The Child with Two Fathers: Updating the Wisdom of Solomon

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King Solomon has long been revered as a man of great wisdom because of his resolution of a dispute between two women over the rights to one child.\(^1\) Although Solomon’s handling of the dispute may lend itself to differing interpretations,\(^2\) the problem and the outcome are clear: two mothers claiming the same child, only one of whom may be awarded all rights to the child. The notion that only one woman is entitled to the child persists today, underlying the exclusive status given to parents: “The law recognizes only one set of parents for a child at any one time, and these parents are autonomous, possessing comprehensive privileges and duties that they share with no one else.”\(^3\) The rights and duties of the parents are ordinarily indivisible as well, in that each parent will have every right accorded to parents.\(^4\)

In Louisiana, the exclusive status of parents has been modified as courts have confronted the issue of dual paternity—a child with two fathers—a modern variation of the Solomon story. Typically, these disputes arise when the natural father and mother conceive a child out of wedlock. The mother is either married to someone other than the father at the time of conception, or she marries someone other than the father after conception but before the child is born. In either situation, the husband of the mother is presumed by law to be the father since the child was either conceived or born during the husband’s marriage to the mother.\(^5\)

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1. The ancient story, recounted in the Old Testament, tells of two women prostitutes who lived in the same house and had each recently given birth. Upon the death of one of the infants, both women claimed the living child. In the absence of any proof, King Solomon decided the issue by ordering that the child be cut into pieces and awarding each woman one of the halves. When one of the women offered to withdraw her claim in order to save the child’s life, Solomon proclaimed her the mother and presented the child to her. 1 Kings 3:16-28.

2. This story has been offered both as an example of an application of the “best interests of the child” test in deciding custody disputes, and as an example of focusing on who the child’s real mother is without considering the child’s best interests. See, Bartlett, Rethinking Parenthood as an Executive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed, 70 Va. L. Rev. 879, 891 n.68 (1984).

3. Id. at 879.

4. Id. at 883.

5. “The husband of the mother is presumed to be the father of all children born or conceived during the marriage.” La. Civ. Code art. 184.
Some cases are initiated by the child, who is attempting to establish filiation (a biological relationship) to his natural father for the purpose of securing some property right, such as a right of inheritance. Other actions to establish filiation, brought by the natural father for the purpose of securing parental rights, particularly visitation rights, have forced recent developments in the law regarding dual paternity. Unlike the child's actions, the rights sought by natural fathers are more often personal in nature, as opposed to proprietary.

There is much debate in Louisiana concerning the concept of dual paternity—both its statutory basis, if any, as well as its practical and legal implications. The focus of this comment will be narrowed to the issues which arise when a natural father attempts to acquire visitation rights with respect to a child who has a legal father under the provisions of Civil Code article 184. The comment will conclude with two proposals for updating Louisiana law. The first is that two fathers, one legal and the other biological, may share rights to one child. Although the husband of the child's mother should remain the legal father unless he timely disavows his paternity, the natural father, in an effort to gain visitation rights, should be allowed to make out a factual basis of paternity. Second, the methods employed by the courts in granting visitation rights, which to date have been unpredictable, should be replaced with uniform guidelines.

I. LOUISIANA STATUTORY AND JURISPRUDENTIAL BASES FOR THE ASSERTION OF AN UNWED NATURAL FATHER'S RIGHTS

The Civil Code sets out a tightly organized framework governing the parent-child relationship. Initially, children are classified as either legitimate or illegitimate, in that "[l]egitimate children are those who are either born or conceived during marriage or who have been legitimated." The child's birth or conception during marriage creates a presumption that the husband of the mother is the child's father, unless

6. Each parental right and obligation, including custody, visitation, inheritance rights, and wrongful death actions, raises different issues in the context of dual paternity.
8. The terms "unwed" and "natural" are used throughout this comment to clarify that the father whose rights are being addressed is both (1) not married to the mother of the child (at least at the time of the conception and/or birth of the child), although he may be married to someone else, and (2) the biological father, related to the child by blood. The term "putative father" has been avoided because its definition is limited to alleged or reputed fathers of illegitimate children. Black's Law Dictionary 1113 (5th ed. 1979).
he disavows such paternity within one hundred and eighty days after he "learned or should have learned of the birth of the child." Herein lies the dilemma: while a father may legitimate or acknowledge his illegitimate child, and thereby establish his biological relationship, there is no express method for a father to filiate with his natural child when the child is classified as the legitimate child of another man. Nor does the Code give a right to anyone except the husband, and sometimes his heirs, to rebut the presumption of the husband's paternity. It is little wonder that the presumption of the husband's paternity has been labelled "the strongest presumption in the law."

The first circuit relied heavily on this presumption in *Burrell v. Burrell.* In that case, the court flatly rejected a mother's request for support from the natural father of her children because the children were born while she was married to someone else. The court said:

> For reasons which should appear obvious, a child can have but one legitimate father. The presumption of legitimacy resulting from birth during the existence of a lawful marriage is absolute and irrefutable (excepting only the right of disavowal under proper circumstances) and precludes application of any rule, principle or theory which would admit of proof that such a child is the offspring of anyone other than the lawful husband of the mother which bore such child.

On the other hand, since *Warren v. Richard,* a legitimate child seeking filiation to his natural father has found the pathway quite easy. In *Warren,* the Louisiana Supreme Court held that a child could recover for the wrongful death of her natural father even though she was the

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14. That legitimization and acknowledgment of an illegitimate child serves both to filiate and classify the child is expressed in the part of article 208 which says that "a child . . . who has not been filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must institute a proceeding under Article 209." La. Civ. Code art. 208 (emphasis added).
15. It may be argued that the word "illegitimate" in the legitimation and acknowledgment statutes can be interpreted as "illegitimate in regard to the claiming father," even though the child is technically "legitimate" by the circumstances of his birth or conception. In fact, the court in *Griffin v. Succession of Branch,* 479 So. 2d 324 (La. 1985), used a similar argument. See note 35 infra and accompanying text. However, this seems to confuse the "classification" of a child with his actual biological paternity.
18. 154 So. 2d 103 (La. App. 1st Cir. 1963).
19. Id. at 107.
20. 296 So. 2d 813 (La. 1974).
legitimate child of another man. One year later, in Succession of Mitchell,\textsuperscript{21} the Louisiana Supreme Court held that the marriage of four children's natural parents after their birth served to legitimate them and thus give them inheritance rights, notwithstanding that the children were born during their mother's marriage to another man, their presumed father. The significance of Mitchell is that: "[I]t changes the rules by which paternity is fixed. The presumption apparently still operates to fix paternity upon a 'legal' father, but now there is an alternative avenue by which paternity may be fixed upon a second man, the 'biological' father.'\textsuperscript{22}

Until 1981, the trend seemed clear: "to allow the true parentage of an individual to be established, if such can be accomplished."\textsuperscript{23} Act 720\textsuperscript{24} of that year, however, which amended Articles 208 and 209 of the Civil Code, emerged as a possible roadblock to the recognition of dual paternity. These articles, which provide the mechanism through which a child filiates to his natural parent, previously stated that, "any child may establish filiation, regardless of the circumstances of conception."\textsuperscript{25} Act 720 amended the articles to state that "a child who does not enjoy legitimate filiation,"\textsuperscript{26} and "a child not entitled to legitimate filiation,"\textsuperscript{27} may filiate. In addition, Act 720 amended another statute\textsuperscript{28} to allow the Department of Health and Human Resources to take direct civil action to establish filiation against an alleged natural parent even when the child has a presumed father. It has been argued that when the changes are considered together, "the discernible legislative intent is that a child presumed to be that of the husband of the mother may not institute a proceeding to establish filiation to another man."\textsuperscript{29}

In Griffin v. Succession of Branch,\textsuperscript{30} the first circuit followed this interpretation. Griffin held that children who wished to establish filiation to a natural father in order to be recognized as his heirs could not do so, since they were the legitimate children of another man and had not rebutted the presumption of legitimacy.\textsuperscript{31} The court observed that the amendments to articles 208 and 209 prevented a "legitimate child from

\textsuperscript{21} 323 So. 2d 451 (La. 1975).
\textsuperscript{22} Spaht & Shaw, supra note 18, at 78-79.
\textsuperscript{23} Thomas v. Smith, 463 So. 2d 971, 975 (La. App. 3d Cir. 1985).
\textsuperscript{26} La. Civ. Code art. 208.
\textsuperscript{27} La. Civ. Code art. 209.
\textsuperscript{30} 452 So. 2d 344 (La. App. 1st Cir. 1984), rev'd, 479 So. 2d 324 (La. 1985).
\textsuperscript{31} Griffin v. Succession of Branch is the subject of an upcoming comment in this review and is not discussed in detail here.
shopping for a more prosperous biological father,"32 and that permitting legitimate children "to bastardize themselves for a larger share of the succession pie would contradict public policy and the 'good order' envisioned in the Civil Code."33

The Louisiana Supreme Court subsequently reversed this holding. The court took the view that children already enjoying legitimate filiation, "are not precluded from instituting a filiation action under that article; they are merely relieved of the obligation to do so by operation of law."34 Further, the court held that it was the legal relationship between a child and his natural father which was significant. Since the children in Griffin were "technically illegitimate"35 as to their natural father, they were "commanded by that article [209] to institute the [filiation] proceeding."36 While conceding that a preclusion of rights to establish dual paternity might protect the family unit, the court asserted that, "it is equally as sound to conclude that the threat of possible future filiation proceedings may also strengthen the marital relationship."37

In Finnerty v. Boyett,38 a case decided before the final decision in Griffin, the trend toward establishing true parentage was continued in the context of an action by a natural father. The second circuit held that the alleged natural father of a child born during the marriage of the mother to another man had a right of action to establish his paternity for the purpose of seeking visitation rights. The court determined that an interpretation of "Art. 184's presumption as irrebuttable would deprive such [natural] fathers of the opportunity to develop a relationship with their children, and thus would deprive them of the limited due process rights afforded them by the Fourteenth Amendment's Due Process Clause."39

In response to the mother's contention that the paternity action would bastardize a child who had previously enjoyed legitimate filiation, the court stated:

[An avowal action is not an attempt by the natural father to exercise the presumed father's right to disavow paternity. The two actions are distinct and separate. The disavowal action breaks the tie upon which legitimate filiation is based, and thus serves to bastardize a child; the avowal action establishes the

32. 452 So. 2d at 347.
33. Id.
34. 479 So. 2d at 327 (emphasis by the court).
35. Id. at 328.
36. Id.
37. Id.
38. 469 So. 2d 287 (La. App. 2d Cir. 1985).
39. Id. at 292.
existence of a tie not previously recognized, and thus serves to establish true filiation.40

The court continued with a perplexing discussion of filiation and legitimation actions. Implicit in this discussion was an acknowledgment by the court that the Code does not resolve the child's status after a Finnerty-type paternity action. The court concluded that, "[i]n light of this state's strong and deeply-rooted policy of avoiding the bastardization of innocent children . . . we hold that allowing the father in the instant case to establish his child's true filiation does not bastardize the child, who remains the legitimate child of her present father."41

As a result of Finnerty and Griffin, the trend of dual paternity has gathered new strength in Louisiana.42 However, the current methods employed by the courts in establishing dual paternity, particularly when a suit is brought by a natural father, present a confusing and possibly erroneous mixing of classification processes (establishing legitimacy or illegitimacy) and filiation actions (establishing biological relationships). In Finnerty, the court allowed the natural father to establish his paternity by means of an "avowal action,"43 but the nature of this action was not explained, although the court did make comparisons between the "avowal action" and a father's actions of acknowledgment and legitimation of his illegitimate child. In Griffin, the Louisiana Supreme Court labelled the children "technically illegitimate"44 as to their natural father, and implied that the natural father could have legitimated the children under Article 198 or formally acknowledged them under Article 203.45

In two earlier cases,46 Louisiana courts properly awarded visitation rights to one unwed father and the right to seek visitation to another. Nevertheless, in those cases, too, the methodology was suspect. In Taylor v. Taylor,47 the third circuit addressed an action by a natural father to be recognized as the father of two children. At the time of the suit, the plaintiff and the mother of the children were married but had

40. Id. at 293.
41. Id.
42. This trend is limited to the context of civil actions. The Louisiana Supreme Court recently addressed the effect of the Article 184 presumption of paternity in a criminal neglect of family suit. The court concluded that the presumption could not be used in the criminal prosecution since such use would unconstitutionally "relieve the state of its burden of proving every essential element of the crime beyond a reasonable doubt." State v. Jones, 481 So. 2d 598 (La. 1986).
43. 469 So. 2d at 293.
44. 479 So. 2d at 328.
45. Id.
47. 299 So. 2d 494.
separated. The children had been conceived by them during the mother’s previous marriage to another man.

The court held that since there had been no disavowal action by the first husband, the natural father had no right of action to demand recognition as the father of the children. Despite this denial, the court reached a just result by finding that the natural father did have a right of action to seek visitation rights, based upon the facts of the case and the best interests of the children. The court concluded:

Plaintiff still remains a legal stranger to these children because legislation, policy, and precedent demand that justice turn a blind eye to his pleading to be recognized as the legal father. These factors do not, however, require that we become deaf and speechless as well. Legal fictions and presumptions need not extend beyond their necessary and useful sphere.\(^4\)

*In re Murray,*\(^49\) a fifth circuit case, involved a situation in which the alleged natural father, a disabled veteran suffering from amnesia and partial paralysis, filed suit to regain custody of his child from his sister and her husband, who had refused to return the child to the plaintiff after a visit. The natural mother had died, and her husband, the presumed father, did not want custody of the child. The court denied custody to the alleged father in light of the presumption that someone else was the father and awarded custody to the sister, based on a determination of the child’s best interests.

The court did grant the natural father visitation rights. It concluded that he had a legal relationship to the child as a result of his “judicial admission” of paternity.\(^5\) In granting visitation, the court cited *Taylor,* and concluded that such a finding would be in the best interests of the child.\(^6\) Thus, the court took both approaches: the father was vested with a legal relationship with the child, but the awarding of visitation rights was based on a determination of the child’s best interests. The court did not define the extent of the legal relationship, except to say that it did not give rise to the right to custody.\(^7\)

Overall, Louisiana courts have reacted fairly to the natural father’s assertion of rights, but have had to devise creative strategies to obtain just results. The common thread evidenced in the various opinions has been the courts’ concern for protecting the child’s best interests. In *Taylor,* the court found no statutory authority for the natural father’s rights and looked instead to the facts of the case and the child’s best

\(^48\) Id. at 496.
\(^49\) 445 So. 2d 21.
\(^50\) Id. at 24.
\(^51\) Id. at 25.
\(^52\) Id. at 24.
interests. The court in Finnerty apparently used a statutory basis for recognizing the father's rights, but the particular statute used to establish filiation is not clear. Once paternity was established, the actual determination of whether the father would be granted visitation rights turned on a determination of the child's best interests. In the case of In re Murray, the court used both approaches—the best interests of the child and the father's admission of paternity—as the bases for the assertion of parental rights. Again, what the court meant by "judicial admission" is not apparent. Finally, in the latest comment on dual paternity in Louisiana, the Louisiana Supreme Court in Griffin implied that a natural father can legitimate or formally acknowledge his children even if they are already classified as legitimate, since the children are "technically illegitimate" as to the natural father.

The current need to rely on the court's good will and creativity for the just resolution of such disputes should be replaced with clear statutory authority for allowing the natural father to make out a factual basis of paternity from which he may derive visitation rights. In addition, courts should be given a framework of guidelines for determining whether the father should, in fact, be accorded visitation rights once he has successfully established his parental status. Careful analysis of the many issues which arise in these disputes is necessary when creating such a statutory scheme. Significant among these issues is the father's right to due process.

II. THE DEVELOPMENT OF THE UNWED NATURAL FATHER'S DUE PROCESS RIGHTS

A. Decisions of the United States Supreme Court

Although the Supreme Court has not yet confronted a case involving the particular factual situation under analysis, the Court's opinions regarding the rights of unwed fathers in matters involving their illegitimate children should provide a framework for the analysis of such rights when the child is considered legitimate under state law.

In Stanley v. Illinois, an unwed father attacked as unconstitutional a statutory scheme which declared that children of unmarried fathers were to be declared wards of the state upon the death of the mother without a hearing on the father's fitness. The Court held that the denial of a hearing violated the father's right to due process. In recognizing

53. 469 So. 2d at 296-97.
54. 405 U.S. 645, 92 S. Ct. 1209 (1972).
55. The Court's holding that the scheme also violated Stanley's right to equal protection of the law will not be discussed, as the due process analysis is sufficient for the purposes of this article.
this right, the Court observed that a hearing is not required in all cases of government impairment of private rights. Instead, the procedures required depend upon the nature of both the governmental function and the private right. The Court characterized the father’s private interest as “that of a man in the children he has sired and raised, [which] undeniably warrants deference and, absent a powerful countervailing interest, protection.” The state’s interest in caring for the children would be of little weight if the father was found to be a fit parent.

The facts of *Stanley* differ from the situation under analysis, in that the plaintiff in *Stanley* faced removal of the children from his custody, while the natural father of a child with another “presumed” father has usually never had custody. In addition, the plaintiff faced no countervailing private interests, while the natural but unwed father of a legitimate child must assert his rights in opposition to the formidable interest in the integrity of a family unit, which has been accorded much deference by the Court. Nevertheless, *Stanley* does offer a framework for analyzing the rights of natural fathers. The Court extended constitutional protection to the unwed father in regard to his relationship with his illegitimate children by imposing procedural safeguards, and indicated that the use of a presumption in determining parental rights will be subject to close scrutiny. The presumption embodied in the statutory scheme in *Stanley* was that unwed fathers are unfit to raise their children. The Court condemned this approach:

> Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.

The Court did not clearly indicate which unwed fathers are to be protected, nor the extent of due process protection accorded to other actions affecting the unwed father’s parental interests.

In succeeding cases, the Court refined some of the issues unanswered in *Stanley*. *Quilloin v. Walcott* presented a situation in which the

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56. 405 U.S. at 651, 92 S. Ct. at 1212.
57. Id.
58. Id. at 656-57, 92 S. Ct. at 1215.
59. At one point, the Court stated the protected interest to be “that of a man in the children he has sired and raised,” 405 U.S. at 651, 92 S. Ct. at 1212, but later broadened this language in a footnote to extend the opportunity for a hearing “to unwed fathers who desire and claim competence to care for their children.” 405 U.S. at 657 n.9, 92 S. Ct. at 1215-16 n.9.
unwed father's rights required review in the face of substantial countervailing interests. There, the Court upheld the constitutionality of Georgia's adoption laws which required only the mother's consent for adoption when the child was illegitimate. The Court held that in this particular case the father's due process rights were not violated by a trial court determination based on the best interests of the child. Over a period of eleven years, the father had neither sought custody of his child nor taken steps to support or legitimate the child. Significantly, the adoption resulted in full recognition of an existing family unit, "a result desired by all concerned, except [the father]." 61

In *Caban v. Mohammed*, 62 the Court addressed the substantive rights of an unwed father who faces the obstacle of an existing family unit, but has himself participated in the rearing of the child. Here, a natural father of an illegitimate child challenged a New York statute which allowed an unwed mother but not an unwed father to block the adoption of an illegitimate child. The stepfather of the child wished to adopt his wife's children, and the statute did not allow the father to contest the adoption. The Court found the statute unconstitutional on equal protection grounds, and thereby avoided the issue of the father's substantive rights. Nevertheless, Justice Stewart's dissenting opinion is instructive:

Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring. The mother carries and bears the child, and in this sense her parental relationship is clear. The validity of the father's parental claims must be gauged by other measures. By tradition, the primary measure has been the legitimate familial relationship he creates with the child by marriage with the mother . . . . In some circumstances the actual relationship between father and child may suffice to create in the unwed father parental interests comparable to those of the married father. 63

This distinction between a "biological" relationship and an "actual" relationship was the central issue in *Lehr v. Robertson*, 64 the Court's most recent treatment of the rights of unwed natural fathers. In *Lehr*, the father of a child born out of wedlock contested the validity of an adoption order in favor of the child's stepfather, rendered without giving the father advance notice of the adoption proceedings. The father had not entered his name in New York's putative father registry, which, under the statutory scheme, would have entitled him to notice. He had filed a paternity petition one month after the adoption proceeding com-

61. Id. at 255, 98 S. Ct. at 555.
63. Id. at 397, 99 S. Ct. at 1770-71 (Stewart, J. dissenting).
64. 463 U.S. 248, 103 S. Ct. 2985 (1983).
menced. The trial judge knew of the pending paternity action, but signed the adoption order anyway.

The Supreme Court held that the father's rights had not been violated, since he had never had a significant personal relationship with the child, and since the law had provided the father with a mechanism for the protection of his relationship with the child, of which he simply failed to take advantage.

Although the technical aspects of the holding may be questioned, the Court properly emphasized the importance of the presence or absence of an "actual" relationship with the child:

The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie.

The principles extracted from these Supreme Court cases provide a basis from which the substantive and procedural rights of an unwed natural father of a legitimate child may be analyzed. In terms of substantive rights, the natural father has little protection without the existence of an "actual" relationship with the child, especially since his rights must be weighed against the rights of the family unit—the mother, the presumed father, and the child. The obstacle may be greater if the family is intact, and the father's assertion of rights can be viewed as a disruption of the family's stability. On the other hand, in a situation where the natural father has established an "actual" relationship with the child, the existence of an exclusive family unit becomes questionable. In such a setting, the denial of the father's rights could be equally disruptive to the family unit, in that the child may have become psychologically attached to the father.

Though not accorded the same significance as an "actual" relationship in determining the extent of parental rights, the biological relationship between the natural father and child is important as a basis for establishing parental status, from which an actual relationship may

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65. Justice White's dissent argued that a paternity petition should be afforded the same recognition as an entry in a putative father registry, which is itself a notice of the father's intent to file a paternity action. Id. at 274-75, 103 S. Ct. at 3000-01 (White, J. dissenting).

66. Id. at 262, 103 S. Ct. at 2993-94.

67. See infra text accompanying notes 106-120.
develop and parental rights may be asserted. Lehr indicates that while a father’s rights are based on his actual relationship with the child, a state may be required to afford him some opportunity to establish that relationship.\textsuperscript{68} The Court would also view unfavorably the use of a presumption rather than a hearing on the merits to determine whether a father merits the opportunity.\textsuperscript{69}

**B. State Supreme Court Decisions**

Three state supreme courts have confronted the problem of a natural father seeking a determination of his parental rights in the face of a presumption that the mother’s husband is the father of the child.

In *R. McG. v. J. W.*,\textsuperscript{70} the Colorado Supreme Court held that a statutory scheme establishing a presumption of paternity in the mother’s husband which could be rebutted by the mother, but not by the alleged natural father, denied equal protection. The court allowed the natural father standing to establish his paternity. The concurring opinion analyzed the alleged father’s rights based on due process grounds, weighing his interests against the state’s interest in protecting the family unit. In *R. McG.*, the child was conceived and born during the marriage of the mother and the husband, and the marriage was intact at the time of suit. Blood tests failed to exclude the plaintiff as the natural father, and in a sworn codicil to her will, the mother acknowledged that the plaintiff was the child’s father. Nevertheless, it was the fact that the plaintiff visited the child almost daily and developed a close relationship with him, that swayed the concurring opinion. The concurrence concluded that the alleged father had the due process right to assert his paternity, observing that if he had “not made continuing efforts to maintain contact with the child and indicated his desire to support the child, the state’s interest would prevail.”\textsuperscript{71}

The California Supreme Court addressed the problem in *Michelle W. v. Ronald W.*\textsuperscript{72} when an alleged natural father and his daughter brought an action to establish his paternity. The trial court held that the plaintiffs could not rebut a statutory presumption of paternity in favor of the mother’s husband, and the California Supreme Court affirmed.

The child in this case was conceived and born during the marriage of Judith and Ronald. After the child was born, the couple remained

\textsuperscript{68} 463 U.S. at 262-65, 103 S. Ct. at 293-95.
\textsuperscript{69} Cf. Stanley, 405 U.S. at 656-57, 92 S. Ct. at 1215.
\textsuperscript{70} 615 P.2d 666 (Colo. 1980).
\textsuperscript{71} Id. at 673 (Dubofsky, J., concurring).
\textsuperscript{72} 216 Cal. Rptr. 748, 703 P.2d 88 (Cal. 1985), appeal dismissed, 106 S. Ct. 774 (1986).
married for several years before obtaining a divorce. Judith then married the alleged father. She was given custody of the child, and Ronald was granted visitation rights. The alleged father together with the child then brought a paternity action.

To determine the due process rights to be accorded the child and the alleged father, the court weighed their interests against the interests of the state. The court concluded that the interest of the child and the alleged father was merely an "abstract interest in establishing paternity," since they were already living together in a family unit. Therefore, the interests of the state in preserving familial stability prevailed. The dissent pointed out that this interest was hardly abstract on the alleged father's part, since any right he had to a relationship with the child would exist only as long as his marriage to her mother continued. In addition, the dissent argued that the familial stability which was the focus of the state's interests had already been disrupted by the divorce.

Since the alleged father was actually living with his child, his ability to have a personal relationship with his child was not an immediate issue, and the court was not forced to analyze the problem very closely. Thus, the majority opinion in Michelle W. provides little guidance for analyzing the father's due process rights.

Most recently, the Supreme Court of Massachusetts confronted the problem in P.B.C. v. D.H. In that case, a child was conceived four months after the mother filed for divorce, but while she was still legally married. The child was born the day after the divorce was finalized. The alleged father was allowed access to the child for more than a year after the child's birth. He then filed this suit, requesting that he be declared the father and be granted custody or visitation rights. Soon after suit was filed, the mother and her previous husband were remarried.

Unlike in the other cases, no statutory presumption was at issue. Instead, the court extended existing case law, holding "that a child conceived by a married woman is presumed to be the child of the man to whom the mother was then married even if the mother and the husband are divorced at the time of the child's birth." The court further concluded that the plaintiff had neither a constitutional nor a common law right to a judicial determination of whether he was the natural father, in light of the state's strong interests in protecting children and encouraging stable family life.

73. Id. at 752, 703 P.2d at 92.
74. The court also found that the denial of this action did not violate equal protection. See id. at 754, 703 P.2d at 94, 95.
75. 483 N.E.2d 1094 (Mass. 1985).
76. Id. at 1096 (emphasis by the court).
77. Id. at 1097.
In summary, the concurring opinion in *R. McG.* points to a distinction, reminiscent of Justice Stewart's dissent in *Caban* and the majority opinion in *Lehr*, between the biological relationship and the actual relationship of the father and child as the crucial factor in determining the father's substantive rights. Such a distinction reflects a growing trend toward viewing the natural father's rights with more concern. The natural father's interest in fostering an existing strong actual relationship with his child may prevail over a presumption of paternity in favor of the husband of the child's mother, even though both the conception and birth occurred during the mother's marriage to the husband, and even though that marriage remains intact. The dissent in *Michelle W.* brings out the compelling realization that without legal standing of his own, the natural father's ability to have a relationship with his child depends on the mother's wishes alone. And finally, *P.B.C.* bucks the trend toward increased substantive rights for the natural father, at least when there are strong countervailing interests in preserving an intact family unit. The court in *P.C.B.* completely discounted the natural father's rights in such a situation:

> Ordinarily an unwed father has a legally protectable interest in his children, and . . . is entitled to establish that he is their natural father. But it does not follow, and *Stanley v. Illinois* . . . does not require, that, in all circumstances, a man claiming to be the father of a child conceived while the child's mother is married to another man is constitutionally entitled to be heard on the question of paternity.  

Yet it is possible, and often more practical, to resolve such clashes of interests without entirely excluding the interests of the natural father or of any one party to the dispute. While an accordace of rights to the natural father should not pre-empt valid concerns of the other parties, neither must these other concerns be upheld at the expense of the father's rights.

III. THE PROBLEM OF COMPETING INTERESTS

In *Finnerty v. Boyett*, a child was conceived by the mother and the plaintiff. Subsequent to the conception but prior to the child's birth, the mother married another man, who was aware of her pregnancy and

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78. See the discussion of the United States Supreme Court cases supra accompanying notes 54-69.
79. 483 N.E.2d at 1097.
80. 469 So. 2d 287 (La. App. 2d Cir. 1985).
of the child’s true paternity. The child was born during this marriage, and therefore the husband was presumed to be the father.

Three years later, the natural father brought an action, seeking both recognition of his paternity and visitation privileges. He alleged that he had openly acknowledged the child from the time of her conception, had sent child support, and had been allowed visitation privileges until just prior to the suit. The mother denied that she had allowed the natural father visitation privileges and denied receiving any support for the child from him. The husband testified that, although people in the community knew he was not the child’s natural father, he treated her as if she were his own child.

Finnerty’s facts provide a useful scenario through which the competing interests in these disputes may be identified. A fair determination of the natural father’s rights requires careful examination of these interests.

The natural father’s interest presents a very real concern: without an affirmation of his paternity, he has no clear basis for acquiring visitation rights, and thus no possibility of maintaining a personal relationship with his child. While the extent of his actual relationship with the child may be disputed, whatever relationship he has been able to establish may be terminated at will by the mother and husband unless his rights are recognized. It may be argued that the natural father could have married the mother in the first place, and secured parental rights to the child. However, if marriage provides the only source of rights for a natural father, his rights again hinge entirely on the mother’s wishes. She can effectively exclude the father by refusing to marry him.

Although the father’s establishment of a personal relationship with the child may be impeded, he does have a parental obligation of support. The Department of Health and Human Resources is authorized to take direct civil action against the natural father to establish his paternity and to compel payment of child support, even when the child has a presumed, legal father. Thus, in answer to the argument that the father should have used better judgment and avoided the pregnancy altogether, this same argument could be made with regard to the mother; only the results differ. The mother is vested with all the rights and the obligations of parenthood, while the father receives only the obligations.

Finally, it may be noted that the natural father in Finnerty brought the action three years after the child’s birth. While three years is a substantial length of time, especially in the child’s eyes, the father allegedly had been allowed to visit the child until that time, and brought

81. Though not discussed in the majority opinion, the dissent notes that the mother had first sought marriage with the natural father, but was rebuffed. Id. at 297.
suit only after the mother discontinued the visits. Assuming the truth of the allegation, the inference may be drawn that he truly desired a relationship with the child and abstained from bringing the suit so as to avoid harassing the family.

The mother's interest is to maintain the integrity of her family unit. She has accepted responsibility for the child since birth, apparently without seeking direct child support from the father. She wishes to avoid the potential disruption to her family which might result if the natural father establishes visitation rights. Besides the physical disruption caused by his presence during visits, the father's presence may also pose a threat to the mother's relationship with her husband, the father serving as a constant reminder of their former relationship. In addition, the relationship between the mother and child may suffer from the tension created by the visits. Finally, the mother may be concerned that the establishment of the natural father's paternity would effectively bastardize the child, notwithstanding the legitimate circumstances of his birth.

These concerns may lose significance if it is shown that the father has established an actual relationship with the child by visiting the child regularly and contributing to the child's support. If so, it may be harder to view the father's assertion of rights as an intrusion, since the family may have already adjusted itself to include the father. The response to the mother's fear that her child will be bastardized is that the community is already aware of the child's true paternity through those actions of the father which created the actual relationship.

Most significant to the mother, regardless of the nature of the existing relationship between the father and child, is that the natural father's success in the action will wrest control of the relationship away from her and place it with the court. Even though she may have allowed visitation in the past, she was in a position to control the degree of intrusion. If visitation rights are granted to the father, her family's integrity is, to some extent, at the mercy of the court.

Another interest worthy of consideration is that of the husband in his status. If a successful paternity action by the father serves to entirely rebut the presumption of Article 184, it would be as if the husband had disavowed paternity, leaving him with no parental status whatsoever. If, instead, the father's paternity rebuts only the presumption that the husband is the biological father, dual paternity will result. The husband will be the legal father, and the natural father will be the biological father, but the rights and obligations attaching to each are not clear.

The husband's other interests are similar to the mother's, with one exception: whereas the mother has a legally imposed responsibility for her child, the husband voluntarily assumed his role as father, with all of its obligations as well as all of its rights. To pre-empt his assumed role as father would be unjust.
The state's interest parallels that of the mother and the husband. That protection and promotion of the family unit is a legitimate state interest has been frequently acknowledged by the United States Supreme Court.

The child's interests include a right to a family life free from disruption, as well as a personal right to continue in a relationship with her natural father. If the child has no existing relationship with her father, allowing the father visitation rights may intrude on her rights to privacy and cause emotional confusion. If an actual parent-child relationship does exist between the two, a successful paternity action and assertion of visitation rights by the natural father may be the only available option for a continuation of that relationship.

When property rights, as opposed to personal rights, are at stake, a mother is more likely to assert her child's biological relationship to a natural father in order to provide for the child's welfare. As discussed earlier, the Department of Health and Human Resources will similarly take action to identify the father and enforce the child's right to financial support as a protection against public dependency.

In contrast, the child's personal interests in a relationship with her natural father will not likely be championed by a mother who has denied the father access to his child. A paternity action serves as a basis for asserting the personal right to a parent-child relationship, making it as vital to the child as it is to the father. Indeed, it could be argued that the father should be allowed to bring the suit on behalf of the child as well as on his own behalf.

Finally, the child has an interest in the determination of her true parentage. Though not a compelling interest in the Finnerty scenario, where the biological parentage is not disputed, an accurate knowledge of biological heritage is increasingly vital to a child for its significance in medical treatment.

In Finnerty, the competing interests were resolved in the natural father's favor. The court held that the natural father had a right of action to establish his paternity, concluding that denying him of the right to rebut the presumption of Article 184 would deprive him of his right to due process. The court noted that an existing actual relationship between the natural father and child is more significant than the biological connection, but that "[n]evertheless, the biological relationship does entitle a natural father to at least some opportunity to develop a

83. 469 So. 2d at 289.
84. See, e.g., Stanley, 405 U.S. at 651, 92 S. Ct. at 1212.
85. For an extended discussion of the best interests of the child, see infra text accompanying notes 108-120.
personal relationship with his child, and thus to assume a responsible role in the future of his child." However, the majority asserted that the natural father's interests could not be recognized to the exclusion of the interest of the mother and husband. "Rather, both of these competing liberty interests are entitled to recognition, since both may coexist compatibly as in the more commonly encountered situation of visitation by noncustodial parents following divorce and remarriage." The child's best interest was addressed, not in regard to the paternity action, but as the central factor to be considered in determining visitation rights.

The second circuit resolved the dilemma of two fathers raising claims to one child admirably; the court bypassed easy answers in the form of legal presumptions in favor of giving careful consideration to complicated interests. Dual paternity results because both men are accorded the status of father to the child. Nevertheless, the court inaccurately analogized the new situation to post-divorce visitation by the noncustodial parent when the custodial parent has remarried. The custodial parent's new spouse has no parental rights of his own, while both men in a dual paternity context are vested with paternal status.

In dual paternity situations resulting from the child's assertion of inheritance or wrongful death claims, the problem of defining each father's role is not pressing since one of the fathers has died. When dual paternity results from an assertion of personal interests, however, the court's decision impacts heavily on both fathers. While the court in Finnerty did not delineate which rights and obligations will be accorded to each father, the opinion asserts that their interests can be served simultaneously. Indeed, the fair and practical resolution of the problem calls for a sharing of parental rights.

IV. Sharing Parental Rights

The exclusive status of parenthood is premised on the notion "that parents raise their own children in nuclear families." The nuclear family, however, has lost its prominence in society, due to the multitude of divorces, remarriages, and other living arrangements that are now commonplace. Twenty-five per cent of United States children under the age of eighteen did not live with both natural parents in 1982, and this figure is estimated to grow to forty percent by 1990.

87. 469 So. 2d at 292.
88. Id.
89. Id.
90. Bartlett, supra note 2, at 879.
91. Fifty-eight per cent of all black children in the United States did not live with both parents. Id. at 880, 881.
As a result of these changes in living patterns, children often form attachments to adults other than their legal parents. These psychological bonds, such as those between stepparents and stepchildren and between unwed fathers and their children, are afforded little, if any, legal protection, since the exclusive rights to the child are vested in the legal parents. Yet a child’s need for continuity and security in his personal relationships may point to the need to legally protect these relationships.

The relationship between a child and his stepparent is a type of extra legal parent-child relationship which has compelled a form of judicial recognition. In *Gribble v. Gribble*, a stepfather sought visitation rights with his ex-wife’s son as part of a divorce settlement. He claimed that he had treated the boy as his own son, had lived with him since he was two months old, and felt very close to him. In addition, he offered to pay fifty dollars a month into a trust fund for the child. Although the pertinent statute which allowed for the granting of visitation rights to “parents, grandparents and other relatives” did not include stepparents, the Utah Supreme Court construed the statute to include stepparents who had assumed the status of *in loco parentis*. If the stepfather was found to have assumed this status, said the court, his rights to the child would be that of a legal parent. The stepfather had a due process right to a hearing to determine whether or not he stood *in loco parentis* to his stepchild. If the relationship was found to exist, he had a right to another hearing to determine his right to visitation and whether that right should be conditioned on a requirement of child support.

A similar case came before the Alaska Supreme Court in *Carter v. Broderick.* Again, a stepfather sought the right to visit his ex-wife’s child after a divorce. The court applied the doctrine of *in loco parentis* to extend a statute authorizing visitation to include the stepfather, observing that “those relationships that affect the child which are based upon psychological rather than biological parentage may be important enough to protect through custody and visitation, to ensure that the child’s best interests are being served.”

The handling of the stepfathers’ interests in these two cases provides a clear example of non-exclusive parenthood, a framework which “permits recognition of de facto parenting relationships without severing the child’s relationships with natural or legal parents.” Under this approach, the legal parents no longer hold exclusive rights to the child;

92. 583 P.2d 64 (Utah 1978).
93. Id. at 66.
94. 644 P.2d 850 (Alaska 1982).
95. Id. at 855.
96. Bartlett, supra note 2, at 944.
rather, the *de facto* and legal parents share at least the visitation rights.

In the context of visitation, the heart of a personal relationship between a child and a noncustodial parent, such a sharing of rights could provide the most equitable result amid a sea of competing interests. Nevertheless, three principles, extracted from the stepparent cases, are probably essential to the workability and fairness of such a solution. First, an actual relationship should exist between the adult and the child—a *de facto* parent-child relationship. Second, the adult must show a willingness to accept some responsibility for the child, possibly a child support obligation. According to the court in *Gribble*, "Loco parentis does not envision that a stepparent be permitted to enjoy the rights of a natural parent without also accepting the responsibilities that are incurred." Finally, awarding visitation rights must be in the best interests of the child.

These guidelines echo the distinction between an actual and a biological relationship used by some courts in determining the substantive rights of an unwed natural father. As in these stepparent cases, the just resolution of disputes in which an unwed father wishes to establish his paternity for the purpose of obtaining visitation rights may often result in dual paternity and a sharing of parental rights. The husband remains the legal father, but the natural father is allowed to establish his paternity. As the biological father, he may be able to assert a right to visit his child. Whether or not the court awards him this right, however, should depend on various considerations over and above the biological connection which accorded him the right to establish his paternity. Guided by the stepparent cases, the court should consider the father's relationship with the child, his willingness to assume responsibility, and the effect upon the child of such an award.

V. VISITATION RIGHTS

A. The Nature of Visitation Rights

The term "'[p]arental rights' . . . [is generally] used to refer specifically to a bundle of obligations and rights that are recognized in a legally cognizable parent-child relationship." These rights may, however, be divided into two categories: (1) the formal legal aspects of the parent-child relationship, such as the right to recover for the wrongful death of the other, or the right to inherit from each other's estates; and (2) the associational aspects, the sharing of love, companionship,

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97. See infra text accompanying notes 102-105.
98. 583 P.2d at 68.
and heritage.\textsuperscript{100} It is the "'[associational] elements [which] imbue the parent-child relationship with its special character and, accordingly, elevate it to its especially protected legal position.'"\textsuperscript{101}

In \textit{Stanley}, the United States Supreme Court stated that, "the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.'"\textsuperscript{102} Because visitation provides the only means by which a noncustodial parent may maintain his relationship with the child, the right of visitation represents the very essence of parental rights.\textsuperscript{103} In fact, in Louisiana, visitation is viewed as a form of custody\textsuperscript{104} and as "a natural right [of a noncustodial parent] with respect to his children."\textsuperscript{105}

Moreover, visitation is important to the child in that "[d]enial of visitation can cause a child to feel rejected and confused,"\textsuperscript{106} if the child has enjoyed contact with the parent beforehand. Visitations provides the avenue for maintaining personal ties with a noncustodial parent; thus the purpose of visitation is to benefit and protect the child as well as the parent.\textsuperscript{107}

\textbf{B. Visitation and the Best Interests of the Child}

A child's interests are greatly protected by the courts, due to the assumption that children are "incomplete beings who are not fully competent to determine and safeguard their interests."\textsuperscript{108} Therefore, in determining visitation rights, "[t]he rights of any parent are always subservient to the best interests of the child."\textsuperscript{109}

Though the goal is worthy, a determination of "best interests" is complex. In past years, family life was generally more intact. As a result, "the parents' interest in raising the child and the child's interest in remaining with his parents normally coincide[d], and the law ... [did] not then enter the private realm of the family."\textsuperscript{110} Today, increased

\begin{itemize}
  \item \textsuperscript{100} Id. at 131.
  \item \textsuperscript{101} Id.
  \item \textsuperscript{102} 405 U.S. at 651, 92 S. Ct. at 1212, citing Justice Frankfurter's concurring opinion in Kovacs v. Cooper, 336 U.S. 77, 95, 69 S. Ct. 448, 458 (1949).
  \item \textsuperscript{103} Novinson, supra note 99, at 131.
  \item \textsuperscript{104} Maxwell v. LeBlanc, 434 So. 2d 375, 377 (La. 1983).
  \item \textsuperscript{105} Id. at 376.
  \item \textsuperscript{106} Note, Visitation Beyond the Traditional Limitations, 60 Ind. L. J. 191, 194 (1984).
  \item \textsuperscript{107} Id.
  \item \textsuperscript{108} J. Goldstein, A. Freud, and A. Solnit, Beyond the Best Interests of the Child 3 (1973).
  \item \textsuperscript{109} Maxwell, 434 So. 2d 377.
  \item \textsuperscript{110} Bodenheimer, New Trends and Requirements in Adoption Law and Proposals for Legislative Change, 49 S. Cal. L. Rev. 10, 29 (1975).
\end{itemize}
family instability has resulted in contrasting interests. "Often what [either parent] . . . wants has little relationship to the child's needs or expressed desires, particularly in bitterly contested divorces." The court is often faced with the difficult task of focusing on the child's needs amid competing parental concerns and contradictory advice from various child experts.

To begin with, the biological connection between the unwed father and child carries little significance in determining the child's interests in visitation. Although important for medical reasons and a valid reason for allowing the father an opportunity to establish paternity, biology is not significant in visitation:

Children have no psychological conception of relationship by blood-tie until quite late in their development . . . . What registers in their minds are the day-to-day interchanges with the adults who take care of them and who, on the strength of these, become the parent figures to whom they are attached. Thus, a court would look to the child's existing personal relationships to determine whether it is in the child's best interests to continue or discontinue them.

Two areas of concern in this determination are the child's need for continuity and the problem of confused loyalties when noncustodial parents are allowed to maintain contact with the child. A child needs continuity, but what type of continuity? Some child psychologists assert that visits with noncustodial parents for the purpose of maintaining a relationship may be a source of discontinuity. The argument is that "children have difficulty in relating positively to, profiting from, and maintaining the contact with two . . . parents who are not in positive contact with each other."

Similarly, granting the father visitation rights may result in conflicting loyalties for the child, or the child may not have the ability to cope with multiple relationships. Some experts recommend that, even in divorce situations, the custodial parent be given the right to decide when and if the noncustodial parent should be allowed to visit the child.

In contrast is the more plausible assertion that if a father has established a relationship with the child, a denial of this access to the child may unsettle and confuse the child. Moreover, "recent research

113. Id. at 38.
114. Id.
115. Id.
does not bear out the conclusion that severing relations with parents . . . will resolve a child's loyalty conflicts. In fact, loss of contact with absent parents is more likely to aggravate those problems."

In interviews with children of divorced parents, the "children expressed the wish for increased contact with their fathers with a startling and moving intensity,"" which "persisted undiminished over many years, long after the divorce was accepted as an unalterable fact of life." Even when the visitation exacerbated hostilities between their parents, "most of the youngsters managed to shake off the bad or anxious beginnings and enjoy the actual visit itself."

Protecting the child's best interests calls for flexibility in considering the child's situation, in light of today's changing composition of family groupings:

American society is no longer composed of neat nuclear units of biological families. If children can adjust to stepfathers, adoptive fathers, live-in fathers, intermittent fathers, and absent fathers, they can adjust to having two fathers, both of whom want them—a biological one with visitation rights and a 'psychological' one with whom they live.

C. Visitation Guidelines and Restrictions

Any guidelines developed for determining when to give an unwed father visitation rights must be viewed against a backdrop of established guidelines for deciding visitation disputes generally. In addition, it is important to realize that visitation can take many forms. Thus, even if the court accords visitation rights to a noncustodial parent, the visits may be restricted in many ways and for many reasons.

Two fundamental rules in visitation cases in Louisiana are explained in *Edelen v. Edelen*: (1) the paramount consideration in determining visitation rights is the best interest of the child; and (2) the trial court has great discretion in the area and his determination will not be disturbed on appeal in the absence of manifest error. Furthermore, each individual case is dependent upon its own facts.

116. Bartlett, supra note 2, at 909.
117. Wallerstein and Kelly, supra note 111, at 134.
118. Id.
119. Id. at 142.
121. 457 So. 2d 171 (La. App. 2d Cir. 1984).
122. Id. at 175.
It is also important that when one parent is seeking visitation rights, "[i]t is the burden of the parent seeking to deny access or visitation . . . to prove that the visitation would not be in the best interest of the child." In Finnerty, the court correctly imposed this burden after the natural father established paternity.

Beyond these requirements, courts deciding visitation cases involving divorced parents have looked to other factors, many of which would be equally applicable in determining the unwed father's rights to visitation. Maxwell v. LeBlanc lists several factors to be used for guidance in visitation cases, including "the love, affection, and other emotional ties existing between the parties and the child, . . . the relationship of the child's mother and father, . . . [and] the effect of visitation upon [the] physical condition of [the] child." Nevertheless, the Louisiana Supreme Court in Maxwell cautioned against a mechanical application of these factors. Instead, it is presumed that continued contact with the noncustodial parent is usually in the child's best interests. Moreover, "a parent is entitled to reasonable visitation rights unless it is proved conclusively that visitation would endanger seriously the child's physical, mental, moral, or emotional health."

The court provided examples of situations in which unwed parents may be denied visitation, despite the presumption that visitation will be in the child's best interests. Such situations include those in which "the duration, nature, and extent of the relationship between the mother and father was not sufficient to warrant recognition of the father's status as a parent," such as when the mother has given birth as a result of a rape, or when the father refused to marry the mother and encouraged her to have an abortion. Unwed parents have also been denied visitation rights when they have shown no interest in the child or when the court has felt that visitation would have harmful effects upon the child.

Even when granted, visitation may take many forms. The parent may be granted "reasonable visitation," to be worked out between the visiting parent and the custodial parent, or very restricted visitation, with times and places specified by the court. Restrictions may take the form of requiring the presence of the custodial parent or limiting the

123. Maxwell v. Leblanc, 434 So. 2d at 378.
124. 469 So. 2d at 297.
125. 434 So. 2d 375.
126. Id. at 378.
127. Id. at 379.
128. Id.
129. Id.
130. Id. at 380.
131. Id.
visits to a few hours.\textsuperscript{132} In \textit{Edelen}, the second circuit let stand a restriction on a noncustodial father's visitation rights which limited the visits to three hours per week because the husband's conduct indicated that he "may be emotionally incapable of properly caring for the child."\textsuperscript{133} The trial judge observed that the father "has a consistent need to control his feelings of anger and has trouble with interpersonal relationships."\textsuperscript{134}

In summary, an unwed father's assertion of visitation rights with his child must be analyzed against a backdrop of existing principles. The trial court has much discretion in making the determination, and the most important factor is whether visitation will be in the best interests of the child. On the side of the noncustodial parent seeking the visitation rights is a presumption that visitation is in the child's best interests, unless the custodial parent establishes that the visits would be detrimental to the child. In \textit{Maxwell}, the Louisiana Supreme Court noted that visitation rights "belong to all parents regardless of illegitimacy of parenthood,"\textsuperscript{135} and in \textit{Finnerty}, the second circuit extended the presumption that visitation will be in the child's best interests to an unwed father seeking visitation with his child, even though the child had a presumed father.\textsuperscript{136}

The principles extracted from the due process analysis within this comment may be superimposed on these visitation guidelines. The actual relationship which the father has with his child is what affords him substantive rights as a parent. If he has only a biological relationship, he should be allowed to make out a factual basis to establish his paternity, but chances are slim that he will be granted visitation rights without an actual relationship with the child. Even with the existence of an actual relationship with the child, the father could still be denied visitation if the court determines that the visits would harm the child. If there is an ongoing relationship, however, continuing visitation will likely be in the child's best interests, since discontinuing the visits will terminate the relationship. If, in addition to an actual relationship, the father displays a willingness to assume some responsibility for the child's well-being, the child's interests are protected even more by allowing visitation.

To limit intrusion into the family unit, the court can restrict the father's visits. Such limitations on the visits may effectively work as a compromise between the rights and interests of the biological father and those of the legal father and mother.

\begin{footnotes}
\item[132] Note, Visitation, supra note 106, at 194.
\item[133] 457 So. 2d at 176.
\item[134] Id.
\item[135] 434 So. 2d at 377.
\item[136] 469 So. 2d at 297.
\end{footnotes}
VI. CONCLUSION

The dilemma of "the child with two fathers" compels a confrontation between very divergent interests. These interests include a mother who wants to maintain her family unit, a husband who has voluntarily accepted paternal responsibilities when he could have disavowed the child, and a biological father who desires a relationship with his own child. The judge's focus in this context inevitably narrows to the child and how the controversy will affect him.

Based on the analyses within this comment, two proposals are offered for dealing with such disputes: the first is a modification of concepts; the second is a modification of law.

(1) The fairest, most workable resolution of the controversy entails the sharing of parental rights as opposed to the granting of exclusive rights to either father. The husband should not be displaced from his role in any degree; instead, his parental rights and obligations may be shared, to a practicable extent, with the biological father who is equally concerned for the child's welfare.

This may be accomplished in two steps. First, the natural father must be allowed to establish factually that he is the child's father. This step affords him the opportunity, at least, to establish a relationship with his child, and thus protects his due process rights as a parent. Having established his parenthood, the father may then approach the court for more substantive rights—in particular, the right to visit his child.

At present in Louisiana, there is no clear statutory authority for the assertion of an unwed father's rights when the child is already the legitimate child of the mother's husband. The creative but questionable methods employed by the courts to achieve just results in these disputes must be replaced with clear authority. Therefore:

(2)(a) The ability of the unwed natural father to establish his paternity should be protected by clear statutory authority. This may be accomplished through legislative action in either of two ways: through a rewording of the existing articles, or through the addition of a new article governing actions by unwed fathers to establish their paternity of children already classified as legitimate. Until this is accomplished, the Louisiana Supreme Court should do for the father at least what it has done for the child in Griffin. The court must issue a clear, decisive interpretation of the existing articles on legitimation and acknowledgment.

(b) The unwed natural father's assertion of visitation rights, after he has successfully established his paternity, should be analyzed according to uniform principles and guidelines. Such an analysis should begin with the presumption that awarding visitation rights to the father is in the best interests of the child, a presumption accorded all natural parents.
Since the mother may rebut this presumption, the focal point of the dispute becomes a determination of what is most beneficial to the child. Significant in this determination should be the existence or nonexistence of an actual parent-child relationship between the father and child. If such a relationship exists, awarding visitation rights is as important to the child as to the father, since visitation provides the only means for maintaining the tie between them. The presence of an actual relationship also strengthens the father's claim to visitation rights since it demonstrates his serious intent in assuming the role of father to the child. An additional finding that he is willing to assume parental obligations should also support a finding that continued contact with the father through visitation is in the best interests of the child. If visitation rights are granted, the judge may structure the award in such a way as to minimize the damage to any parent's interests and to maximize the welfare of the child.

In retrospect, the wisdom of Solomon remains valid today, even though the consequences to the competing parents are different. The same concern exemplified by his judgment in the case of the child with two mothers is equally evident in the modern concept of shared parental rights. It is "wisdom which is concerned with the actual business of living rather than with abstractions."

Valerie Seal Meiners

137. 3 The Interpreter's Bible 44, 45 (1954).