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

Colette Baynes

Loyola University Chicago

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

by
Colette Baynes

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CHAPTER I

INTRODUCTION

The purpose of this thesis is to evaluate the laws concerned with Paternity Proceedings in terms of their social implications, to analyze their punitive or protective intent and to consider their effectiveness in meeting the needs of the Mother, Father and Child.

There is an apparent need for a study of the Laws concerned with paternity proceedings. A review of the literature in the field points up the fact that little has been written although there is evidence of changing trends in coping with this problem. A deeper understanding has developed concerning the rights and needs of all children and the twentieth century has been called the Century of the Child. There is a more enlightened attitude toward the child born out of wedlock who is underprivileged by birth and subject to a disabling social and legal status. The passage of the Castberg Law in Norway pioneered the way in the enactment of constructive illegitimacy legislation. For many years,
the United States Children's Bureau has provided leadership in promoting the welfare of children of unmarried parents, and has advocated better laws to deal with illegitimacy.

Although the Uniform Illegitimacy Act was formulated as a model act over thirty years ago, it has been enacted into a law in whole or part in only seven states. "The law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society. But this progress must be by analogy to what is already settled." Little is known about the social ramifications of Paternity Laws as they impinge on the Mother, Father and child. Abbott and Breckinridge have incorporated an analysis of some aspects of Paternity legislation in their books. But there has been no socially oriented study comparable to the legal studies done by Vernier

1 Corpus Juris Secundum, X, New York, 1938. Preface
3 Sophonisba Breckinridge, The Family and the State, Chicago, 1934.
4 Chester Vernier, American Family Laws, IV, California, 1936.
and Schatkin. A study of the social implications of the laws has not been done and is necessary.

This study is limited to the paternity proceedings or substitute legislation found in Pennsylvania, New Jersey, Maryland, Virginia, West Virginia, North and South Carolina and Georgia. For the purpose of this paper, they are referred to collectively as the Eastern Seaboard States.

A particular geographic area was studied rather than states selected at random as it was felt that regional similarities and differences would be significant in pointing up attitudes and trends. Studies of other areas have been done by other members of the group.

This is an exploratory analysis of the statutes, considered state by state and then evaluated collectively in terms of their significance from a social viewpoint.

Whenever possible, primary sources of information were used. The State statutes were studied and decisions and annotations were examined and evaluated in order to

understand the real intent of the law. Pertinent social and legal literature has been read in order to provide background and orientation. The facilities of the libraries of Loyola University, the Chicago Bar Association and the Chicago Public Library were used. There was an exchange of correspondence with the State and County Departments of Public Welfare in the Eastern Seaboard region. There have been conferences with advisers and with other people doing similar studies in other geographic areas.
CHAPTER II
THE LAW REGARDING THE MOTHER

The first statute permitting the mother to initiate paternity proceedings was enacted in England in 1733. Much of our legislation with respect to illegitimacy was patterned after the English law. The Uniform Illegitimacy Act provides that proceedings may be brought by the mother or if the child is likely to become a public charge, by the welfare authorities responsible for its care. Although the Eastern Seaboard States have not adopted the Uniform Act, they have incorporated some of its provisions into their laws. In West Virginia, the complaint can only be instituted by the mother. The County Court has a statutory right to assume prosecution in its name if the mother withdraws her suit. North and South Carolina specify that the mother shall be the complainant. The section of the Georgia statute authorizing a Justice of Peace to initiate proceedings was written into the Act passed in 1793 and has never been amended. In actual usage it is customary for

1 Breckinridge, The Family and the State, 416.
the mother to make the complaint. Anyone who knows the facts of the case may prosecute in Pennsylvania.

Financial need is recognized as a commonly occurring problem of the unmarried mother. Some of the states have provisions intended to protect the municipality and safeguard the child's welfare by legally fixing paternal responsibility. A public welfare official may request affiliation proceedings in North and South Carolina when the child is or may become dependent. The State Board of Child Welfare or a Public Welfare official in the mother's place of legal residence may file the complaint in New Jersey. New Jersey is one of the states which requires the mother to name the father. For failure to do so she may be held in contempt of court. Georgia, South

2 Code of Georgia Annotated, 1933, Book 22, Title 74, Section 302, 69.

3 Purdon's Pennsylvania Statutes Annotated, 1945, Title 18, Section 4732, 525.

4 The General Statutes of North Carolina, 1949, Chapter 49.

5 Code of Laws of South Carolina, Annotated 1952, II, Title 15, Section 1383, 671.

6 New Jersey Statutes Annotated, 1952, Cumulative Annual Pocket Part, Chapter 17, Title 9: 17-11, 29.
Carolina, and Maryland have similar laws to enforce the mother's cooperation but if she is unwilling to designate the father she must give bond for the child's support.

The time during which the complaint may be filed is a matter of statutory regulation. There are two factors which should be considered in connection with this. The father's right to limitation of the time during which he can be prosecuted should be safeguarded as in other actions at law. The mother should be given sufficient time to adjust to her situation and to make plans.

Social workers are far less ready than formerly to plunge the unmarried mother into hurried court action. This is partly due to a realization of the emotional factors involved, often concealed or disguised and to an awareness of the constantly changing feelings of the mother toward the father of her child which may involve hurt pride and a wish to punish or a desire for marriage. 7

In North and South Carolina and West Virginia the complaint must be made within three years after the child's birth. The New Jersey statute is silent on this point, while Maryland limits the time for filing to within two years after

the birth. In Pennsylvania, where "begetting a bastard is a misdemeanour," the statute of limitations begins from the date of fornication, and apparently extends over the same period as applies in other criminal actions.

Most of these states have statutory provisions regulating the earliest date at which action can begin. Usually the complaint can be made during pregnancy. In North Carolina the court hearing the paternity proceedings may continue the case until the child is born. The New Jersey Law provides that the hearing may be adjourned for sufficient cause. In Maryland the offense is not consumated until the child is born. Georgia permits the mother to file during pregnancy and there is no statutory provision regarding the time of the hearing. In South Carolina and West Virginia, the complaint is made after birth. This seems to be the intent of the Pennsylvania law.

The Uniform Act requires that the complaint be filed with an officer of the court having the power to commit for trial. The Eastern Seaboard States usually provide that the

complaint be filed with a justice of the peace. In Maryland, it can also be made to the state's attorney who can initiate criminal proceedings if indicated. New Jersey specifies that the complaint must be made to a magistrate or the Municipal Court or to a judge of the County District, Juvenile or Court of Domestic Relations, and all proceedings are had in these courts. In North Carolina, the complaint must be made in a court of higher jurisdiction than that of justice of peace. If the defendant is under age sixteen the case is heard in the juvenile court.

Most of the states have rulings regarding the mother's testimony as it has an important bearing on the hearing. Under common law, she was considered an interested party and incompetent as a witness. It is now held that her interest affects her credibility only. In the absence of a statute requiring corroboration the jury may find the accused is the father on the mother's testimony alone. Sometimes her statement before the justice is considered prima facie evidence of guilt and the burden of proof to the contrary is on the defendant.

10 Ibid, 987.
In Pennsylvania, since the act of 1860, the statute has provided that "Any man charged by an unmarried woman with being the father of her bastard child, shall be the reputed father, and if she persists in the charge in the time of her extremity of labor, or afterwards in open court, the same shall be given in evidence in order to convict such person of fornication." While the mother's attending physician is competent to testify to her statement, Pennsylvania courts have held that her declaration must measure up to statutory requirements, and must be of the same character as would be required of testimony to be received in open court at the trial. If the mother dies in childbirth, her statement regarding paternity is not considered a death-bed declaration. In Georgia courts the mother's affidavit charging paternity is admitted as evidence. North Carolina will not excuse the mother from testifying on the grounds of a self incrimination but there is a protective provision that she cannot be subjected to penalty or forfeiture on the basis of her testimony. In New Jersey, if the mother dies or becomes insane or leaves the state after examination or trial, her testimony is

11 Purdon's Pennsylvania Statutes, Section 4506, 215.
12 Ibid, Section 4506.21, 223.
received in the court to which an appeal is taken as if she were present. Maryland law throws its protection around the mother and provides that the privilege of the complainant in not answering questions is personal to her and not the accused. The original papers before the justice are offered in evidence and must be proved. If the mother dies before trial, her written testimony at the earlier hearing is admitted at the trial.

Legislation passed during the reign of Elizabeth "introduced the system of compelling support by the father, which has remained the primary feature of the English bastardy law, and which has been taken over by the American States." Fixing legal responsibility for the child's support is one of the fundamental aims of affiliation proceedings in the Eastern Seaboard states. Some of these jurisdictions follow the provision of the Uniform Act which makes both parents legally liable. North Carolina's statute is entitled an "Act for the Support of Children of Parents not Married to each other." It is a criminal statute which operates against both parents.


15 The General Statutes of North Carolina, Section 2, 603.
It is the failure to support which makes it a crime. The punishment is the fixing of a sum to be paid for the child's support. The Desertion and Nonsupport Act is also used to enforce support in Pennsylvania and West Virginia. In Pennsylvania, where begetting an illegitimate child is a misdemeanor, paternity proceedings are not necessary as a preliminary action to gain support, unless the father denies his relation to the child. When affiliation proceedings are had, enforcement provisions deal primarily with aiding the Mother gain support rather than with punishment for a crime. She may collect arrearages on a support order in the name of the commonwealth. The money collected is to her own use, and the child does not have to be a public charge. New Jersey also makes broad provisions for support. Although the statute requires both parents to support the child born out of wedlock, enforcement lies in favor of the mother. An order for support under affiliation proceedings does not bar subsequent action by the mother to enforce the father's statutory obligation to support the child to the same extent as if born in lawful wedlock. In South Carolina, the father is the only parent mentioned in the statute as liable for support.

16 Purdon's Pennsylvania Statutes, section 4506, 35, 227.
While the Father is also the parent legally liable in Maryland, the court can require the mother to give bond to guarantee the child's support until the age of twelve. In Georgia the claim for support lies against the father.

Compromise agreements are valid under the Model Act when they make adequate provision for the child and when they are approved by the court of proper jurisdiction. Some of the Eastern Seaboard States recognize compromise settlements and voluntary contracts for support. A voluntary bond for maintenance is good at common law in South Carolina which has no statutory provision for compromise settlement. In lieu of a statutory settlement, a contract between the unwed parents is valid and enforceable in North Carolina. West Virginia recognizes an express contract which is a contract otherwise binding by which the father agrees to contribute to the child's support. It may be made payable to the mother in her own right or for the child's support. In Georgia, the court held that even an oral contract is valid. Pennsylvania provides that "the parties may compromise the offense between themselves even after an indictment is found." New Jersey

17 Code of Laws of South Carolina, Title 20, section 305, 1109.

18 Purdon's Pennsylvania Statutes, Section 4506, 8, 218.
which bars compromise settlements has held that action does not lie against the father for support without an order of affiliation. The defendant's promise to support prior to a paternity action is held to be without sufficient consideration.

In most of the Eastern Seaboard states, the amount of support ordered is left to the discretion of the court. North Carolina considers the circumstances of the case, the earning capacity of the parties, and the parent's willingness to cooperate for the child's welfare. Maryland also considers individual circumstances of the parent and the age of the child. In Virginia and New Jersey, the child is entitled to support and maintenance as if born in lawful wedlock. New Jersey provides that if parents desert, their real estate and personal property can be seized to support the dependent child. In South Carolina, the father pays the mother $200 and the maintenance as the court may order. Support for a child who is bound out in service is invested and expended for him by the County Supervisor under the order of the Probate Court. Until recently Pennsylvania courts held that payments could not be increased after the term at which the father was sentenced. In September, 1951, the law was amended to allow any interested party to petition that the order of maintenance be changed before or after the term at which the father was sentenced. In West
Virginia, the amount and frequency of the payments is left to the discretion of the court and is determined by the facts and circumstances of the case. In Georgia, the judgment remains open and is affected by the changing needs of the child.

Provisions regarding the period of time over which the payments must be made is set by statute or fixed by the order of the court. Pennsylvania has interpreted the statutory provision regarding the father's liability for expenses incurred at birth, to extend to the costs of rearing the child during the period when it will be dependent. The father's liability is revoked by death as the judgment is personal to him. Maryland follows the Uniform Act in this instance and holds that the child is entitled to support until age sixteen and that payments may be made from the father's estate if he dies. Georgia requires payment until the child is fourteen. North Carolina defines the child as any person under eighteen years of age whom either parent would be required to support if the child were legitimate. West Virginia does not set the time by statute, and the decision is made by the court which maintains jurisdiction until the child is twenty one. South Carolina and Virginia are silent on this point. While New Jersey does not specify the period, the child's welfare is safeguarded by the statutory provision for support from his parents in the same terms as the child born in wedlock.
The provision of the Uniform Act which makes the father responsible for the expenses of the mother's pregnancy and confinement has been incorporated into the statutes of many of the Eastern Seaboard states. In North Carolina, the father may be required to pay expenses of medical care and confinement. Georgia considers boarding, nursing and maintenance of the mother during her confinement as part of the lying in expense for which the father is liable. If the mother is in indigent circumstances, New Jersey orders the father to provide sustenance during her confinement. In Maryland, the court may direct payment in whole or in part of the expenses incurred by the mother during confinement. Pennsylvania statutes provide for payment of expenses incurred at the birth of the child. The statutes of West Virginia and South Carolina are silent on this point.

Among the most important of all legislative provisions are those pertaining to custody of the child.

The rule is universally adopted that a mother is the natural guardian of her bastard child, and as such has a legal right to its custody, care and control superior to the right of the father or any other person unless it is otherwise expressly provided by statute....One reason is that in the case of a bastard child there is doubt as to the identity of the father, while there can be no mistake as to the identity of the mother. Another reason advanced is that as the obligation to care for and maintain the child is imposed primarily upon the mother she is vested with
the right to the custody of the child in order to enable her to discharge such obligation. 19

In North Carolina any mother who abandons her legitimate or illegitimate child under age sixteen is guilty of a misdemeanor. This state, like Maryland, and South Carolina, provides that the child must be left with the mother at least six months in order to give it a good start in life. In South Carolina, the County Board of Commissioners can bind out an illegitimate child to a person of good moral character if it is likely to become dependent or to be demoralized by remaining with its mother. New Jersey strictly interprets the mother's right to custody and the putative father has no right to control without her consent. When the mother dies in Virginia, the father's right to custody is generally considered superior to that of any other person. Georgia holds that the mother, as the only recognized parent, is entitled to exercise all paternal power, and the father has no claim unless he legitimates the child. In West Virginia, the putative father has rights subordinate to these of the mother, to the custody and guardianship of the child where the mother is living. However, the court is primarily concerned with the child's welfare and this is the controlling factor and the "polar star" by which

19 American Jurisprudence, VII, New York, Section 61, 668.
the court is guided.

20 The General Laws of West Virginia, 1951, supplement, Article 7, Section 4715, 34.
CHAPTER III

THE LAW REGARDING THE FATHER

The father's status in affiliation proceedings is determined by the rulings of the common law or by applicable state statutes. Paternity actions are civil, criminal or quasi criminal in nature as provided by each sovereign state.

The legal systems of all the Eastern Seaboard states is based on common law. Children born out of wedlock have many disabilities under common law. They were once considered the children of no one and became the responsibility of the parish where they were born. Later, during the development of the common law in the United States, they became the children of their mother. The father has no claim on them. There is no provision for affiliation proceedings. Under the common law, children of unwed parents could be legitimated only by an Act of Parliament.

Pursuant to the power to remove the disabilities of bastards which the legislature possesses, the rigor of the common law has been much abated in jurisdictions in which its rules prevail and its asperities have been so softened and tempered by statutes that bastards have many rights and privileges that at common law were denied to them. 1

1 Corpus Juris Secundum, X, Section 21, 102.
All of the jurisdictions in the Eastern Seaboard group have provided statutory remedies to common law rulings. As early as 1785, Virginia made the children of annulled marriages legitimate, provided for legitimation by subsequent marriage of the parents and established rights of intestate succession between the illegitimate child and the mother. Pennsylvania had illegitimacy legislation as early as 1705, Georgia in 1793, South Carolina in 1839, West Virginia in 1849, North Carolina in 1842, Maryland in 1860 and New Jersey in 1898.

The three possible aims in paternity actions are to secure support from the father and prevent the child from becoming a public charge; to punish the father or to benefit the mother. This intent will affect the character of the proceedings which may be civil, criminal or quasi criminal.

Although some of the forms of the proceedings are borrowed from the criminal law, these are simply with a view of giving a more summary and stringent character to the process by which the respondent is brought in to court and held to answer the charge, leaving it in most other respects to stand on the footing of ordinary civil cases. 3

In most of the states in this group, the paternity proceedings have a quasi criminal aspect. The criminal pro-

3 Corpus Juris Secundum, Section 32, 144.
visions may be tied up with enforcement of support and usually operate against the father although they may impinge on the mother. Until 1892, North Carolina Courts held paternity proceedings to be civil and they did not carry even a quasi criminal aspect. During 1892 until 1904, the Supreme Court of North Carolina revised its holdings. Since 1904, the proceedings have again been treated as civil. While begetting a child out of wedlock is not considered a crime, willful nonsupport is a misdemeanor. In South Carolina the statute is part of the criminal code and when in default on the courts order for support, the defendant is guilty of a misdemeanor. Georgia has also incorporated paternity proceedings into the penal code and they are considered "some what penal in character and procedure." New Jersey courts have ruled that in this jurisdiction, paternity actions are quasi criminal for some purposes and quasi civil for others. West Virginia Courts have held that while the statute is civil, there is a quasi criminal aspect as it is criminal in form but civil in substance. Incarceration is not to punish but to enforce the courts order for maintenance of the child, to the end that it may not become a public charge. Maryland, which punishes the offense of fornication, follows the same procedure as in other criminal cases. In Pennsylvania, "fornication and bastardy" were made misdemeanors by statute in the early days of

4 Code of Georgia, Section 302, 69.
the Province as neither of these offenses are indictable at common law which regards them as private wrongs.

As is provided by the Uniform Act, the Eastern Seaboard states use a warrant to gain jurisdiction over the father's person in order to guarantee his appearance at a preliminary hearing. None of these states follow the alternate provision of the Model Act which permits the use of a summons in the first instance, in order to gain the father's participation. Neither the Model Act nor the Eastern Seaboard states allow for voluntary registration of paternity. The degree of importance of the preliminary hearing varies considerably between states. In West Virginia, the hearing is purely preliminary and the justice of peace functions in a ministerial capacity as prescribed by law. He has no authority to decide the merits of the case and cannot enter any final order. In New Jersey, the mother is examined under oath in the presence of the father. The magistrate who hears any evidence offered, may subpoena witnesses. If the father denies paternity a formal hearing is scheduled. In North Carolina the justice of peace may issue a warrant for violation of the statute but it is returnable to a court of proper jurisdiction which is a superior court of the county or to an inferior court having criminal jurisdiction greater than a justice of the peace. At the court's discretion, there may be

5 Purdoms Pennsylvania Statutes, Section 4732, 527.
a continuance and the accused gives surety for his appearance at the next hearing. In Maryland, issuance of a warrant by a justice of peace or filing a sworn statement with the states attorney is considered as starting prosecution. When the first hearing is before a justice, the mother's testimony is taken and she is examined by the accused or his attorney. A transcript of the proceedings is sent to the circuit court of the county or to the criminal court of Baltimore and must be offered in evidence and proved. If the preliminary hearing is before the states attorney, he may require other witnesses and necessary documentary material. The accused may testify in his own behalf if he signs a waiver that his testimony may be used against him. The states attorney may file an information against the father charging him with the offense of bastardy or he may submit the case to a grand jury. In South Carolina the magistrate may bind the man over to the circuit court if he is probably guilty and if he denies paternity and refuses to enter into recognizance. In Georgia, the justice of peace may discharge the parties or may bind over one or both. He may require the father to give bond as required by law for the child's support. For failure to comply the father must give bond to answer the charge of bastardy.

All of the Eastern Seaboard states except Maryland, follow the Model Act which provides for a jury trial at the
time of the formal hearing. In New Jersey, either the mother or father can challenge the selection of jury men as is the case in civil proceedings. The jury or the magistrate decides if the reputed father is the father. When paternity is established an order of filiation is entered. In North Carolina, the state must prove the defendants paternity of the child, his refusal to maintain it and his intentional neglect without cause or excuse. The state must overcome a presumption of innocence regarding paternity and the defendant's refusal to support his child. In South Carolina, the question to be tried is whether the defendant is the father. The Georgia statute is similar as it specifies that the elements of the offense are the paternity of the accused and his refusal to give bond for the child's support as required by the magistrate after legal inquiry. In Maryland, there must be a presentment and indictment upon which the trial proceeds as in other criminal cases. The Clerk of the Court keeps a Bastardy Information Docket on all records and orders for each case. In West Virginia, in addition to establishing paternity, the code provides for support of the child and it has repeatedly been held by the court that the provisions of the section on illegitimacy must be read into and considered part of the nonsupport statute. In Pennsylvania sentence may be imposed for fornication or bastardy or both. A defendant who is acquitted cannot be tried
for the same offense again or for statutory rape.

According to the laws of evidence, "The court must arrive at a genuine and conscientious belief that the defendant is the father". The degree of proof required varies according to the nature of the proceedings. West Virginia requires a preponderance of evidence as is required in civil actions and a verdict rendered on conflicting evidence will not be disturbed unless it is clearly wrong. In New Jersey, the burden of proof is on the complainant. North Carolina places the burden of proof on the state which must introduce evidence that no one else was the father. Georgia, requires proof beyond a reasonable doubt. Pennsylvania requires sufficiency of evidence in order to find against the defendant. The South Carolina law is silent on this point.

The States have rulings about the use of certain kinds of evidence. Pennsylvania, Maryland, North Carolina and West Virginia adhere to the Lord Mansfield Rule which prohibits the declaration by parents after marriage, that they had no connection and that the offspring is therefore illegitimate. New Jersey is one of the states which has rejected the rule. There is a growing acceptance of the use of blood tests to exclude paternity in filiation proceedings. Previously, there had been

some question whether statutory provision for blood tests violated the individuals right against self incrimination. Several of the states using blood test have regulated their use in order to protect the rights of the putative father. North Carolina orders the test for all three parties on the motion of the defendant. Results are admitted in evidence when offered by a licensed physician or other qualified person and the accused has a right of appeal from the finding. New Jersey uses the test for exclusion purposes. At the time of the trial, the court may direct the parties to submit to one or more test. Expert testimony is received as to the results and can be offered in evidence where it is definite evidence of exclusion. If one of the parties refuses to take the test, this may be disclosed at the trial if the court wishes. Maryland enacted a blood test statute in June 1941. A blood test exclusion is regarded as decisive evidence of non-paternity. "In that state it has been urged that blood test be made a routine procedure in all affiliation cases." Until recently, the Pennsylvania courts held that until blood grouping tests were so perfected as to afford decisive proof as to paternity, refusal of the witness to submit herself and child would not operate against her. In May of

7 Schatkin, Disputed Paternity Proceedings, 184.

8 Purdons Pennsylvania Statutes, Section 4506.10, 218.
1951, the state, enacted a law enabling the court, on motion of the defendant to order tests to determine whether the accused could be excluded as the father. The restricted use of blood tests is upheld by expert opinion, "In the present state of scientific development, blood grouping evidence standing alone in a filiation issue is at most effective in disproving or tending to disprove, one or more possibilities of parentage." Most of the paternity statutes in the Eastern Seaboard States do not discuss in detail, the kind of evidence admissible in filiation proceedings. However, an examination of the annotated statutes of Pennsylvania discloses many references in this regard. The opinion of expert witnesses, such as medical testimony regarding collateral facts is admitted for decision by the jury. The mother's statement of non access by other than the putative father must be contraverted by witnesses in order to be disproved. If testimony of access by others is believed by the jury, the mother is rendered incompetent to prove paternity. Such testimony, while permitted by Pennsylvania statute has been discouraged in practice. There were only two instances of its use in the state in a forty year period and both witnesses were

charged with a misdemeanor and fined on their own evidence. The mother's credibility as a witness is weighed. The trial judge can direct the jury's attention to her intelligence, emotional make up and individual characteristics as they bear on her credibility. Declarations which she made against her interest prior to the trial can be called to the jury's attention. When the accused uses an alibi in his defense, evidence must cover the time when the offense was committed in order to preclude the possibility of the defendant's presence at that time and place. As is true in criminal cases, Pennsylvania law provides that the defendant may introduce evidence of good character. While the court cannot reach a verdict solely on such testimony without other evidence to support the denial of paternity, the father's known reputation must be considered. The court has held that such evidence is admissible to create a reasonable doubt in the minds of the jury. When the court finds that the defendant is the father, it enters a judgment against him for support of the child. He is required to give bond to comply with the judgment and to protect the community from responsibility for the child's sup-

11 Purdons *Pennsylvania Statutes*, Section 4506, 226.
port. All the Eastern Seaboard states have some method of enforcement on the judgment. In West Virginia, Pennsylvania and North Carolina, enforcement is under the Desertion and Non-support Act which makes nonsupport a misdemeanor. While Georgia does not use the act it also makes failure to support, in accordance with the judgment, a misdemeanor. In Maryland, the father can be jailed if he fails to follow the order of the court. In New Jersey when the father fails his obligation, judgment against him is the penalty of the bond.

Certainly we know of injustices worked under the present laws, of maladjustments increased and of even embryonic sense of responsibility killed by our present court handling. Yet if we recognize the human pressure of the child to know who his forebears are an added importance is given to the establishment of paternity, even when there is no question of support. In fact, we may need to face the fact that one of the real barriers to case work with both the parents is the fact that our attitude toward paternity proceedings is so dominated by the support element that other factors are obscured, except in those rare instances where it is the mother who refuses marriage. 13

CHAPTER IV

THE LAW REGARDING THE CHILD

The terminology used at law to describe the child born out of wedlock has a two fold effect. It defines the child's legal status and sets up a framework of social reference. The term, bastard, as used at common law and in statutory legislation describes a restrictive legal status inferior to that of other children. In social usage, the term, bastard, has a disabling connotation of inferiority and disrepute. The Uniform Illegitimacy Act does not employ such terminology but uses the term, the child, or the child born out of wedlock. All of the Eastern Seaboard states use the term bastard or bastardy. In Maryland and Pennsylvania, Bastardy and Fornication are used as the title of the legislation under which filiation proceedings are brought. New Jersey, entitles its action Bastardy Proceedings. West Virginia describes its filiation proceedings under the title, Maintenance of Illegitimate Children. In two of the states, paternity actions are included in the statutes as individual sections which are part of a chapter of laws dealing with the welfare of all children. Georgia's Act which is entitled
Bastardy Proceedings is set up in the statute under the section of laws dealing with Parent and Child. In 1943, this state acted to protect the child by legislation which provided that "No court, commission or quasi judicial body shall discriminate against any person because of his illegitimate birth." In the South Carolina Statute, the obligation of the reputed father of the child referred to as bastard, is included in the section of laws dealing with Custody, Care and Support. All of the Eastern Seaboard States seem to use the term Bastard, to designate the legal status of the child as distinct from that of other children. In other references to the child, the laws use the term baby, child born out of wedlock, illegitimate child, natural child, and child of parents not married to each other. Most frequently the law refers simply to the child.

Another legal provision which has a direct effect on the child is the use of its resemblance to the putative father as evidence. Such evidence may be limited to the testimony of witnesses or may require proof of the child for observation by the court. The Federal Court has held that testimonial evidence of resemblance is incompetent but held that the child when old enough to have settled features, may be shown to the court.

1 Code of Georgia Cumulative Packet Part, Section 204, 39.
with instruction to the jury that evidence of resemblance must be limited to the reproduction of characteristics peculiar to the alleged father. In general there is a conflict of authority as to the propriety of permitting exhibition of the child to the court. In the Eastern Seaboard States, the controversy is greatest in Georgia and Pennsylvania. The Georgia Courts are divided on the admissibility of such evidence. In one case, with only one judge dissenting, there was a ruling against such evidence. In another case, it was held on appeal that it was not improper to show the child to a juror by request after the case had gone to the jury and there was no objection made until the jury retired. In this case, the Georgia Appellate Court ruled that the weight of authority was in favor of admissibility of such evidence but it did not make a final statement as to propriety. Pennsylvania courts have also been divided in their holdings. The court held that the prosecuting attorney might comment on likeness even though the child was not a formal exhibit. In another instance, the court held that in a trial for

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3 *Corpus Juris Secundum*, Section 92, 177.
4 Schatkin, *Disputed Paternity Proceedings*, 121.
5 *Ibid*.
Fornication and Bastardy, it was not in error to permit the jury to see the child or to take into consideration any resemblance between the child and the putative father. Showing a child, twenty three days old, to the jury was considered permissible where the attorney for the commonwealth made no comment on resemblance. Both exhibition of the child and testimonial evidence of resemblance are admitted in North Carolina and New Jersey. However, New Jersey puts more weight on the exhibition of the child, provided that the jury may view the child and the putative father and may decide whether there is any resemblance between them. West Virginia Courts have held that the child may be exhibited to the jury and its appearance commented on by counsel in connection with the testimony of other witnesses. In Maryland the exhibition of the child is allowed but testimonial evidence of resemblance is excluded. Exhibition of the child to show similarity to the defendant is not permitted in South Carolina but the child may be shown as proof of the seduction of the complainant.

Since historical times society has enacted legislation which would provide for the support of dependent individuals to the end that they would not become a public charge. In our time, these provisions are found in four types of statutes, those

7. Purdun's Pennsylvania Statutes, Section 1506.26,
224.
requiring the support of poor relatives; legislation penalizing the desertion or nonsupport of a child, statutes providing for a civil suit by the mother or a third person against the father for support of a child and statutes setting up proceedings in which the filiation of a child might be established and a statutory duty of support enforced against the father. The Uniform Illegitimacy Act recognizes the principle of indemnification as it permits a public official to file suit for paternity proceedings if the child is or is likely to become a public charge. In varying degrees, all of the Eastern Seaboard States have provided for indemnification in their paternity actions. North Carolina courts held that their Act was not created primarily for the benefit of the child but that legislation was enacted to prevent the child from becoming a public charge. The object of the act is to shift "the burden of support from the innocent many to the guilty one." In Georgia, the father must give bond to guarantee support and "to indemnify the county against possible charge for maintenance and education of the child until it arrives at the age of fourteen years." In 1951, Georgia enacted legislation providing that an aid to dependent children grant could only be made to one illegitimate child in a family. After paternity is

8 General Statutes of North Carolina, Section 2, 603.
9 Code of Georgia, Section 301, 68.
established in South Carolina, the father must give bond that the child will not become a public charge. Sometimes the aim of indemnification is reflected in particular provisions of the law. In Maryland, the defendant charged with paternity may plead in bar that the mother refused to name the father and gave her own bond for the child's support. In cases where the court orders the father to support after filiation proceedings have been had, Maryland has the additional protective provision that the court may require the mother's bond to indemnify the state against responsibility for the child's support until age twelve. In New Jersey, paternity proceedings have the dual purpose to provide for the child's support and to indemnify any municipality incurring expense for the child's care. If the parents desert, their goods can be seized for the child's support. In West Virginia, the intention of the paternity act is to prevent the child from becoming a public charge to the relief of the state and the mother.

There is wide recognition of the fact that many social and emotional problems inherent in unmarried parenthood, affect the mother, father and child.

Unmarried parents often require assistance in working out their social adjustments, and their children need special legal and social safeguards. Early planning must consider medical, financial and social factors including the relationship of the girl to her family and the baby's father. Both mother and father should be helped to discharge their individual
responsibilities in preparation for the child, make the best possible social adjustment for themselves, and plan wisely for the future of their child. Full knowledge of resources available to them and their child, and protection from pressures to make hasty decisions that do not consider the welfare of the child are necessary for constructive planning.

There are several areas of inquiry which point up the state’s attitude toward the social problem. Does the state require a paternity complaint in order to establish eligibility for Aid to Dependent Children? What provision does the state make for extending professional help to unmarried parents either by a court social service or a private agency? As this material is not covered by any of the state statutes, information was gained by correspondence with the state and county Departments of Public Welfare in the Eastern Seaboard region. Two of the states do not require the mother to file a paternity complaint in order to become eligible for Aid to Dependent Children. In one of these states, the Department of Public Welfare has a statutory right to file on active assistance cases when this is considered necessary. Several of the states permit voluntary agreements for support. One state requires court action only if an amicable settlement is not possible. Even then paternity proceedings are not necessary unless the father denies his re-

lation to the child. Another state requires that the mother explore all possible resources for the child's support and this provision might and frequently does result in court action. However, the Department of Welfare worker analyzes the case situation and paternity proceedings might not be necessary. In another state, the mother's agreement with the father must be approved by the States' Attorney. If there is no agreement, she is referred to the States' Attorney who decides whether to contact the father to arrange support or to require a warrant for a paternity action. In the one state which does not have filiation proceedings or substitute legislation, the applicant for Aid to Dependent Children is required to file a non-support petition if the whereabouts of the putative father are known.

All but one of the jurisdictions reported that there was no social service department functioning in connection with the court hearing paternity proceedings. The other jurisdiction felt that no general statement was possible as the county courts differed in procedures and in the kinds of services available. In this state and in two other jurisdictions, the mother might or might not be helped by a private case work agency. The Department of Welfare in one of these states gives service if the mother is receiving Aid to Dependent Children. Another state reported that referral to a social agency was left to the discretion of the judge hearing the case. Another state contacted
said that they sometimes referred the parties in paternity actions to a social agency but that cases which came to the court's attention in this connection were usually already known to the Department of Welfare. One state said that they made a referral to a social agency when there was financial need. Another jurisdiction said that their courts rarely referred the parties in a paternity action to any social agency.
CHAPTER V

CONCLUSIONS

The legal provisions which regulate the unmarried parents position and participation in the paternity action, the nature of the proceedings by which paternity is established and the ends for which the proceedings are had reflects the attitude of the state toward the social problem and influence its solution. The Uniform Illegitimacy Act was formulated as model legislation to protect the rights of the three parties to the action with particular emphasis on the welfare of the child.

The laws of those states which have substantially adopted the provisions of the so called Uniform Illegitimacy Act clearly reflect an intent to hold paramount the welfare of the child born out of wedlock, to recognize the responsibility of the state for the protection of the rights and best interest of such child and to consider it the duty of the state to afford better protection to the unmarried mother and to bring to justice the father of her child. 1

All of the Eastern Seaboard States except Virginia have made statutory provision for filiation proceedings which do not exist under common law. Although these states have not adopted the Uniform Act, they have incorporated some of its provisions

1 Breckinridge, The Family and the State, 478
into their paternity legislation. This varies between the states and the lack of uniformity in the laws causes problems in enforcement.

The Model Act provides that the mother can report the facts about paternity to the local authorities. The state assumes an active, helping role in the action which is intended to determine the paternity of the child. Such a provision recognizes the mother's status and responsibility in the proceedings. All of the Eastern Seaboard states except New Jersey, permit the mother to initiate the action. West Virginia, North and South Carolina provide for this by statute. Georgia does so in actual practice. A difference in attitude is noticed in Pennsylvania and Maryland where fornication and bastardy are crimes. In Pennsylvania, anyone who knows the facts of the case may prosecute and this would, of course, include the mother. In Maryland, the mother may bring the complaint but the law also provides that action can be initiated by another. For example, any justice with criminal jurisdiction can cause a woman who is or will become an unmarried mother to be brought before him.

Four of the states in the seven which have paternity proceedings compel the mother to name the father. If she is unwilling to do this, Georgia, South Carolina and Maryland require her to give bond for the child's support. In New Jersey, she can be held in contempt of court. These provisions increase the pressures
active on the unmarried mother and are contrary to the Uniform Act which holds that neither the mother nor the putative father shall be forced to testify. In North Carolina, the statute provides that the mother cannot be forced to testify against her will. However, she cannot be excused from testifying on the grounds of self-incrimination. She is protected by a provision that she cannot be held liable to penalty because of what she has testified.

As is provided by the Uniform Act, all the Eastern Seaboard States gain jurisdiction over the father by means of a warrant. None of these states follow the model acts alternate provision that a summons may be used with the complainant's consent. Neither the model act nor the laws in the Eastern Seaboard region have any provision for voluntary participation by the father. The Model Act, "retains in particular, the coercive or quasi criminal features of the bastardy laws which have been found indispensable in dealing with the irresponsible type of person the father is apt to be." The writer believes that the quasi criminal features in some degree stigmatize the parties to the action and give a punitive aspect to the proceedings. It would seem reasonable to consider the individual

2 Breckinridge, The Family and The State, 474.
circumstances of the case and to allow for the possibility of voluntary participation.

State laws relative to the establishment of paternity should be liberalized so as to make it possible for the father to acknowledge paternity without having to go through the criminal or quasi criminal procedure which is now required by many of these laws. To give him the opportunity to make up his own mind and to register his fatherhood with the court seems a much more dignified method and one conducive to the maintenance of self respect on the part of the mother, the father and in future years the child. A different procedure can be established for dealing with contested cases. 3

The Model Act provides for a preliminary hearing before a judge or magistrate having the power to commit for trial. He can discharge without prejudice or bind over the defendant for trial if the examination shows probable cause. The preliminary hearing as set up in the Model Act seems intended to protect the rights of the defendant and to spare all of the parties an unnecessary court experience. The paternity actions of New Jersey and South Carolina seem to fulfill this intention of the Model Act. In Maryland, the case can be disposed of when the first hearing is before the States' Attorney as he can then dismiss it or file an information for further proceedings. In North Carolina and West Virginia, the justice acts as a committing magistrate and this precludes any disposition of the case at the level of the preliminary hearing. In Georgia, the preliminary

3 Maud Morlock, Establishment of Paternity, 367.
hearing carries unusual weight as the justice not only is impowered to dismiss the parties if this is indicated but he can find the father responsible for support and require him to give bond. It would seem that a paternity action involves many problems such as those dealing with the custody and welfare of children which could only be adequately disposed of in a court of higher jurisdiction, preferably a court of chancery. In New Jersey, the hearing may be in the juvenile court. In North Carolina, the juvenile court hears the case if the defendant is under sixteen. The Uniform Act does not specify the kind of court in which the case shall be heard.

The Model Act is fundamentally support legislation and this is the primary intent of filiation proceedings in the Eastern Seaboard region. This provides for indemnification of the state and recognizes and enforces the child's natural right to support from his parents. North and South Carolina and New Jersey permit a public welfare official to initiate the complaint if the child is or is likely to become a public charge. Such a provision protects the dependent child when the mother is unable or unwilling to act. In New Jersey, only a public welfare official, a representative of the State Department of Child Welfare may initiate action. While this impinges on the mother's right to begin the suit, it channels the action constructively and brings all cases to the official attention of the state.
West Virginia permits the county court to continue the action in its name if the mother withdraws.

Under the Model Act both parents are legally liable for the child's support. This principle is applied in the laws of Pennsylvania, West Virginia, North Carolina and New Jersey. In Pennsylvania and New Jersey, enforcement provisions lie in favor of the mother. It is realistic and equitable to recognize that both parents owe support to their child while safeguarding the mother in collecting support from the father who is more likely to be in an advantageous financial position. The Uniform Act specifies that the parents owe the child necessary maintenance, education and support. This sets up a standard without fixing an amount. Paternity legislation in the Eastern Seaboard States permits latitude in fixing the amount of support so that the court may consider the individual circumstances of the case and may evaluate the changing resources of the parents and the changing needs of the child. New Jersey and Virginia give the child the same status as other children in providing that they are entitled to support from the parents in the same terms as children born in wedlock. The period of time during which the child is entitled to support is one of the most important details connected with its support. Maryland follows the Uniform Act which provides for support until the child is sixteen.

There is variance among the other states ranging from Georgia
which compels support only until the child is fourteen to North Carolina which holds the parents liable until the child is eighteen. When the time during which support is mandatory is not defined by statute it seems advisable to safeguard the child by providing continuing court supervision as is done in West Virginia where the child is under the jurisdiction of the court until age twenty one. Except for New Jersey, all the Eastern Seaboard States make the father's failure to support the child after filiation proceedings, a criminal offense. This follows the Model Act.

Although the Uniform Act was written principally to promote the welfare of children, it is quite circumscribed in its provisions. In writing about the act, Professor Freund said that it was "a support measure pure and simple, leaving other provisions of State Laws concerning children born out of wedlock, legitimation by subsequent marriage, rights of inheritance between mother and child . . . . entirely untouched." These additional provisions are also excluded from the paternity actions of the Eastern Seaboard States. Although it is not mentioned in the Model Act, the need for more active state supervision of the child born out of wedlock has long been felt.

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4 Breckinridge, The Family and the State, 473.
It seems unnecessary to point out that special provision by the state for the care and protection of illegitimate children is needed, they are so frequently dependent, their mortality rate is usually nearly double that of legitimate children, they are very often exposed to a demoralizing environment, the mother is not in a position to protect them or their interests are ignored by her as well as by the father. 5

In New Jersey, which clears all paternity complaints through the State Department of Welfare and in West Virginia, where the courts provide supervision until the child is twenty-one, we see the state acting in a protective role.

Because of the complicated interpersonal relationships which are set up by unmarried parenthood and the many emotional and social problems which the three parties have to face, it would seem beneficial to have a social service department attached to the court hearing paternity complaints. Although this procedure is not followed by any of the Eastern Seaboard States, most of them recognize the need for some kind of case work help and have some provision for social service either through the state department of child welfare or through a family service agency. These services should be extended.

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