

## THE SIGNIFICANCE OF BIOLOGICAL PARENTAGE IN YUGOSLAV FAMILY LAW

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### I. INTRODUCTION

In the area of family law, special attention has recently been directed to one's biological origin.<sup>1</sup> The achievements of modern medicine have expanded the range of situations where biological and legal (social) parenthood do not coincide.<sup>2</sup> Moreover, biological parenthood can now be determined through genetic analysis.<sup>3</sup> Although the lack of congruency between legal and biological parenthood often results from adoption or medically assisted reproduction, it may also occur in families where children are born to biological parents without medical assistance.

Since the adoption of the Convention on the Rights of the Child of 1989 (Child Convention), much attention has been focused on the issue of the right of the child to know his or her biological origin.<sup>4</sup> Yugoslavia ratified this Convention,<sup>5</sup> which guarantees children the right to form<sup>6</sup> and preserve<sup>7</sup>

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1. See generally I. Baer, *Adoptees Searching for their Origins: A New Development Seen from International Standpoint*, in PARENTHOOD IN MODERN SOCIETY (J. Eekelaar & P. Arevi eds., 1993); B. M. Dickens, *Reproductive Technology and the 'New' Family*, in FAMILY RIGHTS (E. Sutherland & A. McCall Smith eds., 1990); R. Frank, *Germany: Blood Versus 'Mere' Social Ties*, 32 U. LOUISVILLE J. FAM. L. 335 (1993-94); H. Gamble, *Fathers and the New Reproductive Technologies: Recognition of the Donor as a Parent*, AUSTL. J. FAM. L. 4 (1990); O. Guilloid, *Switzerland: Everyone has the Right to Know His or Her Origins*, 32 U. LOUISVILLE J. FAM. L. 465 (1993-94); Jean M. Thevoz, *The Rights of Children to Information Following Assisted Conception*, in CREATING THE CHILD: THE ETHICS, LAW AND PRACTICE OF ASSISTED PROCREATION 195 (Donald Evans ed., 1996); Gordana Kovaček Stanić, PRAVO DETETA DA ZNA SVOJE POREKLO (Novi Sad, 1997).

2. See Gian Carlo Di Renzo et al., *Control of Human Reproduction: A Clinical Perspective on Bioethical Problems*, in CREATING THE CHILD: THE ETHICS, LAW AND PRACTICE OF ASSISTED PROCREATION, 29-45 (Donald Evans ed., 1996).

3. For instance, DNA and fingerprints.

4. See generally Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 9, at 166, U.N. Doc. A/44/49 (1989), 28 I.L.M. 1448 (1989) [hereinafter Child Convention].

5. See Law on Ratification of the Convention on the Right of the Child, Official Gazette

their identities. The basis of identity is the right to a name, the right to nationality, and the right of a child to know and be cared for by his or her parents to furthest extent possible.<sup>8</sup>

There are three basic interests underlying the desire to know one's genetic origin: (1) the need to know the medical history of past generations, (2) the psychological need for identity, and (3) a material interest connected to the bloodline.<sup>9</sup> The medical interest is essential when a person considers starting a family because of the potential for serious genetic defects that may be inherited by future generations. Medical concerns regarding one's biological origin become more important with the realization that if one's lifestyle is modified in light of the potential hereditary risks that run in certain families, disease may be prevented, delayed, or may occur in a less aggravated form. Furthermore, doctors can treat disease more effectively when they are aware of a person's biological family history.

The psychological interest is expressed in the desire and need to know one's parentage. The psychological interest is most pronounced during adolescence, when personal identity is formed. The material interest is expressed in the desire of the child to receive support and inherit property from his parents and other relatives. It may be said that the medical and material interests are, by nature, rational, while the psychological interest is predominantly irrational.

Biological parentage is an important factor for establishing legal parenthood in family law. Another important factor for establishing legal parenthood is social parenthood. It seems important to find theoretical answers to the question of the significance of biological parentage in situations where a social parent is also the child's legal guardian. These situations can be divided into three basic groups: natural birth, medically assisted reproduction, and adoption.<sup>10</sup> These groups will be discussed below.

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of the Federal Republic of Yugoslavia 15/90.

6. See Child Convention, *supra* note 4, art. 7.

7. See *id.* art. 8.

8. See *id.* art. 7.

9. Katherine O' Donovan, *A Right to Know One's Parentage?*, 2 INT'L J.L. & FAM. 27-45 (1988).

10. The expression "natural" (conception) may be criticized, because its antonyms are the words "unnatural" and "artificial." The author does not, by any means, intend to treat families created by medically assisted reproduction or adoption as unnatural, artificial, or in any way abnormal. The expression is used here only for lack of a more suitable one, and it means the creation of a family in or out of wedlock, without the medical or legal (adoption) assistance.

## II. THE SIGNIFICANCE OF BIOLOGICAL PARENTAGE: NATURAL BIRTH OF THE CHILD

### A. Maternity

Maternity generally does not produce many legal problems because maternity is normally established by childbirth. There are, however, a few situations where legal controversies concerning maternity could arise: as the result of the accidental or intentional exchange of babies at the time of birth; as the result of child abduction; or as the result of false registration in the Civil Register. With the advancement of modern medicine and science, the question of maternity can also arise as a consequence of medically assisted reproduction.

The legal rule of ancient Roman law, *mater semper certa est si vulgo conceperit*, that maternity established by childbirth is normally unquestionable, has been broadly accepted until the present day.<sup>11</sup> Nevertheless, there are some legends about disputed maternity in legal history. According to these myths, the crucial element in establishing which woman actually gave birth to a particular child is maternal feeling.<sup>12</sup>

In contemporary legal systems, maternity is only partly regulated. In the Federal Republic of Yugoslavia, there are two relevant family law acts: the 1980 Law on Marriage and Family Relations of Serbia (Serbian Marriage and Family Law Act) and the 1989 Law on Family of Montenegro (Montenegro Family Law Act).<sup>13</sup> The paternity articles of these Family Law Acts are used in maternity cases unless the issues in a particular maternity case are not analogous to a paternity case.<sup>14</sup> Moreover, the Serbian Marriage and Family Law contains specific articles for contesting maternity.<sup>15</sup> These articles specify when a maternity contest proceeding can be initiated and

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11. See Tufts University, *Perseus Digital Library* (visited Jan. 24, 2001) <<http://www.perseus.tufts.edu>> [hereinafter *Perseus Digital Library*]. Translated from the old Latin presumption "The mother is always certain, if she conceives openly." *Id.*

12. In the Chinese story from the thirteenth century, a child was put in the centre of a chalked-off circle and the judge asked the two putative mothers, to pull the child to herself. The real mother allowed the other woman to pull the child, as she did not want to hurt him. According to the Bible story about King Solomon, the real mother did not allow splitting the child in two. See 1 *Kings* 3. In Serbian folk poetry, there is a poem about an intentional exchange of a female child for a male. The child's godfather brokered the exchange under pressure from the female child's mother for a large reward. The godfather was severely punished after the fraud was discovered. See V. Stefanović Karadić, *Kumovanje Grčica Manojla*, in *SERBIAN POEMS*, Book II (1972).

13. See LAW ON MARRIAGE AND FAMILY RELATIONS (1980) (Serb.), Official Gazette of the Republic of Serbia 22/80, as amended by Official Gazette of the Republic of Serbia 22/93 and Official Gazette of the Republic of Serbia 35/94; LAW ON FAMILY (1989) (Mont.), Official Gazette of Montenegro 7/89.

14. See LAW ON MARRIAGE AND FAMILY RELATIONS art. 100; LAW ON FAMILY art. 105.

15. See LAW ON MARRIAGE AND FAMILY RELATIONS arts. 107-09.

who can bring such an action.<sup>16</sup> Under Yugoslav law, actions contesting maternity may be initiated by a number of people. The woman who is registered in the Civil Register as the mother can contest maternity if she believes that she is not the child's biological mother. Moreover, the woman who claims to be the child's biological mother can petition to have her maternity established if she does so in the same action where the registered mother contests maternity. The child is also permitted to challenge maternity.

The Serbian Marriage and Family Law sets time-limits for starting a maternity suit. Such actions must be commenced six months from the time a woman learns that she is not a child's mother, or six months from the time she learns that she is the mother (depending on which woman starts the proceedings), however, an action must be initiated no later than ten years from childbirth.<sup>17</sup> When the child brings the maternity suit, the action must commence before the child reaches the age of twenty-five.<sup>18</sup> With permission from the Center for Social Work, a guardian can initiate the proceedings if the child is a minor or incompetent.<sup>19</sup>

In Yugoslavia, statutory time limits also restrict a child's right to know his or her biological origin. A maternity suit to establish a child's biological origin can be initiated by a biological or legal mother until the child reaches ten years of age.<sup>20</sup> Children can initiate such proceedings on their own behalf until they reach age twenty-five.<sup>21</sup> If the child discovers that her legal mother is not her biological mother after the statute of limitations, there is no possibility to adjust the child's legal status to fit the factual situation.<sup>22</sup>

Yugoslav courts do not hear many maternity cases. Because a person's identity will be affected in these cases the consequences are serious. There are two general groups of maternity cases in Yugoslav family law. One group involves cases where there is a dispute between parties and the other group involves situations where there is no real dispute.

False registration of motherhood results from a number of different motives. One possible motive may be the biological mother's desire to give birth anonymously, hiding her own identity. There are a few documented cases in which the biological mother presented health insurance documents belonging to someone else at the maternity hospital.<sup>23</sup> These cases are rather dramatic. When a situation like this arises, court proceedings must be initiated to prove that the woman registered in the Civil Register is not the

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16. *See id.*

17. *See id.*

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.*

22. *See* 85 Higher Court of Novi Sad 669 (1985); 81 Higher Court of Subotica 1071 (1981). These maternity actions were rejected on the ground that the time-limit had expired.

23. *See* 86 Higher Court Novi Sad 1071 (1986).

child's biological mother. In other situations, the registration that results may have been motivated by a desire to care for the child. For example, married couples sometimes register themselves as the parents of a child because the child's biological parents are no longer alive or are minors.<sup>24</sup>

In the former Republic of Yugoslavia, one particularly complicated case exists where babies were exchanged at birth.<sup>25</sup> That case initially involved seven female infants and the suspicion that they were exchanged in the maternity hospital and given to persons who were not their biological parents.<sup>26</sup> Suspicion of the exchange arose because one of the babies developed the skin condition psoriasis.<sup>27</sup> At the end of long and difficult proceedings, the court established that three of the girls were wrongly exchanged.<sup>28</sup> Although maternity was eventually established by blood tests,<sup>29</sup> the girls were three years old when they were finally given back to their true biological parents.<sup>30</sup> The relatively long period of growing with other people might have ultimately caused psychological problems in addition to the legal ones.<sup>31</sup>

At other times maternity cases occur even though there is no real maternity dispute. False registration of maternity in these cases most often results when a woman makes a maternity claim by showing documents belonging to another person at the maternity hospital. In these situations, the false registration is not motivated by a desire to hide the mother's actual identity.<sup>32</sup> False documents are often used to establish maternity because the real mother does not have medical insurance and is not aware of the fact that giving birth in Yugoslavia is free, regardless of insurance. Although there is no dispute as to maternity, court proceedings must be initiated so that maternity can be properly established. Many of these cases can be avoided by requiring the Civil Registrar to check the available information concerning the mother against another identifying document with a photograph before registering the mother's name.

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24. It was so in one case, as the married couple registered their parenthood of the child whose natural parents were not alive. The false parents divorced, the child disappeared, and they commenced the procedure for contesting parenthood. *See* 79 Higher Court of Novi Sad 468 (1979). Another case of false registration in the birth register was the case of a grandmother who was registered as the mother of the child in order to hide the true mother's minority. Unfortunately, in this case the statutory time limit for contesting maternity expired, so the action for proceedings was rejected. The consequence is that the grandmother will remain the registered mother, without the possibility to coordinate the legal status of the child with the factual situation. *See* 85 Higher Court of Novi Sad 669.

25. *See* 85 District Court of Tuzla 72 (1985).

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.*

32. *See* 85 Higher Court of Sombor 316 (1985); 83 Higher Court of Subotica 926 (1983); 95 Municipal Court of Novi Sad 927 (1995).

Maternity cases have also resulted from the dissolution of the former Yugoslavia and the subsequent wars in Croatia, Bosnia and Herzegovina, where refugee children were separated from their parents. Although the Save the Children Organization in Yugoslavia has identified and registered thousands of children without parents, only a small number of maternity cases have resulted because a great number of these children were reunited with their families. Furthermore, in most cases it was not difficult to identify the children because most of them knew their names as well as their parents' names and their geographical origins.<sup>33</sup> Some maternity cases resulted in situations where children deliberately gave false names to the Save the Children interviewer and to local authorities, in order to hide their nationality.

### B. Paternity

In Yugoslav family law, paternity during marriage is established according to a theoretical rule—*pater is est quem nuptiae demonstrat*<sup>34</sup>—the presumption of paternity. The mother's husband is considered the father of a child born during marriage or born 300 days after the termination of the marriage.<sup>35</sup> If the child was born in a later marriage of the child's mother, but before 270 days after the termination of the former marriage, the former husband of the mother is considered the legal father of the child, unless the later husband acknowledges his paternity with the mother's consent.<sup>36</sup> When the later husband declares his paternity with the mother's consent, biological and legal paternity normally coincide. A more reasonable solution would be to consider the later husband the legal father according to a direct legal rule when a child is born in cases of consecutive marriages. The Law on Family of Montenegro adheres to this doctrine.<sup>37</sup>

It is interesting to mention that Nordic legislation has amended the *pater est* rule in recent years.<sup>38</sup> After 1976 in Sweden, the husband is regarded as the child's father only if the child is born during the marriage or, if the mother is a widow when the child is born at such time after the marriage that the child could have been conceived during the marriage.<sup>39</sup> The change was

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33. There is only one case in the files on the child whose parents are unknown. The child of about three years of age was found without adult company, unable to give any data about himself. See Save the Children Foundation for the Former Yugoslavia, File no. 1683.

34. See *Perseus Digital Library*, *supra* note 11 (The father is he who is demonstrated by marriage.).

35. See LAW ON MARRIAGE AND FAMILY RELATIONS art. 86 § 1.

36. See *id.* art. 86 § 2.

37. See LAW ON FAMILY art. 91 § 2.

38. A. Eriksson & O. Saldeen, *Parenthood and Science—Establishing and Contesting Parenthood*, in PARENTHOOD IN MODERN SOCIETY 79 (John Eekelaar & Petar Sarčević eds., 1993).

39. See *id.*

motivated by the belief that a divorce before childbirth made it less certain that the husband was the biological father.

Under Yugoslav law, when a child is born out of wedlock, paternity can be established by either voluntary paternal acknowledgement or court proceedings. Arguably, Yugoslav law promotes the establishment of paternity by making it simple for a biological father to acknowledge paternity. Moreover, Yugoslav law provides a number of ways that paternity can be acknowledged. Most often, a declaration is filed with the Civil Registrar, but acknowledgement can also be made to the Center for Social Work, to the court, or to any other public authority authorized to deliver official documents. Furthermore, paternity can be acknowledged in a person's last will and testament. There is also a simple procedure for acknowledging paternity before childbirth. Minor fathers, who are over the age of sixteen, can use the simple procedure as well. The official assistance that Yugoslavia provides in the procedure clearly facilitates paternity acknowledgement.

The Civil Registrar has a duty to inform the mother of her right to identify the person whom she believes to be the father of her child. Upon receiving the mother's notification, the Civil Registrar will request that the alleged father acknowledge his paternity within thirty days. The alleged father must be personally and secretly served with the paternity summon.<sup>40</sup> There is a requirement that the mother and the child, if age sixteen or older, give their consent to the acknowledgement. It is possible for the mother, or the child, to refuse consent even though the man is in fact the biological father, thus preventing the biological father from automatically establishing legal paternity. In such a case, the biological father can nevertheless establish his paternity through a court procedure, however, he must do so within three years from the time he received the refusal notice from the mother or child.<sup>41</sup>

Under Yugoslav law, a man who considers himself the biological father of a child can challenge another man's paternity acknowledgement. This feature in Yugoslav law helps legal paternity coincide with biological origin. Paternity acknowledgement challenges, under such circumstances, must be brought within the one-year statutory limitation from the time paternity is acknowledged.<sup>42</sup> There is, however, a theoretical question of whether this solution is adequate, particularly whether it is sufficient that only the biological father has the opportunity to contest the paternity acknowledgement. Considering the right of the child to know his or her biological origin, there is a legitimate argument that the child should also have an opportunity to deny the acknowledgement on his or her own behalf. This should be possible only if the child did not consent to the initial

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40. See LAW ON MARRIAGE AND FAMILY RELATIONS arts. 88-89 (1980) (Serb.).

41. See *id.* art. 96.

42. See *id.* art. 105.

paternity acknowledgement because such consent is irrevocable under Yugoslav law.

Court proceedings are another way of establishing paternity. In Yugoslav law today, there is no "situational prerequisite" for starting a paternity acknowledgement procedure.<sup>43</sup> Any person in an existing or assumed parental or filial relationship can start the procedure.<sup>44</sup> The Center for Social Work can initiate a procedure as well, but only in one exceptional situation. This one situation is when the mother has identified a man whom she believe is the father, but the man has refused to acknowledge paternity. If the mother has not initiated a paternity suit within the one-year time limit, the Center for Social Work may start the procedure. However, if the mother can show "good cause" for opposing the proceeding, the Center for Social Work will not initiate it.<sup>45</sup> What exactly constitutes "good cause" is uncertain, as Yugoslav law provides no explanation. Rather, establishing good cause is a factual determination in each case. The term "good cause" should be interpreted narrowly because the interest of the child to know her biological origins must be considered. The statute of limitations vary for each person that may bring the paternity suit. The child's father must bring a paternity suit within three years from the time he received refusal notice from the mother or child. The mother must bring a paternity suit during the period that she exercises parental custody. The child may initiate paternity proceedings until she reaches age twenty-five.<sup>46</sup>

A suit to disavow paternity is another court procedure that enables legal paternity to coincide with biological origin. A suit to disavow paternity can be brought by the mother of a child, a child, the mother's husband who is the child's legal father, and, in limited situations, the alleged biological father.<sup>47</sup> The alleged biological father may disavow the paternity of the legal father only if he can demonstrate that he cohabited with the mother at the time of conception or at the time the child was born. If the required facts are established, an alleged biological father can disavow the legal father's paternity and establish his own paternity in the same proceeding. In exceptional circumstances, paternity of a decedent who was declared the legal father of a child may be disavowed by his heirs. Heirs can only disavow the decedent's paternity when the deceased did not know about the conception or the birth of the child and did not live with the mother at the time of conception.<sup>48</sup>

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43. On the other hand, under old Serbian law, the court generally could not establish paternity unless exceptional circumstances like rape. *See* CIVIL CODE art. 130 (1844) (Serb.).

44. *See* LAW ON MARRIAGE AND FAMILY RELATIONS art. 98 (1980) (Serb.).

45. *Id.* art. 99.

46. *See id.* 86 § 1.

47. *See id.* arts. 102-06.

48. This situation is likely to occur when a man dies intestate and his estate is to be divided among his heirs. If paternity is disavowed, the heirs other than the child will take a greater share of the estate. *See id.* art. 111.



There are time limits for disavowing paternity. The mother's husband can start the procedure within six months from learning the fact that he is not the biological father, however, he must do so within ten years from the birth of the child. The mother may bring the action within six months after birth and the child may do so until age twenty-five. Once the statutory limits expire, paternity cannot be disavowed.

The legal position of the biological father, when he is not the legal father, is very important in the context of the child's right to know her biological origin. In Yugoslavia, a biological father who is not a child's legal father is disadvantaged by the law because his opportunity to establish paternity is limited to situations where he had, at some point, actually lived with the mother. This is one of the few doctrinal choices in current Yugoslav family law that emphasizes the significance of the social or legal father over rights of the biological father. Currently, in situations where the social father lives with the mother and does not want the legal paternity of the child changed, the social father has the ability to prevent the biological father from asserting his parental rights.

Other countries give more consideration to the biological father who attempts to establish his parental authority. The English Court of Appeal case, *In Re H*, is an example of a situation where proper consideration was given to the significance of biological parentage.<sup>49</sup> In that case, a child was subjected to blood tests, despite the mother opposition, to determine paternity of an applicant who claimed to be the child's biological father.<sup>50</sup> The mother had given birth to the child at a time when she was having sexual relations with both the applicant and her husband.<sup>51</sup> The mother's husband had a vasectomy operation a number of years prior to the child's birth.<sup>52</sup> The mother's original intent was to leave her husband for the applicant, however, she changed her mind and reconciled with her husband, so mother remained married to her husband prior to, during and after the birth of the child.<sup>53</sup> The mother did not at any time live with the applicant.<sup>54</sup> Hence, the husband was considered the legal father of the child. Under Yugoslav law, the applicant would not have been able to petition for parental recognition. The English court, however, treated the issue differently and permitted the application for child contact and parental authority.<sup>55</sup> The court stated that "[t]he issue of biological parentage should be divorced from psychological parentage" when it concluded that it was not within its power to prevent an alleged biological father from pursuing his application.<sup>56</sup>

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49. *In re H (A Minor) (Blood Tests: Parental Rights)*, [1996] 4 All E.R. 28.

50. *See id.*

51. *See id.*

52. *See id.*

53. *See id.*

54. *See id.*

55. *See id.*

56. *Id.*

### III. THE SIGNIFICANCE OF BIOLOGICAL PARENTAGE: MEDICALLY ASSISTED REPRODUCTION AND ADOPTION

#### A. Medically Assisted Reproduction

There are two articles in the Serbian Marriage and Family Law Act that apply to situations where children are born as the result of artificial insemination by a donor.<sup>57</sup> One article pertains to the situations where paternity may be disavowed. This possibility depends on whether the husband, who is presumed to be the legal father, has given his prior consent to artificial insemination by the donor. A husband can initiate a suit to disavow paternity only if he did not consent to the artificial insemination procedure. Furthermore, the non-consenting husband must bring the suit within six months from the time he discovers that the child was conceived by means of artificial insemination. There are other limitations on a husband's ability to disavow paternity in these circumstances. For instance, a husband cannot disavow his paternity once the child reaches age ten.<sup>58</sup> Moreover, if the husband has given his consent to artificial insemination, he will be considered the legal father on the basis of the *pater est* rule<sup>59</sup> and he will not have the possibility to rebut the paternity presumption. Additionally, paternity cannot be established by court order when a child is conceived by means of artificial insemination.<sup>60</sup>

Under Yugoslav law, a child conceived by means of artificial insemination by donor has no possibility of knowing the identity of her biological father because the sperm donation process is completely anonymous. In other countries, the opposite is true and it is possible for a child to obtain information about sperm donors. Sweden was one of the first countries to introduce this possibility. In 1984, Sweden passed the Act on Insemination.<sup>61</sup> This act entitles a child, of sufficient maturity, to be advised of the content of the hospital record concerning the donor sperm. Furthermore, the local Swedish Social Welfare Committee must assist the child in obtaining this information, if the child so desires. In Austria, a similar law was codified in 1992 by the Act on Procreative Medicine.<sup>62</sup> Austrian law provides that a child, age fourteen or older, conceived by artificial insemination has the right to information about his or her genetic roots, if desired.<sup>63</sup>

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57. See LAW ON MARRIAGE AND FAMILY RELATIONS arts. 101 & 110 (1980) (Serb.).

58. See *id.* art. 110.

59. See *Perseus Digital Library*, *supra* note 11 (Latin phrase meaning the father is he who is demonstrated by marriage.).

60. See LAW ON MARRIAGE AND FAMILY RELATIONS art. 101 (1980) (Serb.).

61. See ACT ON INSEMINATION, No. 1140, art. 4 (Swed.) (1984).

62. See Erwin Bernat & Erich Vranes, *The Austrian Act on Procreative Medicine: Scope, Impacts, and Inconsistencies*, in *CREATING THE CHILD: THE ETHICS, LAW AND PRACTICE OF ASSISTED PROCREATION* 325, 329-30 (Donald Evans ed. 1996).

63. See *id.*

The disclosure of a sperm donor's identity to a child conceived by artificial insemination promotes the factual significance of biological parenthood and implicates no changes in the legal paternity granted by law to the mother's husband or cohabitant.

The significance of biological origin is illustrated more vaguely in countries that have laws that permit disclosure of only non-identifying information about the sperm donor to children. The Spanish Act on Techniques of Assisted Reproduction (Spanish Act) permits disclosure of non-identifying information about sperm donors.<sup>64</sup> Under the Spanish Act, children born as a result of artificial insemination, or their legal representatives, can obtain non-identifying information about the donors. The Spanish Act extends the same right to those who receive the sperm.<sup>65</sup> In Australia, the Infertility (Medical Procedures) Act of Victoria allows disclosure of non-identifying information to donors and patients.<sup>66</sup> The Australian law requires hospitals to provide written disclosure of the non-identifying particulars of each person who gave sperm, which may be used in an artificial insemination procedure, to any married woman before the woman undergoes the procedure.<sup>67</sup>

In Great Britain, the Human Fertilization and Embryology Act of 1990 allows for limited disclosure of non-identifying information.<sup>68</sup> The British Act provides that children born as a result of assisted reproduction have a right to seek non-identifying information about the egg or sperm once they reach the age of majority.<sup>69</sup> The right to know one's biological origin in surrogate situations is treated differently. The British act contains provisions that permit disclosure of non-identifying information concerning donors in surrogate situations similar to the provisions that permit disclosure of such information to adopted children, who are believed to have a general right to discover the truth about their origins.<sup>70</sup>

### B. Adoption

In Yugoslav law, legal consequences differ depending on the type of adoption. There are two types of adoption: full and partial. Partial adoption is also referred to as simple adoption. In partial adoption, the adopted child

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64. See Jaime Vidal Martinez, *Anonymity of the Donor in the Spanish Act on Techniques of Assisted Reproduction*, in *CREATING THE CHILD: THE ETHICS, LAW AND PRACTICE OF ASSISTED PROCREATION* 217, 217-24 (Donald Evans ed. 1996).

65. *See id.*

66. *See* Infertility (Medical Procedures) Act of Victoria (1984) (Austl.).

67. *See id.* Part III, art. 20 (The donor of a gamete may ask the designated officer to give the personal particulars of each woman in relation to whom the procedure may be carried out, as well the personal particulars of each child born in cases of pregnancy resulting from the use of gametes.).

68. *See* Human Fertilisation & Embryology Act § 33 (1990) (Eng.).

69. *See id.* § 31.

70. *See id.*

does not break the legal relationship with her biological parents and family. Moreover, hereditary rights remain unchanged and the adopted child may keep the last name of her biological parents. On the other hand, full adoption makes the adopted child a member of the adopted family by law. The child is considered a relative of the relatives of the adopters and the law terminates all legal relationships with biological parents and family. After full adoption was incorporated into the codes of the republics and provinces of the former State of Yugoslavia in the 1970s, full adoption became absolutely secret. Current Yugoslav law, however, has seen changes in this regard with the passage of the Serbian Marriage and Family Law. Although the general principle of secrecy remains intact with regards to adoption, the new law introduced an important change. Currently, the adopters, the adopted person, if over the age of sixteen, and, if the adoption is partial, the biological parents, may look into relevant adoption documents if the Center for Social Work grants permission.<sup>71</sup> In keeping with the right of the child to know her biological origin, the right of an adopted person to have access to information about his biological family is an important one. The full realization of this right, however, depends on whether relevant information is available in the adoption documents. On the other hand, the fully adopted person never has the opportunity to establish paternity or maternity through court procedure.<sup>72</sup> In practice, the ability to learn the identity of one's biological parents is limited because there is no obligation for the adopting parents to inform the child about the adoption at any time. Moreover, birth certificates do not contain any records of adoption. The Register lists the name of adoptive parents in the same way as biological parents and the adopted person is given the adoptive surname. There can be, however, some indication through minor departures from the common registration procedure. The right to have access to information on one's natural parents has been introduced in a number of adoption statutes.<sup>73</sup> This right to obtain information on biological origin is a doctrinal choice that promotes the significance of biological parenthood.

#### IV. CONCLUSION

Yugoslav family law gives high priority to biological parentage. A great number of doctrinal choices support this conclusion. First, Yugoslav law contains general provisions that expressly allow paternity and maternity to be established and contested. There are no factual requirements for paternity and maternity procedures. Furthermore, Yugoslav law encourages the acknowledgement of paternity by providing a number of ways that paternity

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71. See LAW ON MARRIAGE AND FAMILY RELATIONS art. 173 (1980) (Serb.).

72. See *id.* art. 196.

73. For instance see generally the adoption laws in Scotland, Great Britain, Switzerland, Sweden, Finland, Norway, Poland, Israel, United States, Canada, and Australia.

can be acknowledged, including a very simple procedure at the Civil Registrar that can be utilized before or after childbirth.

Although the numerous doctrinal choices favor biological parentage, the strict statutory time limits for initiating the court proceedings for establishing and contesting parenthood de-emphasize its significance. Moreover, biological parentage has little significance in medically assisted reproduction situations involving sperm donors because of the strict confidentiality laws that pertain to such situations in Yugoslavia.

In Yugoslav adoption law, the significance of biological parenthood is evident. Although there are limitations, a number of relevant adoption documents are available for disclosure to adopted children in both full and partial adoptions. A number of other countries have been even more progressive and have enacted adoption statutes that include rights of adopted children to obtain information about their natural parents. This change illustrates the increasing recognition of the significance of biological parentage in family law.

It can be said that Yugoslav family law promotes biological parentage, especially if the child is without legally established parentage. However, if there is a possible conflict between biological and social parents, it seems that Yugoslav family law favors the social parents. This appears to be the result of the emphasis in the law on the exclusive significance of one form of parenthood.

There is an alternative to the exclusive approach of the law. This possible alternative approach gives parallel significance to biological and social parentage. The right of the child to know her biological origin, as one of the newest and most controversial rights of the child, will be easier to exercise if the parallel approach is promoted. An example of a law that illustrates this approach is one that gives a child the right to know the identity of the sperm or egg donor, without any consequences on legal paternity of her mother's husband or cohabitant or on legal maternity. A second example of the parallel approach is the solution that would permit biological origin to be established with no changes in the existing relationship between the child and her legal parents. Yet, another example of this approach applies in adoption situations where an adopted child could be granted the right to know the identity of her biological parents, with no effect on legal parentage.

Theoretical solutions dividing biological and legal parenthood recognize that more than two parents with different parental roles can exist at the same time. Another question that arises, however, about whether it is realistic to presume that knowing the identity of one's biological parent would be enough for the child or would that only result in the child inevitably attempting to establish contact with the genetic mother or father? For the parallel significance approach to ever become widely accepted, the relationship between the child and the biological parent, who is not the legal or social parent, likely must be regulated by the state.

If we presume that there is a conflict between family stability and the right to know one's biological origin, it seems that the right to know biological origin is not absolute. If, however, the attitude towards parental positions and functions changes in such a way as to accept the proposition that more than two persons can have different parental functions, the conflict can probably be avoided.