendel stated:

> It is common knowledge that, despite resemblance of some children to their parents, cases often occur where a child shows no likeness to his brothers or sisters and indicates no resemblance to either the father or the mother. Moreover, doubles of persons (of no blood relationship), particularly of famous men in history, have not only been found, but have been the subjects of widespread comment and publicity.[9]

In New Hampshire[10] the court's decision permitted the general comparison of a child only a few months old, while the court's decision in Connecticut[11] permitted the exhibition of a ten month old child.

---

9 Schatkin, Paternity Proceedings, 119: Re. Estate of Wendel(1933), 146 Misc. 260.

10 Schatkin, Paternity Proceedings, 123: State V. Danforth(1905), 73 NH, 215.

11 Ibid, 120: Shailer V. Bullock(1905), 78 Conn. 65.

However, in Massachussetts the testimony of a witness is inadmissible, although the exhibition of the child is permitted. The child's age is a factor in determining the relative weight of the evidence.[12] In Maine, the resemblance of specific features or color may be proper as pointed up in a decision,[13] but the exhibition of the child for general resemblance is inadmissible.[14]

Decisions in Maine and Massachussetts confirm Professor Wigmore's position that "the sound rule 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 indication."[15] And, similarly, it was held in the Federal Court in a decision in which the jury was instructed that the evidence of resemblance must be a reproduction of characteristics peculiar to the alleged father.[16] Another decision in the Federal Court

---

12 Ibid, 122: Scott V. Donovan(1891), 153, Mass, 378.

13 Ibid: Leniston V. Rowe(1839), 16 Me, 38.

14 Ibid: Clark V. Bondstreet(1888), 80 Me., 454.

15 John H. Wigmore, Evidence, Chicago, 1935, Vol. I 400.

16 Schatkin, Paternity Proceedings, 126: Fillipon V. U.S. (1924), 12 F(2d), 928.

points up that testimonial evidence of resemblance is incompetent.[17]

Marriage itself or else the marriage of the parents of the illegitimate child before the birth of the child was considered the basis for legitimating a child under the common law. However, under the Roman civil law, the subsequent marriage of the parents of illegitimate children gave such children the status of legitimacy.[18] This was adopted in a few of our states, and more recently, the general principle of legitimation through subsequent marriage has been established by statute.

While under the common law, if a marriage was annulled the issue became illegitimate, there is a specific provision in the code of Rhode Island that the issue of a marriage that is null and void does not affect the legitimacy of the child.

In Maine, Massachussetts, and New York in a case of a bigamous marriage, the child may become legitimate if one or both of the parties to the union were without knowledge of it. However, in New York the children are legitimate only in relation to the parent who was legally capable of contracting a marriage. Outside of these notable exceptions in the American law, the general rule is that legitimacy is the status of children whose

---

17 Ibid, 125: U.S. V. Collins,(1809), CCC, 592.

18 Encyclopedia Brittanica, Chicago, 1939, Vol 15, 879.

parents are lawfully married. This legal rule assumes that both parents to the marriage acknowledge the offspring as their own unless stated otherwise.[19]

In Maine, Massachussetts, New Hampshire, and Vermont there are specific statutory limitations in regard to the acknowledgement.

In Maine, the statute provides that the father adopt the illegitimate child into his family or make a written acknowledgement before some justice of peace or notary public. This procedure makes the child an heir of his parents. This is an unusual right of inheritance to the legitimated child.[20] The more usual is the procedure in Connecticut and New York in which the child may inherit only from the mother.

Massachussetts and Vermont require that the father acknowledge the child after marriage in order to complete the legitimation process. The manner in which this acknowledgment may be given is broadly interpreted as in a decision in Massachussetts. This case illustrated that the recognition need not be in writing and can be shown by conduct as well as byy declar-

---

19 Encyclopedia Brittanica, 879.

20 Vernier, American Family Laws, 165.

ation.[21]

New Hampshire requires that the acknowledgment be made by both.

Delaware differs from the other states under study in so far as the code provides other methods besides subsequent marriage by which the child may become legitimate. This takes the form of acknowledgment in writing by both parents, if living. It may be accomplished by the father alone, if the mother is dead. However, the child legitimated solely by a written acknowledgment of paternity does not inherit from the father.[22]

The New York code expressly provides that the illegitimate child is entitled to all the rights and privileges of a legitimate child.[23] A similar inference may be drawn when the statute unconditionally provides that the child becomes legitimate or is legitimated by subsequent marriage as in the jurisdiction of Connecticut and Rhode Island.

It may be noted that the passing of a special act by the legislature to make a particular child legitimate has fallen into disrepute. As pointed out by Vernier, legitimation for

---

21 Annotated Laws of Massachussetts, 1952, 82 NE, 481.

22 Vernier, American Family Laws, 161.

23 Ibid, 169.

the natural child with varying legal consequences has been made possible in many states either by marriage of the parents or by court process.[24]

The process of legitimation is separate and distinct from the legal procedure aimed merely at establishment of support and maintenance for the child born out of wedlock, as provided through paternity proceedings. This may be understood in light of the development of the responsibility for the support of the unwanted child. Hooper pointed out that the child of nobody, as the illegitimate was called, was as regards its support the child of the people, and the people in the person of the overseers had to undertake its support. The unfortunate position of these children brought about an alarming increase in the number of illegitimate children reported to be born dead. This resulted in a statute in England in 1623 obliging the unwed mother to report her pregnant condition and produce at least one witness in the case of a stillbirth. Failure to comply with this was punishable by death as in the offense of murder. Consequently, there was an increasing number of waifs. The financial burden to the parish and the community at large grew onerous.[25]

---

24 Ibid, 154.

25 Hooper, The Law of Illegitimacy, 136.

The provisions of the Poor Law Act of 1576 intended relief of the community at large by requiring that both father and mother support their illegitimate children. Mere legislation did not accomplish this objective and so there have been various support statutes enacted in the past few centuries in an effort to indemnify the public.

In England the poor authorities alone were empowered to commence a proceeding, but made it compulsory for the mother to disclose the name of the father of her child. However, in 1844 there was a statute enabling the mother of the child to secure support from the father for the welfare of the child.

The resemblance of the paternity proceedings to the poor relief system is very clear in so far as the public welfare departments have the right to institute bastardy proceedings in case the child is or is likely to become a public charge.

In New York City, the role of the Department of Welfare in paternity proceedings provides that the Commissioner has the responsibility for the following action:

> Institute proceedings to establish paternity and secure the support and education of any child born out of wedlock, or make a compromise with father of such child, in accordance with the provision of the law relating to children born out of wedlock.
>
> Hold and disburse the money received from such a compromise or pay it to the mother if she gives security for the support of the child.

When practicable require the mother to contribute to the support of the child.[26]

The proceeding is similar in the states of Connecticut, Delaware, New Hampshire, Rhode Island, and Vermont where there is a provision for instigation by the Department of Public Welfare or overseer of the poor.

The judgment for the support of the child results from a court hearing on the charge for the crime of fornication.[27]

Although there is no present statutory provision in Maine for the instigation of a paternity proceeding, by the Department of Public Welfare in 1947, there was an amendment to the statute that required the consent of the Department of Health and Welfare before a settlement was considered legal. Possibly this did not result in the reduction in number of unwise settlements, and in 1951, the legislature deleted the amendment.

All the statutes provide for a surety bond at the trial. If the adjudged father fails to carry out the order for the support of the child, the bond is defaulted and used in carrying out judgment for support.

Letters were sent to welfare departments in each of the

---

26 New York State Social Welfare Law, 1950, Art. 6, Section 395, Paragraph 5.

27 Annotated Laws of Massachussetts, 1952, Chap. 273, Section 12.

states under study in an effort to determine the availability of social services. The questions propounded: Is there a social service department within your court system providing services to the unmarried woman pressing a paternity charge? Is the filing of paternity proceedings an elegibility requirement for an unmarried mother applying for Aid to Dependent Children?

Information received from these particular departments of welfare indicate that casework services are available to the unwed mother in varying degrees. It was learned that in some cities, the social welfare services are directly connected with the court system. In other cities, services are connected with the Department of Health and Welfare. In still others, the Aid to Dependent Children's program provides services to the unwed mother.

Responses from the eight states under study were in accord regarding eligibility requirements for Aid to Dependent Children in that the mother is expected to start proceedings to determine paternity unless the father is willing to acknowledge the child.

This chapter has covered the laws as they relate to the child pertinent to the social connotations of terminology, resemblance as evidence, the legitimation process, indemnification, and a cursory survey of the availability of social services to the unwed mother.

CONCLUSIONS

This study consisted of a close examination of paternity proceedings in the North Eastern Seaboard States in order to determine the effectiveness of these laws in terms of the needs of the three parties to an action, namely, the mother, the father, and the child. Stress has been placed on the social and emotional implications of these legal proceedings without any attempt to evaluate the legal aspects. The North Eastern Seaboard States considered in this study were Connecticut, Delaware, Maine, Massachussetts, New Hampshire, New York, Rhode Island, and Vermont. All these states had statutes that might be described as paternity proceedings.

The common law was found to be the basis of the legal system of all the states under study. Under the common law little individual consideration was given to the parents of a child born out of wedlock. The child was given no legal status and a most humiliating social position. The harshness of the common law was gradually replaced by the paternity statutes. An analysis of these proceedings led to the following conclusions:

There should be a legal basis for the establishment of

paternity and support. The Uniform Illegitimacy Act recommended to the states more than thirty years ago as a standard has thus far been adopted in only seven of the states in the country. New York State is the only state under study which has adopted the Uniform Illegitimacy Act with slight modification. The lack of uniformity in legislation has pointed up the need for further study and interpretation of the social implications of the similar and dissimilar features of the paternity proceedings in the eight states under study.

An examination of the statutes indicated that paternity proceedings are unique, in some respects resembling a civil action, and in others, a criminal action. While proceedings are generally considered to be civil actions, many aspects of the criminal methods have been applied to paternity proceedings. This may be viewed as a provision for implementing the primary goal of the proceedings which is to gian support of the child.

In Massachussetts, the begetting of an illegitimate child is considered a punishable offense, and in Delaware the prosecution is always in the name of the state. In all the other states under study, the proceedings are instituted in the name of the mother, child's guardian,or some other designated person. It has also been shown that in this group of states outside of Maine and Massachussetts, a public official may join with the mother in bringing the complaint in the event that the

child is or is likely to become a public charge.

The criminal aspect has also been shown in the use of warrants in these proceedings in all the states except New York. In accordance with the Uniform Illegitimacy Act, as in New York, a summons may be personally served upon the defendant instead of a warrant.

The probation feature has been pointed out as a typical criminal characteristic of the paternity proceedings in all the states. In substance it may be said that the procedure more closely resembles a civil procedure, while the enforcement of the law closely resembles a criminal procedure. Unquestionably, in many cases the criminal aspect of the law has served as a threat to the father to prod him into carrying out his responsibility. At the same time this procedure can be viewed as facilitating an elemental goal of the proceedings, which is the indemnification of the public.

The codes of Massachussetts, New York, and Rhode Island have provided for voluntary procedure to establish paternity and responsibility of support. This provision can be seen as encouraging the father to accept his responsibility without fear of punitive measures.

The nature of the hearings which have provided for preliminary hearings in all the states under study, except Massachussetts, reemphasizes the desirability of a settlement between

the mother and the father without the publicity of a court hearing. The preliminary hearing in the proceeding connotes relative pressure in comparison with the voluntary method. However, the preliminary hearing also affords the opportunity to bring about a settlement and compromise, as provided for in the Uniform Illegitimacy Act, without the trauma of a court procedure. These socially desirable methods at the same time satisfy the purpose of the paternity proceedings which is the support of the child.

The statutes of Connecticut, New York, and Rhode Island provide for a limitation of time during which an action may be brought. This seems to serve as a safeguard for the mother and father's welfare. The mother has an opportunity to bring charges after the initial emotional impact has softened. This provision also secures for the father some protection of his rights and freedom from constant jeopardy.

The lack of uniformity and differences in the paternity proceedings are furthered by the great variety of courts having jurisdiction. It would seem preferable to have the paternity proceedings in a court of chancery, as in Rhode Island, rather than in a civil or criminal court. Hopefully, in progressive and enlightened courts, the chief purpose of the paternity proceedings would be to secure the health, welfare, and happiness of the child.

The desirability of a private hearing as pointed up in the provisions for the court hearing in New York reflect the attitude of respect and dignity for the individual. On the other hand, permitting the public to intrude on the court hearings may serve to add to the embarrassing and humiliating position of the parties involved. This applies particularly in respect to the area of evidence.

However, it appears that the puritanical atmosphere in which the mother is compelled to testify is evident only in Vermont. The other states under study follow the Uniform Illegitimacy Act in which neither the mother nor the father is compelled to testify.

The rules of evidence in regard to the child vary from state to state. It seems most likely that in the event the child is too young to actually remember the experience of appearing in court as such, the pattern of society shall play its part in reactivating this traumatic experience. The resulting stigma and labelling of the child remains difficult to eradicate. An effort to lessen the social stigma may be noted in the gradual changing of the terminology from "bastard" to the most commonly used term "born out of wedlock". The latter term is used in the Uniform Illegitimacy Act, as well as in the majority of the statutes of the states under study. New Hampshire is the only one in this group still retaining the use of the term

"bastard". This seems to be an effort on the part of legislation to bring an end to discrimination in the mind of the community toward the child.

In New York there is a clear cut rule that evidence of resemblance of the child is inadmissible and incompetent. However, the jurisdictions of Connecticut and New Hampshire permit the comparison of a child only a few months old. The provisions in Maine and Massachussetts confirm Professor Wigmore's position that it is sound to admit the fact of similarity in specific traits, providing the child is old enough to have settled features or other corporal indications. Professor Wigmore allows for the evidence of resemblance either through the actual presence of the child or through the testimony of the witnesses.

Like the Uniform Illegitimacy Act, all the states under study except Connecticut and Rhode Island have made statutory provisions for joint responsibility for the support and maintenance of the child born out of wedlock. This effort may be considered as an important step in encouraging responsibility in the material area by both parents. Rhode Island and New York also spell out education along with support and maintenance in their code.

The specific amount for support as explicitly designated in the statute of Delaware can be considered undesirable, in so far as change in legislation lags behind fluctuating economic

needs. On the other hand, the courts' responsibility to decide the amount of support to be given in relation to the ability and needs of the parties seems socially desirable and particularly of the child. This has been the case in Connecticut, Massachussetts, New Hampshire, New York and Rhode Island. The New York code states that the amount of support should be in keeping with the mother's station in life. While it seems desirable for a child to enjoy the full benefits of a high financial status, the former provision may serve to protect the father from unreasonable demands due to his economic station.

The support of children born out of wedlock is generally terminated when they reach sixteen years of age. The code in Rhode Island sets the age limit at eighteen for normal healthy children. In Massachussetts all minors are entitled to support. In making this provision such children have the obvious advantage of uninterrupted care and education until they are capable of caring for themselves.

Rhode Island is the only state under study, in which payments for support are made to the court or to a third party. In this way the possible complications of subsequent contact between the parents who may be hostile toward each other because of the court action, is eliminated. To a degree, the court's intervention also insures the payments.

Statutory law in Massachussetts, and Vermont, has

followed common law in providing that the mother retain the custody of the child. The remaining states under study have relied completely upon the common law ruling in which the child has the mother's domicile. The desirability of the mother retaining custody seems inherent in the very nature of the relationship. The need for both parents to share in the responsibility of rearing children highlights the special problems for the group of children born out of wedlock.

This basic need prompted inquiries concerning the services that are available to children born out of wedlock. Information from responsible state authorities was received through letters indicating that in the states under study, casework services are available in varying degrees. It seems desireable that these services should be increased in order to better serve the needs of the three parties to this proceeding and especially to insure the continued well being of the child.

BIBLIOGRAPHY

I. PRIMARY SOURCES

A. STATUTES

Annotated Laws of Massachussetts, Volume IA, Rochester, New York, 1952.

Baldwin's New York Consolidated Laws Annotated, Volume I, Cleveland, Ohio, 1948.

General Statutes of Connecticut, Volume III, Published by Authority of the State, 1949.

Revised Code of Delaware, Wilmington, Delaware, 1935.

Revised Statutes of Maine, Volume II, Augusta, Maine, 1944.

Revised Laws of New Hampshire, Volume I, Concord, New Hampshirre, 1942.

Public Laws of the State of Rhode Island, Providence, Rhode Island, 1950.

Vermont Statutes, Published by Authority of the State, 1947.

II. SECONDARY SOURCES

A. BOOKS

Abbott, Grace, The Child and the State, Volumes I,II, Chicago, 1938, 13-41: 493-606.

Black, Harry Campbell, Black's Law Dictionary, St. Paul, 1933.

Bradway, John S., Law and Social Work, Chicago, 1929, 43.

Breckinridge, Sophonsiba, The Family and the State, Chicago, 1934, 415-476.

Encyclopedia Brittanica, Chicago, 1939.

Hooper, Wilfred, Law of Illegitimacy, London, 1911

Schatkin, Sidney B., Disputed Paternity Proceedings, New York, 1947.

Vernier, Chester G., American Family Laws, Volume IV, Stanford, 1936.

Wigmore, John H., Evidence, Chicago, 1935.

B. ARTICLES

Donahue, Madorah, "Children of Illegitimate Birth Whose Mothers Have Kept Their Custody", Children's Bureau Publication, Wahington, D.C. Number 190, 1928.