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DNA Dilemmas

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This Article introduces a set of novel stories rooted in DNA surprises. As consumer DNA testing becomes more widespread, more people will accidentally discover that a stranger is their genetic parent. Many feel that their birth certificate is now a "lie" and want to correct it. These stories provide a new lens through which to examine the definition of parenthood, who should wield that definitional power, and the relationship between identity and recognition. DNA testing lays bare the intractable conflict between different definitions of parentage—functional, intentional, legal, and genetic—and seemingly demands that we choose one to prevail. This is the DNA dilemma. This Article argues that, after the relevant "child" becomes an adult, the state can and should yield its monopoly over the definition of legal parentage and allow each adult-child to resolve this deeply personal dilemma for herself. Along the way, this Article introduces post-majority parentage as a new conceptual space, seeks to reorient existing scholarship on adoption and donor-conception, defends a novel identity interest in the official recognition of parent-child relationships, and upends common intuitions that birth certificates simply record facts.

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INTRODUCTION 538

I. HISTORY AND BACKGROUND 543
A. History of Genetic Testing 543
B. Genetics and Identity 545
C. History of Birth Certificates 548
D. Birth Certificates and Identity 549
E. Ava's Story 553

II. IDENTITY, RECOGNITION, AND AMENDING BIRTH CERTIFICATES 554
A. Existing Birth Certificate Reforms: Identity Through Knowledge 554
B. A New Focus: From Knowledge to Recognition 557
1. Identity Disruptions 558
2. Reconstructing Identity Through Recognition and Correcting Misrecognition 560
3. Recognition, not Rights 562
4. Recognition in the Donor-Conception and Adoption Contexts 562
5. Recognition as a Human Right 564
C. A New Problem: Recognition Implicates Amendment Policy 566
D. A New Question: Whose Birth Certificate Is It, Anyway? 568

III. STATE INTERESTS IMPLICATED BY AMENDING BIRTH CERTIFICATES 569
A. Child-Related Interests 571
B. Other Potential State Interests 577
1. Facilitating Public Health Research 577
2. Preventing Fraud 577
3. Administrability 578
C. Post-Majority Parentage: A Blind Spot 580
D. Summary 582

IV. PRIVATE INTERESTS: WHOSE BIRTH CERTIFICATE IS IT, ANYWAY? 582
A. The Child 583
B. The Current Legal Parents 586
C. Unwilling New Parents: Identity and Non-Recognition 591
D. Summary 593

V. TWO CONCRETE PROPOSALS AND A FUTURE POSSIBILITY 593
A. Statutes of Limitation 593
B. Birth Certificate Reform 598
C. Elective Parentage 602

VI. OBJECTIONS 607

A. Recalibrating Collateral Effects of Parentage *607*
B. Genetic Essentialism *611*

CONCLUSION 614

INTRODUCTION

When she was 51, Ava (a fictional name, but a real person) took an Ancestry.com DNA test for fun.[1] She found out that the man who she thought was her genetic father was not. Ava desperately wants to change her birth certificate. She says:

> I feel that it is my "right" to have correct information on my birth certificate. I also feel it is now my obligation to correct this lie on my birth certificate. I want to do this for future generations of mine, who will undoubtedly look at my birth certificate and assume it is fact, yet it is not. I am truly haunted by this.[2]

The laws surrounding establishment and disestablishment of paternity prevent Ava from amending her birth certificate. To do so, she would need a court order adjudicating paternity, and the statute of limitations passed 49 years ago.[3]

These discoveries have been accelerating rapidly thanks to the equally rapid expansion of consumer DNA testing.[4] The resulting DNA discoveries can significantly disrupt our self-narratives and the security that stable identities provide. Various self-help groups, blogs, and online communities have begun to help people who have had a "misattributed parentage

1. Telephone Interview with "Ava" (Jan. 13, 2021).

2. E-mail from "Ava" (Oct. 3, 2019, 14:14 CST) (on file with author).

3. *See infra* Section III.A.

4. LIBBY COPELAND, THE LOST FAMILY 5 (2020); *see also* Michael Cook, *The US Should Brace Itself for a "National Wave of Fertility Fraud"*, BIOEDGE (Sept. 19, 2020), https://www.bioedge.org/bioethics/national-wave-of-fertility-fraud/13561 [https://perma.cc/MQ3C-GWGS] (arguing that "hundreds of fertility fraud cases will emerge across the US as people begin to investigate their genealogy using home DNA testing kits").

experience" (MPE).[5] MPE situations[6] can arise from many sources: adoption, donor-conception, adultery, rape, or other situations where the facts of conception were concealed from the child. The desire to alter one's birth certificate is not unique to any one of them.[7]

This Article makes five novel contributions.

First, and most broadly, this Article opens up a hitherto unrecognized conceptual space: post-majority parentage. Many statutes and much family law scholarship implicitly assumes that parentage is only important during the period when the child is a minor.[8] This may well be where legal

5. Other terms are also used to describe these surprises, such as "non-paternity event" and "not parent expected" (NPE). *See, e.g.*, NPE FRIENDS FELLOWSHIP, https://npefellowship.org/ [https://perma.cc/PBD9-C3VE]; WATERSHED DNA, https://www.watersheddna.com/ [https://perma.cc/BL8H-WEPM]. COPELAND, *supra* note 4, at 75. For more on debates about the evolving terminology, see Everything's Relative with Eve Sturges, *Baby, You've Got a Right to Know!*, ANCHOR (Aug. 20, 2021), https://anchor.fm/ryan-middledorf6/episodes/Baby--youve-got-a-right-to-know-e162fcq [https://perma.cc/3Y2Q-FFTC] (preferring MPE—misattributed parentage experience—as the umbrella term, and using NPE to describe non-adopted and non-donor-conceived MPEs).

6. This term is grammatically flexible at the moment. It can refer to the experience, the people experiencing it, an event, etc.

7. *See, e.g.*, Tom Rowley, *My Life Was a Lie . . . Now Gaps on My Birth Certificate Tell the Truth About My Father*, TELEGRAPH (July 20, 2014), https://www.telegraph.co.uk/news/10978332/My-life-was-a-lie-...-now-gaps-on-my-birth-certificate-tell-the-truth-about-my-father.html [https://perma.cc/4RWW-F92L] (telling the story of Emma, a donor-conceived child who tried to amend her birth certificate to list "donor" as the father); Personal Communication with "Sally" (Apr. 4, 2019) (expressing the desire to control her own birth certificate even though it could mean listing a rapist on it).

8. *See, e.g.*, MICH. COMP. LAWS ANN. § 722.1441 (2022) (not even addressing the possibility that an adult child might want to challenge paternity); *see also infra* note 310 (collecting scholarly work). Of course, other areas of law—most notably the law of intestate succession—extend the importance of parentage beyond the minority of the child. To the extent that they import definitions of parenthood from family law, however, they risk adopting definitions that do not fully serve their purposes. *See, e.g.*, Richard C. Ausness, *Planned Parenthood: Adult Adoption and the Right of Adoptees to Inherit*, 41 ACTEC L.J. 241, 278–79 (2016) (critiquing courts for unthinkingly importing rules surrounding adopted children into the context of adult adoption).

parentage has its largest consequences, but parentage is worthy of study even after the relevant child becomes an adult.

Second, the above stories reveal that birth certificates can implicate more identity interests than scholars have explored thus far. Most writing about identity interests and birth certificates focuses on gender identity.[9] Much of that work argues that the child listed on a birth certificate has an identity interest in having the sex category on the certificate match their gender identity.[10] This Article surfaces other identity interests in birth certificates. Ava and others have an identity interest in their parentage, and want this identity accurately reflected on their birth certificates.

Third, this Article seeks to reorient existing scholarship on adoption and donor-conception. To understand how, we first have to understand more about birth certificates. Birth certificates list legal parentage, not genetic parentage.[11] Existing birth certificate reforms address issues faced by adopted and donor-conceived children, and seek to use birth certificates to communicate accurate genetic information to the child.[12] For example, one common reform proposal is to have birth certificates list legal and genetic parents separately.[13] When the child sees her birth certificate, it will then communicate a much fuller picture of her beginnings.

Once we expand our focus beyond adoption and donor-conception, to the wider MPE community, the Article's third contribution is sharpened: reformers and scholars need to move beyond a focus on *access* to genetic

9. *See, e.g.*, Emily Maxim Lamm, *Bye, Bye, Binary: Updating Birth Certificates to Transcend the Binary of Sex*, 28 TUL. J.L. & SEXUALITY 1, 4 (2019); Mark Strasser, *Defining Sex: On Marriage, Family, and Good Public Policy*, 17 MICH. J. GENDER & L. 57, 59-63 (2010). For wider discussions, see Annette R. Appell, *Certifying Identity*, 42 CAP. U. L. REV. 361, 377 (2014) (discussing birth certificates as arbiters of race, gender, sex, and parentage), and Jessica A. Clarke, *Identity and Form*, 103 CALIF. L. REV. 747, 776, 782, 792, 799 (2015) (discussing birth certificates as documents of gender and other identity categories).

10. *See* sources collected *supra* note 9. Other work calls for eliminating sex from the birth certificate. *See, e.g.*, Anna James (AJ) Neuman Wipfler, *Identity Crisis: The Limitations of Expanding Government Recognition of Gender Identity and the Possibility of Genderless Identity Documents*, 39 HARV. J. L. & GENDER 491, 543 (2016).

11. Courtney G. Joslin, Shannon P. Minter & Catherine Sakimura, LESBIAN, GAY, BISEXUAL & TRANSGENDER FAMILY LAW § 5:25 (2016).

12. *See infra* Section II.A.

13. *See, e.g.*, Naomi Cahn, *Do Tell! The Rights of Donor-Conceived Offspring*, 42 HOFSTRA L. REV. 1077, 1104–05 (2014).

information, to ask whether the state should grant formal *recognition* of it. For Ava and other MPE people, access to genetic information is no longer the issue. They have it. This will be true for an increasingly large number of people. In 2019, commercial DNA databases like Ancestry.com and 23andMe had tested about 26 million people.[14] Within a few years, these datasets might be large enough that they will be able to identify *everyone* in the United States, even those who never took a test.[15] Access will increasingly be a problem solved by technology, regardless of the law. The new question concerns recognition. The birth certificate, with its talismanic qualities as the current legal and cultural arbiter of parentage, is a natural site for this recognition.

Fourth, this Article outlines two targeted reforms. Under the first, states should eliminate statutes of limitation for paternity suits brought by the child herself after she becomes an adult. Currently, these laws are badly misfiring. Short statutes of limitation were designed to ensure that children had a steady source of financial support and to protect vulnerable children from the emotional turmoil that could result from parental disruptions.[16] Ava is no longer a vulnerable child in need of the state's protection. She should be able to make her own determinations of what is in her best interests, without a legislator or a judge second guessing her. I have worked personally on individual MPE cases. I have spoken to numerous people in this community. I can attest to the immense benefits that this reform would create. It would allow Ava to amend her birth certificate and define her own identity. Of course, Ava is not the only person with important interests at stake. For example, Ava's existing legal parents have an identity interest in retaining their status as parents. But their interest is not strong enough to justify giving them veto power over Ava's attempt to come to grips with the foundational secret that they decided to keep from her. Under the second reform, birth certificates would be expanded to allow adult children to list genetic and legal parents separately. This would preserve the legal status of Ava's parents, but also allow her to tell her truth.

Fifth, this Article introduces a more foundational reform project grounded in consent. If all of the relevant parties agree—for example, Ava, her current legal parents, and her potential new legal parent—then the state

14. *See infra* notes 28-29 and accompanying text.

15. COPELAND, *supra* note 4, at 77, 235. For example, if your second cousin uses Ancestry.com, then part of your DNA is already in their database. If two or three of your relatives do so, even more of your DNA is available for companies, or others, to analyze.

16. *See infra* Section III.A.

should allow them to alter legal parentage. This simple idea could have significant advantages even in states that recognize another form of consent-based parentage: adult adoption.[17] By allowing elective legal parentage (at least after the child becomes an adult), the state opens up a site for individuals to contest, resist, and reshape our cultural understanding of parentage.

DNA testing "lays bare the existence of multiple possible paternities—social, affective, legal, biological—and asks which should prevail when they are in contradiction."[18] This is the DNA dilemma.[19] This Article argues that, for post-majority parentage at least, this intractable and deeply intimate question should be answered by each person herself, and not uniformly dictated for all by an overreaching state.

This Article proceeds in six Parts. Part I sets out the history of birth certificates, the history of genetic testing, and the ways that laws surrounding birth certificate amendments already recognize the importance of some identity interests. Part II critiques existing birth certificate reforms as too narrow and reveals a set of novel yet pressing questions that can help shape broader reforms. Part III discusses the various state interests involved in policing parentage and the content of birth certificates. Part IV discusses the relevant private interests. Part V outlines various reforms. Part VI addresses various objections.

17. *See infra* notes 319-325 and accompanying text.

18. NARA MILANICH, PATERNITY: THE ELUSIVE QUEST FOR THE FATHER 10 (2019); *see also* Katharine Baker, *The DNA Default and Its Discontents: Establishing Modern Parenthood*, 96 B.U. L. REV. 2037, 2090 (2016) ("Once it becomes clear that parentage, like all designations of family, are questions of politics and law, not questions of science and fact, then the possibilities for family formation become almost infinite.").

19. Currently, state law resolves these dilemmas by defining legal parentage, although federal law also plays a role. *See* Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 344-50 (2005); MILANICH, *supra* note 18, at 26.

I. HISTORY AND BACKGROUND

A. History of Genetic Testing

The law has long held that the act of childbirth makes maternity knowable, while paternity is inevitably uncertain.[20] But this does not mean that demand for this knowledge was or is low. Quite the opposite. There has been a long history of "scientific" attempts to find the unfindable father. Much of it was quackery and junk science.[21] "Experts" looked for possible markers of paternity in the slope of one's nose, the width of one's brow, one's fingerprints, or the vibrations of one's electrons.[22] By the 1940s, scientists found markers of paternity by analyzing blood types.[23] Finding paternity in the blood was particularly poetic, considering the importance of the metaphor of "blood" to define kinship.[24] However, blood-type paternity testing could only identify the possible blood types of the genetic father. This was far more effective at ruling out potential fathers (and dismissing paternity suits) than it was at identifying fathers.[25]

DNA testing is the most recent and most powerful tool used in the search for the genetic parent.[26] Now, for as little as $99, genetic fathers can be positively identified, rather than just ruled out.[27] The largest market for DNA testing is not paternity tests, but rather genealogical research. People take these direct-to-consumer DNA tests for a variety of reasons: to find out where their families are from, whether they are at heightened risk for some genetic condition, or just because someone got them a testing kit for Christmas. The resulting databases contain about 30 million samples, the

20. *See* MILANICH, *supra* note 18, at 14.

21. *See id.* at 11-12.

22. *See id.* at 35, 127, 133.

23. *See id.* at 7.

24. *Id.* at 37 ("The idea that blood carried the essence of selfhood was a deeply compelling one. Blood is perhaps the most culturally ubiquitous idiom for talking about race, identity, and family, 'the major symbol of our kinship system,' and 'a liquid rich in allegorical meaning.'").

25. *See id.* at 55, 72.

26. *Id.* at 248.

27. Genovate, *DNA Paternity Test*, https://www.genovate.com/product/dna-paternity-test/ [https://perma.cc/PKL3-ZW5A].

vast majority of which come from the United States.[28] Soon these databases may have far more samples than they need to identify just about *everyone* in the United States, even those who never took a test.[29] This is because we share our DNA with many other people. In an only slightly hyperbolic statement, one reporter quips: "[I]f a third cousin you've never heard of puts his DNA out in the wild, yours is out there too."[30]

Direct-to-consumer DNA testing is not the only potential source of DNA surprises. The future of customized medicine hints at a time when we might need our genetic code to access the best medical care.[31] This too may reveal family secrets.[32]

Whether by virtue of consumer genealogy or customized medicine, the future would seem to be one of widespread access to our and others' DNA.

28. *See* COPELAND, *supra* note 4, at 5, 135; Jessica Bursztynsky, *More Than 26 Million People Shared Their DNA with Ancestry Firms, Allowing Researchers to Trace Relationships between Virtually All Americans*: MIT, CNBC (Feb. 12, 2019), https://www.cnbc.com/2019/02/12/privacy-concerns-rise-as-26-million-share-dna-with-ancestry-firms.html#:~:text=More%20than%2026%20million%20people%20have,consumer%20DNA%20test%20so%20far [https://perma.cc/G8YD-EXZL].

29. COPELAND, *supra* note 4, at 5 (quoting Thomas H. Murray) ("[Y]ou don't get to opt out."); *see also id.* at 77, 235.

30. Kristen Brown, *How a Third Cousin Could Give Away Your DNA Secrets*, BLOOMBERG (Dec. 3, 2020), https://www.bloomberg.com/news/articles/2020-12-04/how-your-dna-test-could-be-used-in-unanticipated-ways-quicktake-ki9t1dc6 [https://perma.cc/M4QH-XYCE].

31. KEVIN DAVIES, THE $1,000 GENOME: THE REVOLUTION IN DNA SEQUENCING AND THE NEW ERA OF PERSONALIZED MEDICINE 8 (2010).

32. Moshe Y. Prero et al., *Disclosure of Misattributed Paternity*, 143 PEDIATRICS 1, 1 (2019) ("One of the most common dilemmas faced by physicians and genetic counselors is the discovery of misattributed paternity."); Georgia Lowe et al., *How Should We Deal with Misattributed Paternity? A Survey of Lay Public Attitudes*, 8 AJOB EMPIRICAL BIOETHICS 234, 241 (2017) (discussing medical ethics surrounding whether a physician should disclose inadvertently discovered non-paternity). Regardless of how it is first discovered, the process of investigating the family secret can also lead to the revelations of other secrets. Sex, Lies & The Truth Podcast, *Christine - And the Light Skinned Dancer* (Aug. 18, 2021), https://podcasts.apple.com/si/podcast/christine-and-the-light-skinned-dancer/id1437285450?i=1000532419649 [https://perma.cc/P7B4-VZSK] (reporting an example where one person's attempt to find their genetic father ended up revealing that her niece was also an MPE); Copeland, *supra* note 4, at 85-86.

The resulting MPE discoveries force us to confront the very definition of family, and the role that DNA might play in it.[33]

B. Genetics and Identity

Forming and maintaining a sense of personal identity is a process of telling stories about ourselves and negotiating the stories that others tell about us.[34] It is a dynamic process, not just a set of DNA.[35] Our self-narratives are created and recreated within a complex web of perceived facts and social relationships. Our identities situate us and provide a sense of security and place.[36] Genetics are one part of the complex web that creates our identities; they are one way that we situate ourselves in the world.[37]

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33. MILANICH, *supra* note 18, at 10.

34. COPELAND, *supra* note 4, at 159; Dan P. McAdams, *Narrative Identity*, *in* HANDBOOK OF IDENTITY THEORY AND RESEARCH 99, 100 (Seth J. Schwartz, Koen Luyckx & Vivian L. Vignoles eds., 2011) ("Narrative identity is an internalized and evolving story of the self that provides a person's life with some semblance of unity, purpose, and meaning."). For a discussion of other theories of identity and other conceptions of the self, see generally Vivian L. Vignoles, Seth J. Schwartz & Koen Luyckx, *Introduction: Toward an Integrative View of Identity*, *in* HANDBOOK OF IDENTITY THEORY AND RESEARCH 1 (Seth J. Schwartz, Koen Luyckx & Vivian L. Vignoles eds., 2011).

35. COPELAND, *supra* note 4, at 159; *see also* McAdams, *supra* note 34, at 107.

36. COPELAND, *supra* note 4, at 169-70; Clarke, *supra* note 9, at 754 (noting that formal belonging to various groups—whether defined by nation, gender, or kinship—"are generally considered fundamental characteristics of human beings, contributing to a person's 'sense of self and place in the world.'").

37. Carol Smart, *Families, Secrets and Memories*, 45 SOCIO. 539, 543 (2011) ("It is impossible to imagine a family without the sense that it is part of a lineage; that the people who are the current parent generation are the children of the previous generation and that they carry with them some sense or aura (not to mention genes) of those who have gone before. . . . [T]he past and the present are therefore intertwined and each gives meaning to the other.") (citation omitted)); Jeremy Freese & Sara Shostak, *Genetics and Social Inquiry*, 35 ANN. REV. SOCIO. 107, 120 (2009) ("[P]eople are active interpreters of information from ancestry tests, aligning it with other sources of information and meaningful categories of identity in their lives.").

DNA testing can disrupt our stories about ourselves, and hence also the security that stable identities provide.[38] Here's how people who have experienced DNA surprises describe them:

> You feel like you are literally detached from the universe. Like your identity is gone.[39]

> I had over 40 years of history as *me*, but now I felt like I wasn't who I thought I was. Everyone says that DNA doesn't make you who you are, but if the very basis of your self image is a lie, what does that mean for self identity?[40]

These people speak of no longer knowing who they are. These disruptions can also make people wonder who they might have been. What if I had been raised in a different family? What if I had been able to meet my genetic grandparents before they died?[41] These questions can make one's identity feel contingent and fragile, and undermine the stability that our self-narratives normally provide.

Of course, these reactions are not inevitable. Some people shrug off news that their legal parent is not their genetic parent.[42] For them, perhaps their genes are not a large part of their self-narrative, nor is the story of how they came to be in this world or how they came to be raised by their legal

38. COPELAND, *supra* note 4, at 169-70; Llilda P. Barata, Helene Starks, Maureen Kelley, Patricia Kuszler & Wylie Burke, *What DNA Can and Cannot Say: Perspectives of Immigrant Families About the Use of Genetic Testing in Immigration*, 26 STAN. L. & POL'Y REV. 597, 621-23 (2015) (discussing narrative identity and the disruptions caused by DNA disclosures).

39. *Megyn Kelly TODAY: DNA Test Reveals Man is Not Related to Beloved Grandparents* (NBC television broadcast Sep. 7, 2018), https://www.youtube.com/watch?v=5Pamc0tiEY4 [https://perma.cc/X5ES-8XYQ].

40. *My New Reality*, MY SEARCH FOR ME (Oct. 16, 2018), https://mysearch4me.com/page/4/ [https://perma.cc/R67J-LX9P] (anonymous blog).

41. *See* Casey, *Do You Wish You'd Never Done a DNA Test?*, WATERSHEDDNA BLOG (June 9, 2018), https://www.watersheddna.com/blog-and-news/caseydnasurprise [https://perma.cc/ULC2-HRGJ] ("[T]he worst part was that my biological dad was deceased. I'd never get a chance to meet him—for closure, or curiosity, or any other reason. Door shut. End of story. . . . [A]nd all the years I missed out on knowing my brother. It hurts.").

42. Rowley, *supra* note 7 (describing one woman who fought to amend her birth certificate, but mentioning her brothers who more easily adjusted to the DNA surprise).

parents. Nothing in this Article argues that DNA is always essential to identity, or that genes necessarily reveal important information about us.[43] But genes are relevant to a great many people today, and understandably so.[44]

One need only look to literature and other media to see how enduring questions of genetic parentage are. A series of switched-at-birth cases captivated the public imagination in the 1920s.[45] During that time, women began moving from home births to hospital births in large numbers.[46] This generated anxieties about whether the hospital staff might accidentally give a mother the wrong baby. They occasionally did, and newspapers of the time voraciously covered the resulting disputes.[47] In the realm of fiction too, baby-swaps were and are a common plot twist. From the H.M.S. Pinafore to current daytime soap operas, characters find that they were not who they thought they were.[48] Other MPE events are also common. From *Veronica Mars* to *Star Wars*, writers with large incentives to tell stories that will capture the attention of massive numbers of people seem to understand that many of us find at least some meaning in genetic heritage, even when it only involves fictional characters. These issues are all the more intriguing when they involve real people, as Jerry Springer has long understood.[49]

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43. Annette R. Appell, *Controlling for Kin: Ghosts in the Postmodern Family*, 25 WIS. J.L. GENDER & SOC'Y 73, 104 (2010) ("This is not to say that biology or biological connection is constitutive of identity, but simply that our own and our perceptions of others' identities often include reference to biological connections and the construction of those connections.").

44. *See id.*; Carol Smart, *Family Secrets: Law and Understandings of Openness in Everyday Relationships*, 38 J. SOC. POL. 551, 555 (2009) ("[B]lood or genetic links do carry special meanings. This specialness should not imply that these links indicate good-quality relationships, but, even where such relationships are poor, they occupy a kind of iconic status in the cultural and personal imaginary.").

45. MILANICH, *supra* note 18, at 80-84.

46. *See id.* at 82.

47. *See id.* at 79, 82; COPELAND, *supra* note 4, at 255.

48. *See, e.g.*, WIKIPEDIA, *Babies Switched at Birth*, https://en.wikipedia.org/wiki/Babies_switched_at_birth [https://perma.cc/UV56-BM6A].

49. Laura A. Matejik, *DNA Sampling: Privacy and Police Investigation in a Suspect Society*, 61 ARK. L. REV. 53, 79 (2008). Other shows that rely on paternity-revelation to entertain and entrance include *Maury*, *The Jenny Jones Show*, *The Ricki Lake Show*, and *The Montel Williams Show*. *See id.*; Mayukh Sen, *Who's*

C. History of Birth Certificates

Births have been recorded for many centuries, often by churches.[50] This tradition continued in the American colonies, although some colonial governments also recorded births themselves.[51] It was not until the mid-1800s that states began formalizing the practice of collecting birth data.[52] Much of the impetus for this formalization came from the need for greater public health data.[53] In the first half of the twentieth century, the functions of the birth certificate expanded. Progressive reformers wanted to limit child labor and promote compulsory education.[54] To do so, they successfully lobbied for more systematic birth certificate practices in order to have a document that could easily verify a child's age.[55] In part because of their efforts, all states had adopted federally recommended birth certificate practices by the 1930s.[56] Birth certificates rose to prominence again during World War II, when they were used to document citizenship.[57]

Today, one prominent use of birth certificates is as prima facie evidence of *legal* parentage.[58] Parents use birth certificates to show that they have decisional authority over the child, such that they can enroll the child in school, for example.[59] To accomplish this function, birth certificates record legal parentage rather than genetic parentage. When birth certificates became widespread in the United States, the information they listed was

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Your Daddy, How Televised Paternity Tests Became a Racialized American Spectacle, TOPIC (June 2018), https://www.topic.com/who-s-your-daddy [https://perma.cc/N4BH-VZ8H] (noting the "timelessness of this narrative's appeal").

50. Heather L. Brumberg, Donna Dozor & Sergio G. Golembek, *History of the Birth Certificate: from Inception to the Future of Electronic Data*, 32 J. PERINATOLOGY 407, 407 (2012).

51. *Id.*

52. *Id.*

53. *Id.*

54. Susan Pearson, *Age Ought to be a Fact*, 101 J. AM. HIST. 1144, 1144-45 (2015).

55. *Id.*

56. Brumberg, *supra* note 50, at 408.

57. Pearson, *supra* note 54, at 1165.

58. JOSLIN ET AL., *supra* note 11, at § 5:25.

59. Anna Marie D'Ginto, *The Birth Certificate Solution: Ensuring the Interstate Recognition of Same-Sex Parentage*, 167 U. PA. L. REV. 975, 1001-02 (2019).

perhaps the best proxy for genetic parenthood available. They listed the birth mother and, if she was married, her husband. They still do so today. The Uniform Parentage Act defines legal parents.[60] In most cases, the birth mother is the legal mother, and her husband is the legal father.[61] This is true regardless of whether they used a donor egg and donor sperm, meaning that neither legal parent is genetically related to the resulting child.[62] This and other forms of assisted reproductive technology regularly cleave genetics and intentional parentage apart. When they do, the intended parents are the legal parents, and the legal parents—rather than the genetic parents—are listed on the birth certificate.[63]

Legal and genetic parentage can also diverge outside of the assisted reproductive context. A married woman may become pregnant as the result of an affair, and give birth during marriage. As a default, the wife and husband would be the legal parents and would be listed on the birth certificate. The genetic father would, as a default, not be a legal parent and would not be listed on the birth certificate. As discussed below, he might be able to assert legal parentage in a paternity suit.[64] If he is successful, he will replace the husband as the legal father. This will also trigger a change in the birth certificate. Similarly, as discussed more in the next Section, when legal parentage changes through adoption, courts normally amend the birth certificate to reflect the change.[65]

D. Birth Certificates and Identity

Birth certificates are "not merely [] a reporter and portable record of having been born, but [also] a powerful creator, regulator, and arbiter of

60. UNIF. PARENTAGE ACT §§ 102, 201, 204 (UNIF. L. COMM'N 2017).

61. *Id.*

62. *Id.* at §§ 702, 703.

63. *See* JOSLIN ET AL., *supra* note 11, at §§ 4:8, 3:15.

64. *See infra* Section III.A.

65. In some states, terminating parental rights also removes that parent from the birth certificate. *See, e.g.*, TENN. CODE ANN. § 36-2-313 (2021) ("When an order of parentage has been entered, the clerk of the court shall immediately transmit a certified copy of the order and the completed application for a new certificate of birth by parentage to the registrar of vital records, who shall issue a new certificate of birth."); VA. CODE ANN. § 20-49.10 (2021) ("A court that sets aside a determination of paternity in accordance with this section shall order completion of a new birth record.").

identity."[66] States seem to understand this, and routinely allow people to pursue identity interests through amendments to their birth certificates.

Name changes provide an initial example of amendments that serve identity interests.[67] Adults who find out that they were adopted as children might change their name back to the name that they were given by their birth parents.[68] Someone else might change her last name to distance herself from its potential source—the white slaveowner who owned her ancestor.[69] Another person may change her name after converting to a new religion.[70] Still others may simply dislike the name that their parents burdened them with. States have even allowed people to make political statements with their names, and to change their name to "Pro-life" or "KentuckyFriedCrueltyDotCom."[71] After these name changes, states can issue new birth certificates.[72]

66. Appell, *supra* note 9, at 367.

67. Elizabeth F. Emens, *Changing Name Changing: Framing Rules and the Future of Marital Names*, 74 U. CHI. L. REV. 761, 769 (2007) ("Though apparently trivial, names are also constitutive. To have a name at all is thought to be a fundamental element of identity and dignity."); Julia Shear Kushner, *The Right to Control One's Name*, 57 UCLA L. REV. 313, 342 (2009) (arguing that "[c]ontrol over one's name, like other components or manifestations of individual autonomy and identity, should be protected as a fundamental privacy right").

68. *See* COPELAND, *supra* note 4, at 142-43; Jessenia Parmer, *I'm Changing My Name Back to My Birth Name*, (Sep. 25, 2014), https://web.archive.org/web/20210506063623/http://iamadopted.net/im-changing-my-name-back-to-my-bir/ [https://perma.cc/SS7D-8SC7] ("I found out the name meant something to my birth mom . . . I feel like this is who I truly am. Since she is no longer here, I feel like this is the one thing she gave me.").

69. COPELAND, *supra* note 4, at 174.

70. *See* Kushner, *supra* note 67, at 355.

71. *Boy Changes Name to Fight for a Cause*, NBC NEWS (Aug. 4, 2010, 2:17 PM EDT), https://www.nbcnews.com/id/wbna10928344 [https://perma.cc/UTH6-GTGJ].

72. *See, e.g.*, STATE OF TEXAS, APPLICATION FOR AMENDED BIRTH CERTIFICATE BASED ON A COURT ORDERED NAME CHANGE, https://www.dshs.texas.gov/vs/reqproc/forms/vs2318.1a.pdf [https://perma.cc/6EV6-DWAE].

Arguments for allowing people to amend the gender markers on their birth certificates are also, at least partially, rooted in identity claims.[73] People have a dignitary interest in obtaining identity documents that accurately reflect their gender identity, including where that identity is nonbinary.[74]

Adoption provides yet another example of states recognizing the identity interests of people listed on birth certificates.[75] Starting between 1930 and 1950, an increasing number of states began issuing new birth certificates for adopted families.[76] This new birth certificate maintained the child's date of birth, but perhaps little else. The new birth certificate listed the adopted parents and perhaps also their domicile as the place of birth.[77] The child could get a new name as well. Starting in the 1960s, states began

73. *See, e.g.*, Lisa Mottet, *Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People*, 19 MICH. J. GENDER & L. 373, 379 (2013) (noting that identity interests combine with interests in avoiding discrimination and violence).

74. Jessica A. Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894, 951 (2019) ("Identity documents such as passports, driver's licenses, and birth certificates can also play a meaningful role in a person's conception of self. The documentary formalities that recognize nonbinary gender can legitimate an individual's claim to that status."); Andrew Cray & Jack Harrison, *ID Accurately Reflecting One's Gender Identity is a Human Right*, CTR. FOR AM. PROGRESS (Dec. 18, 2012), https://www.americanprogress.org/issues/lgbtq-rights/reports/2012/12/18/48367/id-accurately-reflecting-ones-gender-identity-is-a-human-right [https://perma.cc/C469-538X] ("When a government agency is unwilling to issue identification that reflects a person's identity, they are making a value judgment on the legitimacy of that identity and, as an extension, on an individual's right to citizenship.").

75. Appell, *supra* note 9, at 398 ("[A]doption is the paradigm of the birth certificate's malleability: a record of vital statistics that is not fully accurate and creates an individual marker of identity that only might be true."); *see also* JULIA GREENBERG & ROBERT STAM, INTERSEXUALITY AND THE LAW: WHY SEX MATTERS, 71 (2012) ("Typically, amendments to birth certificates are made following an adoption, change of name for minors, and acknowledgment of paternity. If legislatures allow amendments in these circumstances, legislators do not intend that the birth certificate should reflect only accurate historical facts that were true at the time of birth.").

76. Prior to this time, an adoption was not a reason to alter a birth certificate. Elizabeth J. Samuels, *The Idea of Adoption: An Inquiry Into the History of Adult Adoptee Access to Birth Records*, 53 RUTGERS L. REV. 367, 376-78 (2001).

77. *See, e.g.*, KY. REV. STAT. § 199.570 (2022).

to seal the original birth certificate so that it could only be accessed by convincing a judge that you had good cause to do so.[78] None of these practices are necessary to define the legal consequence of adoption. A decree of adoption could provide proof of the parent-child relationship that would entitle the adoptive parents to enroll the child in school and exercise other aspects of their authority as legal parents. Of course, birth certificates become more useful as arbiters of legal statuses if they have fewer exceptions. This might justify issuing a new birth certificate with the adoptive parents listed as parents. But it does not justify sealing the original birth certificate, as opposed to simply noting that it is an old version that is now amended. Sealing original birth certificates protected some children from the stigma of illegitimacy, allowed some adoptive parents to avoid the stigma of infertility, and most importantly for this Article, helped solidify the identity of the adoptive parents as the true and real parents of the child, rather than some second-class version of parents.[79] The new birth certificate combined with sealing the original is a powerful expressive act that says: you are a family now.[80]

Just as the state recognizes identity interests when amending birth certificates, it recognizes those interests when it allows people to *decline* to amend them. People who adopt older children might be especially wary of signaling the erasure of their former legal parents by amending their birth certificate. "Changing a birth certificate may not sound like a big deal, and it may even sound logical, but for many older youth in the child welfare system, it can be viewed as an attack on their identity."[81] Similarly, a grandmother who adopts her grandchild may not want to be listed as the

78. Samuels, *supra* note 76, at 377-82; Appell, *supra* note 9, at 399.

79. Josh Gupta-Kagan, *The New Permanency*, 19 U.C. DAVIS J. JUV. L. & POL'Y 1, 23 (2015).

80. Gary Clapton, *The Birth Certificate, "Father Unknown" and Adoption*, 38 ADOPTION & FOSTERING 209, 216 (2014) ("Adoption demonstrates the powerful, talismanic qualities of the birth certificate."); Shohreh Davoodi, *More Than a Piece of Paper: Same-Sex Parents and Their Adopted Children Are Entitled to Equal Protection in the Realm of Birth Certificates*, 90 CHI.-KENT L. REV. 703, 720 (2015) ("[T]he state decision to issue a birth certificate with the names of a child's parents cements the parent-child relationship, perhaps especially for adoptive parents, who depend on the state to create and legalize their parentage in the first place.").

81. Michelle Chalmers, *What is the Purpose of a Birth Certificate?*, AMPERSAND FAMILIES (Nov. 8, 2015), https://ampersandfamilies.org/2015/11/08/what-is-the-purpose-of-a-birth-certificate/[https://perma.cc/DR3H-DE7G].

"mother" when doing so would erase her own daughter.[82] To preserve the identity of the adopted child, and to refrain from signaling that the parents they perhaps loved and still love no longer matter, these adoptive parents might choose to allow the birth certificate to deviate from legal parentage. Again, this compromise is made to promote the child's identity interests.

E. Ava's Story

Ava was the family genealogist.[83] Ever since she created a family tree for a school project when she was twelve, she enjoyed researching her roots. She researched her last name and was proud of it. When she was fifty-one, she took an Ancestry.com DNA test to see if she, and by extension her family, had any Native American heritage. She ignored the rest of the information that Ancestry.com provided until three years later.

Ava was contacted by someone, I'll call him Carl. Carl said that Ancestry.com estimated that they were first cousins, and he hoped that Ava might be able to help him. He was looking for his genetic father. He had always known that his legal father was not his genetic father, but was now thinking about trying to contact his genetic father. He had some information, but needed more. Ava was happy to help.

She never doubted that Carl was her first cousin, but she could not figure out how this was true. At first she suspected that her paternal grandfather might have had another child. She also wondered whether her grandmother had ever given a child up for adoption. Either way, this would be her uncle and perhaps Carl's father. She searched for this mystery uncle until one morning it dawned on her that she might be the missing link. If there was no long-lost uncle, then perhaps there was a long-lost father: hers.

Ultimately, she was able to help Carl find his genetic father, who had tragically died just a few months before. His obituary held the clues that Ava needed to find her own genetic father. She narrowed down the possibilities.

82. This might be disruptive to the identity of the mother, the child, and the grandmother herself. Other adoptive parents find the new birth certificate disruptive of their own identity: "It felt to me like it had erased his past, including all evidence of his parents, and had replaced them with a fabrication. It labelled me as his mother and specified that the 'age of the mother' was 38. I was 38 when he was born, but I was not 38 when I became his mother." VICTORIAN LAW REFORM COMMISSION, REVIEW OF THE ADOPTION ACT 1984, 6. BIRTH CERTIFICATES OF ADOPTED PEOPLE, https://www.lawreform.vic.gov.au/content/6-birth-certificates-adopted-people [https://perma.cc/32CC-UG4H].

83. Telephone Interview with "Ava" (Jan. 13, 2021).

Many MPE people craft carefully worded letters to their potentially new-found relatives. Ava called and left a message saying bluntly: "You are either my father or my uncle." It turned out that this was her genetic father. He had long suspected that he might be her father and thought about contacting her on several occasions.

The story of Ava's conception and birth soon emerged. Ava's genetic father joined the military just after high school and briefly dated her genetic mother. Her mother told him that she might be pregnant, but then moved away rather suddenly. Her genetic father was able to locate her mother through the help of her mother's old neighbors. She was still pregnant when they spoke. She told him that the baby was not his, and he was later transferred to a military base far away. She married the man who would, at Ava's birth, become her legal father.

Ava now wants to amend her birth certificate. This simple desire opens up a series of novel questions and suggests that existing reform efforts surrounding birth certificates are outdated and need to be significantly rethought.

II. IDENTITY, RECOGNITION, AND AMENDING BIRTH CERTIFICATES

The stories from Ava and other MPE people begin to highlight the identity interests that children have in their birth certificates. This Part introduces existing birth-certificate reform efforts and seeks to reorient them. Much of the existing work on birth-certificate reform focuses on providing adopted and donor-conceived children with access to truthful information about their genetic parentage. Once we see those stories alongside Ava's, a new and unstudied question emerges: after children learn about their genetic heritage, what, if anything, should the law do to recognize their potentially evolving identities?

A. Existing Birth Certificate Reforms: Identity Through Knowledge

Various organizations advocating for adopted children and many scholars of adoption law have argued that adopted children should be able to discover that they are adopted, and perhaps also who their genetic parents are.[84] One common reform effort is to unseal the adopted child's original birth certificate and give them unfettered access to it once they turn

84. *See, e.g.*, Jennifer R. Racine, *A Fundamental Rights Debate: Should Wisconsin Allow Adult Adoptees Unconditional Access to Original Birth Certificates?*, 2002 WIS. L. REV. 1435, 1435.

eighteen.[85] These reforms seek to balance the adoptive parents' parental rights, the genetic parents' right to privacy, and the child's right to truthful information.[86]

Scholars and advocates have also called for more comprehensive reforms to birth certificates. Ensuring access to original birth certificates cannot transfer information to the adopted child unless they know to look for it.[87] Accordingly, various proposals alter birth certificates so that they either reveal genetic parentage on their face or signal to the child that more information might be available.[88] These reforms weigh the adult-child's interest in knowing their origins more heavily than the parents' interests in withholding this information.

The arguments in favor of providing adopted children with information about their genetic parents have also been applied to donor-conceived children.[89] There, various organizations have sought to ban anonymous gamete donation,[90] and have sought to reform birth-certificate practices so that an original birth certificate with accurate genetic information is available to the child.[91]

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85. *See, e.g.*, Wayne Deloney, *Unsealing Adoption Records: The Right to Privacy versus the Right of Adult Adoptees to Find Their Birthparents*, 7 WHITTIER J. CHILD & FAM. ADVOC. 117, 142 (2007).

86. Naomi Cahn & Jana Singer, *Adoption, Identity, and the Constitution: The Case for Opening Closed Records*, 2 U. PA. J. CONST. L. 150, 173-74 (1999) (discussing the relevant interests and how their weight might shift over time).

87. *See, e.g.*, Cahn, *supra* note 13, at 1095-96.

88. *See, e.g.*, *id.* at 1104-05 ("A variety of options are available for including information about donor conception on birth certificates, ranging from a special stamp to two separate certificates, one indicating 'genetic heritage' and the other labeled 'certificate of birth,' with the latter including the names of the legal parents. Perhaps the easiest would simply be a notation on the certificate that more information is available; this system is currently in effect in the Australian state of Victoria.").

89. *See, e.g.*, *id.* at 1112; Naomi Cahn & The Evan B. Donaldson Adoption Institute, *Old Lessons for a New World: Applying Adoption Research and Experience to ART*, 24 J. AM. ACAD. MATRIM. L. 1 (2011).

90. Elizabeth J. Samuels, *An Immodest Proposal for Birth Registration in Donor-Assisted Reproduction, in the Interest of Science and Human Rights*, 48 N.M. L. REV. 416, 445 (2018) (listing advocacy groups).

91. Cahn, *supra* note 13, at 1100 ("[B]irth certificates provide the most certain, and potentially the least intrusive, way of ensuring the availability of [genetic]

In both the adoption and donor-conception areas, reformers often talk about the child's "right to know" about their genetic heritage, how they came to be, and how they came to be a part of their family.[92] There are two main arguments in favor of recognizing such a right. First, the child could get significant medical benefits from having more accurate genetic information.[93] Knowing that you have a family history of skin cancer, for example, might significantly impact your behavior and allow doctors to monitor and treat you more effectively. Second, one's genetic history is, for some, a building block of one's self-narrative and identity.[94] Knowing who your genetic parents were, and what they were like, might have a powerful impact on your own self-concept.

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information [to donor-conceived children]"); Olivia Rundle & Samantha Hardy, *Australian Birth Certificates: The Best Interests of No One at All*, 26 AUS. J. FAM. L. 116, 117 (2012) (suggesting that one option for reform is to decouple legal parentage documents from genetic parentage documents by creating a "parentage certificate").

92. Cahn, *supra* note 13, at 1111; An Ravelingien & Guido Pennings, *The Right to Know Your Genetic Parents*, 13 AM. J. BIOETHICS 33, 33 (2013) (discussing the "right to know" as a human right); DONOR SIBLING REGISTRY, HISTORY AND MISSION, https://www.donorsiblingregistry.com/history-and-mission#future_goals [https://perma.cc/ZQ3L-74FA]; ADOPTEE RIGHTS LAW CENTER, ABOUT, https://adopteerightslaw.com/about/ [https://perma.cc/G2DQ-NT9N].

93. *See, e.g.*, Naomi Cahn, *Children's Interests and Information Disclosure: Who Provided the Egg and Sperm? Or Mommy, Where (and Whom) Do I Come from?*, 2 GEO. J. GENDER & L. 1, 6, 7, 9 (2000).

94. *See, e.g.*, Cahn & Singer, *supra* note 86, at 173 (advocating for open access to adoption records in part because "access to information about their biological origins may be central to [adult adoptee's] construction of identity"); Deloney, *supra* note 85, at 132 (advocating for open access to adoption records in part because "as the child matures and reaches adulthood . . . the adoptee may have the need to know about his or her birth parents in order to form a complete identity."); Cahn, *supra* note 13, at 1109 (arguing for mandatory disclosure to donor-conceived children that they were donor-conceived, and mandatory disclosure of the identity of the donor in part because "donor conceived people express strong interest in knowledge about their biological progenitors for identity purposes and medical information, and emotional needs for this knowledge."); *see also* Smart, *supra* note 44, at 555 ("[B]lood or genetic links do carry special meanings. This specialness should not imply that these links indicate good-quality relationships, but, even where such relationships are poor, they occupy a kind of iconic status in the cultural and personal imaginary.").

For purposes of this Article, the most important point is that these reforms are grounded, at least in part, in identity claims. Knowledge of one's origin story is, for some people, "central to [their] construction of identity," and it can provide them with a more "complete . . . sense of identity."[95] Of course, for other people, this knowledge might be irrelevant. But providing adult-children with access to genetic information allows them to decide for themselves how, if at all, to adjust their self-narrative and conception of themselves.[96]

B. A New Focus: From Knowledge to Recognition

Identity interests extend beyond access and knowledge, to recognition.[97] Existing scholarship on adoption and donor-conception has been focused on the first issue—access to information.[98] It has failed to address the second issue—recognition. Ava's story nicely captures the new focus. There, access was no longer an issue. The beginning of MPE stories is discovery. That's their starting point. It is not surprising, therefore, that they focus on recognition rather than access. Ava feels that the foundation of her identity has been knocked out from under her, and that her existing birth certificate now tells a lie. It no longer reflects who she is. She wants some official record to reflect the genetic truth, which also happens to be her truth as to the identity of her father.

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95. Rebecca Johns, *Abolishing Anonymity: A Rights-Based Approach to Evaluating Anonymous Sperm Donation*, 20 UCLA WOMEN'S L.J. 111, 130 (2014).

96. Samuels, *supra* note 90, at 436 ("[An] individuals' right to know their genetic origins is based on their autonomy to decide at different times in their lives what their genetic origins mean to them.").

97. This has only been obliquely recognized in the relevant literature. *See* Gregory Luce, *What You (Don't) Get in Pennsylvania*, ADOPTEE RTS. L. CTR., (Nov. 21, 2017), https://adopteerightslaw.com/what-you-dont-get-in-pennsylvania [https://perma.cc/EH55-YPHD] (critiquing Pennsylvania for only providing "a lousy printout" summary of an adopted child's original birth certificate, rather than a certified official document).

98. *See supra* notes 95-97; Michelle Dennison, *Revealing Your Sources: The Case for Non-Anonymous Gamete Donation*, 21 J.L. & HEALTH 1, 3 (2008); Nancy E. Dowd, *From Genes, Marriage and Money to Nurture: Redefining Fatherhood*, 10 CARDOZO WOMEN'S L.J. 132, 139 (2003) (arguing for a functional, not genetic, definition of parentage, but also noting that "[t]he child has a right to know their genetic identity, most strongly for medical and health reasons, but also to value cultural and social identity").

Shifting focus from knowledge to recognition seems particularly appropriate in an era of commercial DNA databases and genetically-customized medical care.[99] As technology partially solves the access issue, the number of people who experience DNA surprises will increase.[100] This simultaneously decreases the importance of the access question and increases the importance of the recognition question.

1. Identity Disruptions

Recognition of one's parentage matters to many people, and understandably so. To begin, it is important to acknowledge that many MPE people perceive these discoveries as profoundly disruptive to their identity; we should not dismiss their interests as trivial, fleeting, or unimportant.

One common refrain of MPE people is that others cannot really understand how disruptive these discoveries are. A therapist who both works with MPE people, and is one herself, echoed this common experience:

> There were a slew of insensitive remarks. . . . What I heard most often was "What does this really change?" . . . Of course, it changes everything. You have no idea the impact it has on identity . . . . It turned my world completely upside down.[101]

This is certainly not unique to MPE situations. Those who experience a stillbirth often say something similar,[102] and they have fought for official recognition of their experience as well. In 2001, Arizona was the first of thirty-four states to pass a so-called Missing Angel Law which creates a birth

99. *See supra* Section I.A.

100. One might argue that the omnipresence of commercial DNA databases will deter parents from ever lying to their children in the first place. If true, this would go a long way toward solving the access question. Although children would not be surprised by the mismatch between legal and genetic parentage, they may still have an interest in the recognition of both types of parents. Again, the recognition question becomes more important than the access question.

101. Sex, Lies & the Truth, *Sean—Long Time Listener, First Time Caller* (Dec. 15, 2018), https://www.sexliesandthetruth.com/episodes [https://perma.cc/FR4G-M4UU] (featuring therapist Jodi Klugman-Rabb interviewing her new-found brother after experiencing an MPE event).

102. MISS Foundation, *Missing Angels Bill PSA*, YOUTUBE (Apr. 27, 2007), https://www.youtube.com/watch?v=ZNvTDTK-0Jk [https://perma.cc/Y8EV-BVSL].

certificate of sorts for stillborn children.[103] These certificates have no legal effect, but serve to recognize the experiences of parents who felt that they had lost a child, not just a pregnancy.[104] Advocates had to overcome a great deal of skepticism from others who thought that these certificates were unnecessary or unimportant.[105]

Ava too finds other people often dismiss the impact of her MPE discovery. Ava's doctor said: "Well it doesn't really matter, he was effectively only a sperm donor anyway." Ava's friend said: "Well nothing's really changed. He's still your father." Ava's response is concise and poignant: "BULL SH*T."

Again, you may not understand what the big deal is about.[106] But we should be humble about our ability to know what both parents of stillborn children and MPE people need. We should listen to what they themselves feel is an appropriate response to their particular tragedy. Here is how Ava describes her experience:

> They will never truly understand if they don't experience this. When your whole reality . . . you grow up knowing that red is red and the sky is up, and one day red isn't red and the sky is down. Reality is turning completely upside down . . . . I had an extreme identity crisis. Extreme. I still, every time I have to say or write my name, my stomach hurts. I went from being so committed and proud of my last name, and now it sickens me. I love my family, but it's all a lie . . . . I just feel like *I'm* a lie, like there is no [Ava]. She's a lie. Of

103. MISS FOUNDATION, https://www.missfoundation.org/advocacy/miss-state-and-federal-legislative-initiatives [https://perma.cc/X68X-WRA6].

104. MISS Foundation, *supra* note 103 ("Acknowledge that our daughter existed . . . that she mattered"); Carol Sanger, *"The Birth of Death": Stillborn Birth Certificates and the Problem for Law*, 100 CAL. L. REV. 269, 288–89 (2012) ("[The certificate's] subject is not only the child but also the parent's relation to the child. The certificate is proof that a real child—real enough to have its birth recorded—was born to a woman now registered as its mother."); Clarke, *supra* note 9, at 789 ("Parents of stillborns seek public recognition of that status, which they experience as made real by the physical birth certificate.").

105. *See* MISS FOUNDATION, *supra* note 103.

106. Indeed, one article on this topic illustrated similar skepticism, asking "why should a bureaucratic act, and a piece of paper, prevent people from creating their own narratives about themselves?" Edward Higgs, *UK Birth Registration and Its Present Discontents*, 5 REP. BIOMED. & SOC. ONLINE 35, 36 (2018).

> course, I know I am the same person. I know that my experiences make me who I am. I'm not trying to escape reality.[107]

Other MPE people describe similar experiences.

> I felt like my whole family died on the same day. Some days were better than others, of course, but it was very difficult. Many nights I woke up in the middle of the night crying. Family is more than biology and I've always known that, but everything has changed for me . . . . I have been through all the stages of grief-denial, anger, bargaining, depression and acceptance. I've bounced back and forth through all of those.[108]

> I felt lost . . . it's hard to find out in your late 40s that you aren't who you thought you were all of your life, and I didn't take it well . . . . I wondered what I'd done to anger the Universe, and I grieved for . . . the lost opportunities to know my biological family.[109]

2. Reconstructing Identity Through Recognition and Correcting Misrecognition

In response to these massive disruptions to one's identity, Ava and many other MPE people seek to amend their birth certificates:

> This is not about choosing which father I like more . . . . I loved my [legal] father like crazy. [As for my genetic father,] I can't call him "my father" so I call him "the father." I don't feel the emotional attachment. I'm open to it, but it hasn't happened yet.

107. Ava went to three different therapists to try to deal with her experiences, but none helped. It was not until she went to a trauma specialist that she got results. Other MPE people also use the label "trauma" to describe their experiences. Jodi Klugman-Rabb, *Family Secrets and Trauma: When DNA Secrets Are Discovered, People Can be Traumatized*, PSYCHOLOGY TODAY (Sept. 20, 2019), https://www.psychologytoday.com/us/blog/finding-family/201909/family-secrets-and-trauma [https://perma.cc/C7G9-MLNA].

108. Michelle & Eden, *DNA Surprise*, WATERSHEDDNA BLOG (Sep. 26, 2018), https://www.watersheddna.com/blog-and-news/michelle-eden-dnasurprise [https://perma.cc/SU5L-5C3N].

109. Casey, *supra* note 41.

> I understand you can't go willy-nilly changing your father on your birth certificate. But my birth certificate is a lie . . . . People like me who are going to research their roots are going to use my birth certificate and immediately, they're on the wrong path . . . . I'm furious that we can't change it.

Ava spent the extra money to get a paternity test that would be admissible in court. She also asked her mother to sign a notarized letter stating who her genetic father was. Ava knew that these documents would likely have no legal effect. But she collected them in the hopes that the law will someday allow her to amend her birth certificate.

Ava and others not only want the state to recognize their truth of parentage, but they also want the state to stop *misrecognizing* it.[110] The state makes truth claims on birth certificates. In common understanding, birth certificates list genetic parentage. Of course, this is not technically true, but popular opinion and common beliefs often diverge from legal realities.[111] Even in the case of adoption, the state uses the birth certificate to assert a truth: that the adoptive parents are the true parents. Insofar as the state continues to use birth certificates after the child turns eighteen, it continues to make contestable truth claims. From Ava's perspective, and the perspective of many other MPEs, it is more accurate to say that the state continues to make *erroneous* truth claims. Empowering Ava to obtain recognition of her truth will also end the state's misrecognition of it.[112]

110. Ava and others are most concerned that their birth certificate tells a lie. This is a concern about misrecognition. There is likely some selection effect at work here. People who use Ancestry.com are more likely to care about genealogy and the accuracy of the relevant records.

111. *See generally* Sean Hannon Williams, *Sticky Expectations: Responses to Persistent Over-Optimism in Marriage, Employment Contracts, and Credit Card Use*, 84 NOTRE DAME L. REV. 733 (2009).

112. The relationship between obtaining recognition and ending misrecognition is not always this simple. For example, the state might delete parentage information on birth certificates after the child becomes an adult. This would mitigate the state's role in misrecognizing parentage. Ava's birth certificate would no longer tell a lie because it would no longer make any truth claims about parentage. But insofar as future genealogists will be able to access the birth certificate as it existed when Ava turned eighteen, a lingering truth claim remains, and Ava has an interest in correcting it. If the state entirely removed itself from the business of making truth claims about parentage, then Ava's interests in recognition would require forcing the state to get back into that business. I will set this issue aside in this Article.

3. Recognition, not Rights

Ava and other MPEs seek recognition of their parentage, but they generally are not focused on obtaining the various rights or obligations that other laws might append to a parent-child relationship. This is especially clear in the context of inheritance. MPEs generally have no interest in inheriting property from their newly discovered relatives. In fact, often the reverse is true. MPEs often report that their newly discovered relatives were or are suspicious of their motives.[113] These newly discovered relatives might think that the MPE is only after money. If anything, many MPEs would prefer a legal regime that mitigated rather than exacerbated these suspicions. They crave some way to credibly signal that they want nothing except the chance to have a few conversations with their newly discovered relatives. As one MPE put it: "I'm not looking to get invited over for Thanksgiving, but, you know, don't be an assh*le."[114]

The next subsection adds further support to the claim that MPEs seek recognition, not rights. It tells the stories of donor-conceived and adopted children who sought to amend their birth certificates in ways that had no legal consequences whatsoever.

4. Recognition in the Donor-Conception and Adoption Contexts

Although currently ignored by the existing literature, donor-conceived children and adopted children sometimes desire to amend their birth certificate. They go to great lengths to vindicate their identity interests by seeking recognition of their parentage. Emma discovered right after her first day of college classes that she was conceived using donated sperm.[115] After that, she reported:

> Each time I looked at [my birth certificate], I just thought: this is a lie, this isn't me. I wanted something that represented the truth.[116]

113. *Sex, Lies & The Truth: Catherine the Great*, COUCH GENES (Jan. 24, 2019) (noting that newly contacted relatives often think: "What do you want from us? You must be after something.").

114. Everything's Relative with Eve Sturges, *Pour Yourself Some Chianti: I'm Not Italian*, ANCHOR (July 9, 2021), https://anchor.fm/ryan-middledorf6/episodes/Pour-Yourself-Some-Chianti-Im-Not-Italian-e13o9of [https://perma.cc/P3AC-JAF7].

115. Rowley, *supra* note 7.

116. *Id.*

That truth, according to Emma, was that her father was a sperm donor, not her legal father. Yet there was no clear legal pathway to make this change. Various family law scholars found Emma's legal efforts "unprecedented."[117] Even after her mother and legal father agreed to help her make the change—that is, even after the three people with the strongest interest in the birth certificate all agreed that it should be changed—it was still not clear that she would be able to amend it.[118] Because at the time of the donation, donor anonymity was allowed, her goal was merely to have her birth certificate list "donor" as the father.[119] In June 2014, at the end of her six-year legal battle, Emma succeeded:

> It is not exactly an exciting piece of paper to anyone else . . . . But to me, it is. It is the truth. It is who I am.[120]

For many adopted children, access and recognition will largely come at the same time. Many adopted children discover the identity of the genetic parents by accessing their original birth certificate. This document, once obtained by the adopted child, informs the child of her birth parents and provides some official recognition of their relationship.

For other adopted children, access is not the same as recognition.[121] Some adopted children seek further recognition by, for example, seeking to legally change their name to reflect their genetic parents' names or to reflect the name that those parents originally gave to them. Like any name change, this is a relatively easy process, and can result in an amended birth certificate. As the next story illustrates, other adopted children find errors on their original birth certificate that they feel are worth correcting.

Linda was adopted.[122] She wanted to learn about her genetic parents, but the adoption agency would not provide her with her original birth certificate.[123] She sued, and in 2001 won a high-profile court battle to obtain

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117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. IOWA CODE ANN. § 144.24A (effective July 1, 2021) (allowing adopted children to access a *redacted* version of their original birth certificate that still conceals the identity of the birth parents).

122. Tine Miles, *I've Got Dad's Name - at Last*, LIVERPOOL ECHO (Jan. 31, 2009), https://www.liverpoolecho.co.uk/news/liverpool-news/ive-dads-name---last-3463413 [https://perma.cc/VW74-YUL3].

123. *Id.*

this information.[124] But she did not stop there. Her original birth certificate did not list a father, it just had a dash listed for that line.[125] She eventually discovered her father's name and fought to have it listed on her original birth certificate. At age sixty-two, she finally succeeded.[126] When interviewed, she said:

> I wanted recognition [that] he was my father. It wasn't nice to see a dash where your father's name should be. I just had a line there and I wanted his name because it was my right. I still can't believe it, it's like reading a story about somebody else. I'm so pleased, I can't stop looking at it. I want to make a copy and frame it. This is my pot of gold at the end of the tunnel.[127]

These stories again speak to the importance of moving beyond the question of access to address the question of recognition. Regardless of why their genetic history was at first obscured and later revealed, adult children maintain an identity interest in the content of their birth certificates.

5. Recognition as a Human Right

Some courts are painfully blind to these interests. In 2014, Susan Dent brought a paternity suit on her own behalf when she was sixty-nine years old.[128] Obviously, she was no longer eligible for child support. Because the alleged father died many years earlier, she also had no claim to his estate.[129] The trial court held that Dent lacked standing because she "only seeks to invoke the judicial process for apparently personal reasons."[130] Under similar circumstances, a different trial court judge dismissed a paternity suit because "[i]t's for [the adult-child's]—I'm going to use the word 'peace of mind.' He just wants the recognition of that relationship in a legal fashion."[131] These judges have a cramped vision of the relevant interests.

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124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. Dent v. Wolf, 222 Cal. Rptr. 3d 846, 847 (Cal. Ct. App. 2017).

129. *Id.*

130. *Id.*

131. S.S. v. S.S., No. D072122, 2018 WL 4659575, at *1 (Cal. Ct. App. Sept. 28, 2018).

Both cases were reversed.[132] In Susan Dent's case, the appeals court reversed, partially based on the plain language of the statute, but also partially based on a fuller understanding of Dent's interest. "Dent has a personal stake in the outcome of the paternity action, i.e. the accurate identification of her father and other collateral benefits such as the ability to amend her birth certificate and to develop a relationship with family members."[133] The voices in this Article speak clearly about the importance of these interests, and the myopia involved in seeing them as merely personal.

A recent case in the European Court of Human Rights has elevated the importance of recognition by implicitly placing it within a set of fundamental human rights. The European Convention on Human Rights protects "private and family life."[134] The European Court of Human Rights has consistently interpreted this to include an identity right:

> The right to know one's ascendants falls within the scope of the concept of 'private life', which encompasses important aspects of one's personal identity, such as the identity of one's parents.[135]

Most cases focus on access to information and strike down statutes of limitation that bar adult-children from bringing paternity suits.[136] But one recent case strongly implied that the right to identity includes more than knowledge: it includes a right to state recognition of parentage. In *Gronmark v. Finland*, that court addressed a statute of limitation that cut off Maarit Gronmark's ability to bring a paternity suit.[137] She was thirty-two when she attempted to bring the suit, so child support and custody were no longer issues.[138] She had already conducted a DNA test and confirmed her genetic father's status as such.[139] In fact, her genetic father had already supported

132. *Id.* at *3; Dent, 222 Cal. Rptr. 3d at 848.

133. Dent, 222 Cal. Rptr. 3d at 848-49.

134. European Convention on Human Rights, Art. 8, Nov. 4, 1950.

135. Grönmark v. Finland, Eur. Ct. H.R. 10 (2010). People have an interest in this knowledge even after they become an adult. Jäggi v. Switzerland, Eur. Ct. H.R. 9 (2006) ("[A]n individual's interest in discovering his parentage does not disappear with age, quite the reverse.").

136. Capin v. Turkey, Eur. Ct. H.R. 1 (2019).

137. Grönmark v. Finland, Eur. Ct. H.R. 10 (2010).

138. *Id.* at 1-2.

139. *Id.* at 2.

her when she was a child.[140] So what interests remained? She had an interest in the state officially recognizing the relationship. This recognition would give her a share of the inheritance, and promote her identity. But the court never mentioned the inheritance; it played no part in their reasoning.[141] This is perhaps because a previous case had already held that interference with a potential inheritance was insufficient to trigger the Convention's protections.[142] Instead, this court found that the statute of limitations interfered with Gronmark's right to pursue her identity interests.[143] This strongly implies that the state must not only provide a means for people to discover their genetic parentage, but must also provide a means of formally recognizing those connections.

Of course, the United States is not a signatory of this convention. States are free to give whatever weight they want to the adult-child's identity interests. But their importance in international law is noteworthy. It suggests at a minimum that states should seriously consider the importance of identity interests in parental recognition, rather than ignoring or trivializing them.

C. A New Problem: Recognition Implicates Amendment Policy

Ava, Emma, and Linda sought recognition of their parentage through an amendment to their birth certificate. This is not surprising. The birth certificate is the main document that the state uses to record and define parentage. It has also been imbued with cultural significance.[144] Birth

140. *Id.*

141. *See id.* at 9-16.

142. Haas v. The Netherlands, Eur. Ct. H.R ¶43 (2005). Haas wanted to inherit through his genetic father, even though this man was not his legal father. The court found that a genetic child's interest in obtaining an inheritance was not sufficient to outweigh the state's interest in "legal certainty in matters of inheritance." When inheritance, but not identity, is at issue, the state's general interest in certainty prevails. When identity is an issue, the state's interest in finality is never sufficient unless the child has been given a reasonable opportunity to prove parentage. *See* Capin v. Turkey, Eur. Ct. H.R. 18 ¶38 (2019).

143. Grönmark v. Finland, Eur. Ct. H.R. 15 (2010).

144. Cahn, *supra* note 13, at 1105 (noting that, despite its lack of formal legal authority to define parentage, the birth certificate, "in popular culture, [] remains an identity document . . . . Its symbolic, performative significance

certificates are intimately connected with identity and are seen as the arbiter of parental truths.[145] Today, this is most clear for parents: a birth mother's lesbian partner and intended co-parent has a strong identity interest in being named a parent.[146] But we should also recognize that this is true for children. For both parents and children, "birth certificates are intrinsically linked to a person's sense of identity, both personally and socially, [and hence] they must genuinely reflect the reality of children's family structures in order to uphold these children's right to identity."[147] Birth certificates also have significance after death. The birth certificate is one of the few documents that people leave behind to tell their story.[148] They show the basic scaffolding of our family lives. Of course, they tell very little of our day to day lives or the richness or barrenness of our emotional connections with our family. But future researchers are unlikely to read our diaries or sift through our family albums unless we are famous enough to have our own biographer. The birth certificate is the one document that others may see that tells at least part of the story of ourselves.[149]

Of course, amending a birth certificate is not the only possible pathway to recognize parentage. States could create a separate certificate, perhaps a

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outweighs its actual value."); Sanger, *supra* note 104, at 288 ("[B]irth certificates have subjective significance for the person. They tell a great deal about who we are, at least according to certain traditional conceits, and thus are constitutive of identity.").

145. Appell, *supra* note 9, at 367 (identifying birth certificates "as a powerful creator, regulator, and arbiter of identity").

146. Rundle & Hardy, *supra* note 91, at 46 (noting, in the context of a parent's interest, that "[t]here is considerable symbolic power and emotional investment in who should be recorded as a parent on a child's birth certificate").

147. Paula Gerber & Phoebe Lindner, *Birth Certificates for Children with Same-Sex Parents: A Reflection of Biology or Something More?*, 18 N.Y.U. J. LEGIS. & PUB. POL'Y 225, 274 (2015).

148. Of course, not everybody is lucky enough to have one. *See* Barbara Cooter, *Born in the USA; Without a Shred of Proof*, THE GAZETTE (Sept. 30, 2011), https://gazette.com/news/born-in-the-usa-without-a-shred-of-proof/article_a9a684fd-d024-531d-9b17-2282578cda4a.html [https://perma.cc/ER47-W74M].

149. *See* Wendy Kramer, *Biology and Birth Certificates: Our Right to Accuracy*, DONOR SIBLING REGISTRY (Oct. 14, 2014), https://www.donorsibling registry.com/blog/biology-and-birth-certificates-our-right-to-accuracy/ [https://perma.cc/G8K2-ACMF] (noting the birth certificates have "become an indispensable tool for genealogical researchers").

Certificate of Genetic Parentage or a Certificate of Functional Parentage.[150] These would provide some degree of recognition. But it is not clear whether these documents will stand the test of time and become a staple of genealogical research. It is also not clear that these other hypothetical documents will be embraced by individuals as the proper markers of their identity; it takes time to imbue a document with meaning. Currently, the birth certificate appears to be the only document commonly associated with both identity and parentage. This Article therefore sets aside the possibility that identity interests can be adequately pursued through other types of official documentation of parentage and focuses on the one document that has come to be infused with great cultural and research significance in matters of parentage: the birth certificate.[151]

D. A New Question: Whose Birth Certificate Is It, Anyway?

One common intuition is that the birth certificate is solely the child's.[152] It's "her" birth certificate, after all. But she is not the only person listed on it. Birth certificates serve identity interests of both children *and their parents*. The state also has an interest in controlling the information listed on birth certificates. The next two Parts explore these interests.

150. *See* Eric Blyth, Lucy Frith, Caroline Jones & Jennifer M. Speirs, *The Role of Birth Certificates in Relation to Access to Biographical and Genetic History in Donor Conception*, 17 INT'L J. CHILDREN'S RIGHTS 207, 222-23 (2009) (discussing "a two-part system of birth certification, in which a 'Certificate of Parentage' would record the fact of assisted conception and the names of the individual's social and donor parents"); Samuels, *supra* note 90, at 418-20 (arguing that the birth certificate should reflect genetics, and a "certificate of parentage" should document legal parentage).

151. Sanger, *supra* note 104, at 288 ("[B]irth certificates have subjective significance for the person. They tell a great deal about who we are, at least according to certain traditional conceits, and thus are constitutive of identity.").

152. *See infra* Section IV.A.

III. STATE INTERESTS IMPLICATED BY AMENDING BIRTH CERTIFICATES

This Part examines the various state interests surrounding the amendment of birth certificates.[153] Birth certificates function as prima facie arbiters of current legal status.[154] Amending parentage information on a birth certificate is therefore tied up in policies about altering legal parentage. It is generally not possible to amend parentage on a birth certificate without altering legal parentage.[155] Emma's story is the exception that proves the rule. Her efforts were novel precisely because there was no known legal pathway for her to accomplish her goal. Accordingly, this Part addresses changes to legal parentage. Other Parts will discuss disentangling birth certificates from legal parentage.[156]

This Part makes a negative claim: the strongest state interests that justify robust state oversight of legal parentage simply do not apply after the child becomes an adult.[157] Other state interests are weak. Thus, amendment policy should be driven largely by the relevant private interests. An initial example comes from adoption. Before a child can be adopted, a court must generally find that the adoption is in the best interests

153. I am setting aside citizen-children born abroad who receive a Consular Report of Birth Abroad rather than a state birth certificate. It is not clear what substantive standards would apply for amending Consular Reports of Birth Abroad. Bureau of Consular Affairs, *How to Replace or Amend a Consular Report of Birth Abroad (CRBA)*, U.S. DEP'T STATE, https://travel.state.gov/content/travel/en/records-and-authentications/requesting-a-vital-record-as-a-u-s--citizen/replace-amend-CRBA.html [https://perma.cc/HYK6-6YLH] (listing only name changes and alterations to legal parentage after adoptions as examples of possible changes).

154. JOSLIN, MINTER & SAKIMURA, *supra* note 11, at § 5:25 377.

155. The reverse is possible. As discussed above, it is sometimes possible to alter legal parentage without altering the birth certificate. *See supra* Section I.D.

156. *See infra* Section V.B.

157. There are, of course, affirmative arguments for a state-interest in allowing amendments to birth certificates. A liberal state has an interest in respecting the diversity of families. Married parents get divorced and remarried. Unmarried parents may partner or repartner as well. Grandparents or other caregivers may enter or exit the child's life. Patterns of caregiving change, new parental figures might arrive, and other parental figures may leave. A state committed to supporting this diversity of family forms would likely embrace changes to legal parentage (at least under some circumstances) and corresponding amendments to birth certificates.

of the child.[158] Many state courts have interpreted state adoption statutes that were designed for adopting children and found that they also allow one adult to adopt another adult.[159] For various reasons that I will discuss later, adult adoption is ill-suited to the MPE context.[160] But adult adoption nicely illustrates the main point of this Part. In the context of adult adoption, should a court have to find that the adoption is in the best interests of the "child"? Courts have been rightly skeptical that this requirement should be transposed without alteration into the adult context. One court recently noted that "a best interest determination inherently requires less of a court when considering the interests of competent, consenting adults fully able [to] understand the implications of the adoptive status."[161] It went on to suggest that, in the context of adult adoptions, the statutorily required "best interests of the parties" analysis should be largely an inquiry into duress and fraud.[162] Other courts have similarly interpreted best-interest requirements in ways that do not directly challenge the judgment of competent consenting adults.[163] These cases show that the state's powerful child-related interests in child adoption dissipate significantly in the context of adult adoption. The rest of this Part examines the state's child-related rationales for policing legal parentage in the context of paternity suits to illustrate how those rationales also evaporate in the context of adult-children.

158. DOUGLAS E. ABRAMS, NAOMI R. CAHN, CATHERINE J. ROSS & LINDA C. MCCLAIN, CONTEMPORARY FAMILY LAW 368 (5th ed. 2019).

159. Ausness, *supra* note 8, at 255.

160. *See infra* Section V.C.

161. *In re* Termination of Parental Rts. of Schultz, 389 P.3d 322, 325 (Okla. 2017).

162. *Id.* at 325-26.

163. *In re* P.B. for Adoption of L.C., 392 N.J. Super. 190, 193-94, 200 (Law Div. 2006) (interpreting an adult-adoption statute that required a finding of "best interests" to waive its ten-year age-difference requirement and holding that this entailed simply determining whether the parties had a previous parent-child relationship); *see* Eder v. Appeal from Prob., No. CV146045533S, 2016 WL 1265763, at *29 (Conn. Super. Ct. Mar. 2, 2016), aff'd *sub nom.* Eder's Appeal From Prob., 171 A.3d 506 (2017) ("Of course courts operating under the statute involving minors must pay strict attention to the best interests of the child-children are involved but this is not a factor where there has been an adult adoption.").

A. Child-Related Interests

Two dominant policies shape the rules for altering legal parentage through a paternity suit: providing children with emotional stability by resolving legal-parentage issues before they develop deep attachments to parents and providing them with a stable source of child support.[164] The primary tools that states use to promote both forms of stability simultaneously are statutes of limitation that bar paternity suits after short time periods.[165] These interests dissipate once the child becomes an adult, at which time an irony appears: the short statutes of limitation that were designed to help children are now harming them by preventing them from amending parentage on their birth certificate.

Legal parentage is determined first and foremost by birth. The birth mother is the legal mother, absent an enforceable surrogacy agreement.[166] The spouse of this birth mother is, by default, the other legal parent.[167] Together, these and similar rules create a set of presumed parents under the law.[168] These presumptions of parenthood inform the initial content of birth certificates, and when there are two parents listed, the law often makes it difficult to change parentage.[169] In some states, the "presumption" that the spouse of the birth mother is the other legal parent is simply

164. *See* Melanie B. Jacobs, *When Daddy Doesn't Want to Be Daddy Anymore: An Argument Against Paternity Fraud Claims*, 16 YALE J.L. & FEMINISM 193, 221, 240 (2004).

165. *Id.* at 214-221.

166. *See* Douglas NeJaime, *The Nature of Parenthood*, 126 YALE L.J. 2260, 2280, 2309 (2017).

167. UNIF. PARENTAGE ACT § 204 (UNIF. L. COMM'N 2017).

168. *Id.*

169. States generally only allow two legal parents, so to add a parent to a birth certificate, often a different parent will have to be removed. *See* Melanie B. Jacobs, *Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents*, 9 J.L. & FAM. STUD. 309, 310 (2007); Julie McCandless, *Reforming Birth Registration Law in England and Wales?*, 4 REPROD. BIOMED. & SOC'Y. ONLINE 52, 56 (2017) ("The information recorded by the state—however partial and prescriptive—is informed by the normative politics of family life . . . . [T]he[se] politics seem to remain tenaciously informed by gendered perceptions of the two-parent family model, in which children are deemed to have, at most, two 'real' parents." (citation omitted)).

irrebuttable.[170] Others allow paternity suits—so called because to date they have largely been about adjudicating male parentage. These suits are won or lost with genetic evidence; paternity is defined as genetic paternity.[171] But importantly, many states limit these paternity suits by imposing short statutes of limitation.[172] Under the UPA, for example, a paternity suit generally cannot be brought after the child's second birthday.[173] Preventing changes in paternity protects the child from losing financial support from her legal father, and potentially helps prevent disruptions in their emotional relationship as well.[174]

If there is no presumed father, a man might be listed as the father on a birth certificate by virtue of signing a Voluntary Acknowledgement of

170. In Pennsylvania, for example, "the presumption is irrebuttable where mother, child, and husband live together as an intact family, and husband assumes parental responsibility for the child." TRACY BATEMAN & LUCAS MARTIN, 8 STANDARD PENNSYLVANIA PRACTICE 2D § 49:80, Westlaw (database updated Feb. 2022).

171. Leslie Joan Harris, *A New Paternity Law for the Twenty-First Century: Of Biology, Social Function, Children's Interests, and Betrayal*, 44 WILLAMETTE L. REV. 297, 312-13 (2007).

172. *See Parentage Act*, UNIF. L. COMM'N (Apr. 16, 2022), https://www.uniformlaws.org/committees/community-home?CommunityKey=c4f37d2d-4d20-4be0-8256-22dd73af068f [https://perma.cc/CE7D-WB4E] (listing twenty states that have enacted a version of the UPA, which itself imposes a two year Statute of limitation for disestablishing paternity); Harris, *supra* note 171, at 312 ("Traditionally, states imposed short statutes of limitations on paternity suits, often requiring the suit to be brought within a year of the child's birth.").

173. UNIF. PARENTAGE ACT § 608 (UNIF. L. COMM'N 2017).

174. *Compare* Dye v. Geiger, 554 N.W.2d 538, 541 (Iowa 1996) ("David may scornfully characterize the court's ruling as a charade, but we are more inclined to view it as an attempt to foster responsible parenting. We hope that David's heart will follow his money."), *with* B.E.B. v. R.L.B., 979 P.2d 514, 519 (Alaska 1999) ("It is far from obvious that precluding a non-biological father from challenging paternity can effectively protect his child's emotional well-being. . . . Of course, it is arguable that if the father knows that he will not be able to shirk his support obligation by challenging paternity, he might be deterred from attempting the challenge. But any such deterrence would be more than offset by the risk that a court order requiring the non-biological father to pay support might itself destroy an otherwise healthy paternal bond by driving a destructive wedge of bitterness and resentment between the father and his child.").

Paternity (VAP).[175] When a birth mother and an alleged father sign one of these forms, it has the same effect as a determination in a paternity suit.[176] Here, some states have imposed even more limits on second-guessing paternity. Generally, the mother and the father have sixty days to rescind the VAP.[177] After this, signatories can generally only challenge the acknowledgement "on the basis of fraud, duress, or material mistake of fact."[178] But even here, statutes of limitation can be short. California requires such suits to occur within two years of the signing of the acknowledgement.[179] This bars all challenges, even those by the child acting through a legal representative, two years after the acknowledgement was signed.[180] Ohio bars all challenges sixty days after it was signed.[181]

Where only one parent is listed on a birth certificate, states generally do not impose a statute of limitations, or have a longer one.[182] This is because states generally want the child to have two parents. Here, the state sacrifices stability in order to promote a normative vision of the family. To the extent that a suit is brought while the child is a minor, these states also may obtain additional sources of child support.

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175. Jeffrey A. Parness & Zachary Townsend, *For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth*, 40 U. BALT. L. REV. 53, 69 (2010) ("[M]ost states . . . exclude marital children from voluntary-acknowledgment processes.").

176. *Id.* at 60 (discussing 42 U.S.C. § 666(a)(5)(D)(ii) (2006)).

177. Jeffrey A. Parness & David A. Saxe, *Reforming the Processes for Challenging Voluntary Acknowledgments of Paternity*, 92 CHI.-KENT L. REV. 177, 183 (2017).

178. *Id.* at 183-84; *see, e.g.*, CAL. FAM. CODE § 7576 (West 2022).

179. CAL. FAM. CODE § 7576 (West 2022).

180. CAL. FAM. CODE § 7577(d) (West 2022).

181. OHIO REV. CODE ANN. § 3111.27 (West 2021-2022).

182. *See, e.g.*, TEX. FAM. CODE ANN. § 160.606 (West 2021) (no statute of limitation)); 750 ILL. COMP. STAT. 46/607 (West 2021) (same); D.C. CODE § 16-2342 (2022) (21 year statute of limitation if no presumed father; 2 year staute of limitation if child has a presumed father). In Pennsylvania, children born out of wedlock only have eighteen years to file a paternity suit, but those suits are entirely barred when there is an intact marital family. *Compare* 23 PA. STAT. AND CONS. STAT. ANN. § 4343 (West 2020), *with* BATEMAN & MARTIN, *supra* note 170 at § 49:80. A similar pattern exists in New York. *Compare* N.Y. FAM. CT. ACT § 517 (codifying a general 21 year statute of limitation), *with* Merril Sobie & Gary Solomon, 10 N.Y. PRAC. *New York Family Court Practice* § 6.4, Westlaw (database updated Jan. 2022) (noting that fathers cannot bring "non-paternity action[s]" regardless of the timing).

Laws in this area are strongly rooted in policy concerns about ensuring that the child has a steady source of child support.[183] VAPs were specifically designed to increase the amount of child support flowing to children on federal-welfare programs.[184] Statutes of limitation aggressively prevent paternity actions when those actions threaten child support, but not when they will increase child support.

The laws are also rooted in protecting vulnerable children's emotional attachments to their legal parents. A regime solely concerned with child support would freely allow switching fathers, at least when the new one had a higher income. But this is not what the current statutes of limitation do. They favor stability. When emotional attachments are likely to be a smaller issue—for example, when the father never lived with the child or never held the child out as his own—the relevant statute of limitation is sometimes longer.[185]

The main policy concerns that motivate state control over legal parentage simply do not apply to birth-certificate amendments that occur after the child becomes an adult. Ava was over fifty years old when she discovered that her legal father was not her genetic father. She no longer needs child support from her father. The emotional stability rationale is similarly inapposite. Ava is old enough to navigate the emotional shoals ahead. Most importantly, she is old enough to make her own choices. This is not a case where an innocent and impressionable child is cast into emotional turmoil by the legal wrangling of her parents. Ava can decide for herself what is in her best interests; she does not need courts stepping in to monitor her choices, or legislators paternalistically constraining her options.

Yet, these laws often prevent amendment.[186] One frustrated person writes:

183. Parness & Saxe, *supra* note 177, at 178; *see* 42 U.S.C. § 666(a)(5)(A) (2012) (mandating only that states offer VAPs until the child turns eighteen).

184. Parness & Saxe, *supra* note 177, at 57.

185. *See, e.g.*, WASH. REV. CODE ANN. § 26.26A.435 (West 2022).

186. Some courts interpret these statutes of limitation as statutes of repose, which cannot be waived, while others allow such waivers. *Compare In re* Ngo, No. 05–13–00382–CV, 2013 WL 3974136, at *1 (Tex. App. Aug. 2, 2013) (holding that order disestablishing paternity was "void" because the case was filed after the relevant statute of limitations even though no party asserted the statute of limitation as an affirmative defense), *with* Miles v. Peacock, 229 S.W.3d 384, 387 (Tex. App. 2007) ("Miles asserts that the four-year statute of

> I want to change the father's name on MY OWN birth certificate. I am 40 yrs old. My mother . . . put my older sister's fathers [sic] name on the certificate . . . . My bio father is known to me . . . . His obituary lists me as his daughter. Everyone knows he is my father and to honor his memory and to keep the record correct I want to make the correction!! But I am hitting brick walls . . . it seems like no one will even listen to me . . . .[187]

Another person reports that she has been to multiple attorneys and the conversation is always the same. They ask "How old is the child"? Then the conversation grinds to a halt when she says, "Fifty-four."[188]

Ironically, state control over parentage harms the people it was supposed to protect.[189] Parentage laws were designed to ensure that Ava and other children could receive the benefits of financial and emotional stability. Ava's financial stability is no longer an issue that short statutes of limitations can affect. But they do still affect her emotional well-being. Statutes of limitation now cause her deep and ongoing psychological harm by preventing her from bringing a paternity suit, which prevents her from amending her birth certificate.

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limitations set forth in section 160.607 bars Bridget's paternity suit. . . . 'Limitations[, however,] is an affirmative defense that is waived if not pleaded.'"); *In re* S.L.W., 788 N.W.2d 328, 330 (N.D. 2010) (holding that the mother waived her statute-of-limitations defense to her husband's disestablishment action). Even if several parties agree that the paternity case should go forward, a court may not allow it. *See* R.E.H. v. J.M.H., No. 20100006, 2009 WL 6340108, at *2 (Del. Fam. Ct. Oct. 23, 2009) (refusing to hear a paternity case where the mother did not object to disestablishing paternity because their agreement meant that there was no controversy and hence the issue was not justiciable).

187. Shay, Comment to *How Do I Change the Father on My Child's Birth Certificate?*, DNA DIAGNOSTICS CTR. (May 14, 2020, 3:14 AM), https://dnacenter.com/blog/how-do-i-change-the-father-on-my-childs-birth-certificate [https://perma.cc/787K-QXQK].

188. Telephone Interview with "Nicole" (March 10, 2020).

189. Although a handful of philosophers may debate whether a child and the adult she grows into are really the same person, this Article will not. For an overview of arguments of this type, see Sean Hannon Williams, *Self-Altering Injury: The Hidden Harms of Hedonic Adaptation*, 96 CORNELL L. REV. 535, 563 (2011) ("According to Parfit, people persist through time only as a matter of degree. Therefore, the question of whether my future self will be 'me' cannot be definitively answered.").

There is room for debate about how to balance the various interests when the person who wants to amend their birth certificate is a young adult who is no longer a minor but is still eligible for child support. Most states allow child support to last through graduation from high school.[190] Some states can order child support until the child is twenty-one or twenty-three, often in the form of assistance for college.[191] We might worry that the adult-child cannot navigate the relevant financial and emotional issues on her eighteenth birthday,[192] and regardless, the state may have its own interests in providing post-majority support. Similarly, the state may have its own interest in ensuring a source of support for disabled children who are incapable of supporting themselves, even after those children turn eighteen.[193] This Article will not take a strong position here, but it will generally define "adult-child" as someone who is not only eighteen or older, but also no longer eligible for these various forms of support. Future work can balance the state's interest in child support against the young adult's autonomy and identity interests and could even ask whether twelve-year-olds should have some measure of control over their legal parentage.[194] In order to motivate the broader project without being sidetracked by debates that are severable, this Article will focus on areas where there is likely to be greater consensus.

190. PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 3.24 (AM. L. INST. 2002).

191. RESTATEMENT OF CHILDREN AND THE LAW § 2.10 (AM. L. INST. TENTATIVE DRAFT 2018).

192. To account for immature adults or rash decisions, the state could enact cooling-off periods or other procedural barriers designed to ensure considered judgment.

193. TEX. FAM. CODE ANN. § 154.302(a) (West 2021) ("The court may order either or both parents to provide for the support of a child for an indefinite period . . . if the court finds that: (1) the child . . . requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support; and (2) the disability exists . . . on or before the 18th birthday of the child.").

194. *See* Sutton v. Diane J., No. 2006-002342-DP, 2007 WL 840900, at *1 (Mich. Ct. App. Mar. 20, 2007) (rejecting a minor's attempt to bring a paternity action against his mother in order to force her to disclose the name of his biological father).

B. Other Potential State Interests

The main policy concerns that motivate short statutes of limitation for legal parentage simply do not apply to birth-certificate amendments that occur after the child becomes an adult. Of course, we could expand the set of relevant policy concerns. These interests might include facilitating public health research, preventing fraud, and reducing administrative costs.

1. Facilitating Public Health Research

The state has an interest in creating and maintaining birth certificates that are useful for public health and demographic research. This was one of the first functions of birth certificates.[195] Research will benefit from more, and more accurate, data. Suppose Ava alters the person listed as her legal father. It is not clear which legal parents—the former functional parent, or the current genetic parent—would be more valuable for research purposes.[196] But regardless, the state can keep the historical information on file as well. If it deems it valuable to know who the legal parents were at birth, or when Ava turned eighteen, or at any other time, it can do so. It does not have to ossify legal parentage on the birth certificate to accomplish its potential goals of collecting useful data. In fact, ossifying parentage has the deleterious effect of precluding Ava from adding potentially interesting data: her desire to alter legal parentage may itself be a useful piece of information for researchers.

2. Preventing Fraud

In the context of name changes, the state has an interest in preventing amendments to birth certificates that could promote fraud. It does not protect these interests bluntly by precluding name changes. It allows anyone who just wants a different sounding name to have one.[197] The state protects its interest by ensuring that the person seeking the name change is

195. Brumberg et al., *supra* note 50, at 407.

196. *But see* Samuels, *supra* note 90, at 431 (suggesting that accurate information on genetic parentage is more important for public-health research).

197. Michelle Kaminsky, Esq., *Top 10 Reasons People Change Their Names*, LEGALZOOM (Aug. 24, 2020), https://www.legalzoom.com/articles/top-10-reasons-people-change-their-names [https://perma.cc/W2SA-YGW5].

not doing so in order to avoid criminal or civil liability, and by keeping a record of the person's former name.[198]

Unlike name changes, there does not appear to be any special risk of fraud in the case of amendments to parentage. The rules surrounding adult adoption support this. There, one adult can adopt another as long as both consent.[199] Courts are wary about making special inquiries into possible fraudulent motives.[200] If people could *unilaterally* alter their birth certificates, one might imagine con artists altering their birth certificates and then using them to infiltrate other families to ask for money. So, the state would have an interest in verifying claims of parentage. This is easiest in the case of genetic parentage, which can be verified by DNA tests.

3. Administrability

Potentially, a state could question whether the administrative cost of the change would be worth the benefit. But the state has ways to offset these costs without compromising the interests of those who want to alter their birth certificates. States commonly charge fees to amend birth certificates.[201] Those fees could be calibrated to offset the administrative costs.

More importantly, the relevant disputes don't necessarily need to be channeled through expensive paternity suits. In 1995, a Massachusetts court confronted whether an adult child could bring a paternity suit. The court rejected the suit:

> [T]he complaint must allege some adequate reason for seeking a paternity determination. A determination of paternity in this case made in the abstract cannot be justified. The complaint fails to

198. Kushner, *supra* note 67, at 355.

199. THOMAS A. JACOBS & NATALIE C. JACOBS, CHILDREN & THE LAW: RIGHTS AND OBLIGATIONS § 4:7 (2020).

200. *See id.* Courts sometimes police other motives. *See infra* note 319 (discussing same-sex lovers who sought to use adoption to formalize their relationship pre-*Obergefell*).

201. *See, e.g.*, *Locations, Hours, and Fees*, MARICOPA COUNTY (n.d.), https://www.maricopa.gov/2857/Locations-Hours-Fees [https://perma.cc/ZES3-EBN2] ($30); *Amending a California Birth Certificate*, SAN DIEGO L. LIBR. (Jan. 2013), https://sandiegolawlibrary.org/wp-content/uploads/wpmc-trash/2013/04/Amending_a_California_Birth_Certificate.pdf [https://perma.cc/2WCA-NDPQ] ($20).

> allege any reason why a determination of paternity would serve any interest of the plaintiff that the law should recognize. Courts have more important business to discharge than providing answers to questions that have no asserted purpose.[202]

This court has a cramped and stilted view of the plaintiff's interests. But even if the judge was right, and "[c]ourts have more important business to discharge," the state can design regimes that do not require courts.

A clear administrative procedure may be preferable to a court case. Paternity suits presumably protect the rights of all parties by ensuring a high level of accuracy about the genetic determination of parentage. But today, proof of genetic connection can be established without the need to test the genetic father directly. Ancestry.com already provides the equivalent of testing on genetic relatives of the father, which would then be sufficient if genetic accuracy is our only goal. If some interpretation of the results is required, perhaps a notarized letter from a doctor might be sufficient.[203] Funneling disputes through courts also allows judges to apply equitable doctrines like paternity by estoppel. This doctrine estops someone from challenging legal paternity, and hence maintains their status as legal parent despite their lack of genetic connection.[204] This doctrine is commonly invoked when the estopped person suspected the lack of genetic connection but nonetheless embraced their status as parent.[205] But this doctrine hardly seems likely to estop the *child* from challenging paternity. This doctrine's entire purpose is to protect the child.[206] It would be a grand irony to use it to deny the child's own efforts to amend her birth certificate, thereby causing psychological distress and thwarting her autonomy in

202. Conlon v. Sawin, 651 N.E.2d 1234, 1236 (Mass. 1995).

203. *See also* Mottet, *supra* note 73, at 435-36 (arguing against requiring a court order to change your gender marker on your birth certificate, and instead recommending a simple administrative process that required only a notarized letter from doctor).

204. Jessica Feinberg, *Restructuring Rebuttal of the Marital Presumption for the Modern Era*, 104 MINN. L. REV. 243, 253-54 (2019) (collecting cases).

205. Vanessa S. Browne-Barbour, *"Mama's Baby, Papa's Maybe": Disestablishment of Paternity*, 48 AKRON L. REV. 263, 272–73 (2015); Leslie Joan Harris, *Reforming Paternity Law to Eliminate Gender, Status, and Class Inequality*, 2013 MICH. ST. L. REV. 1295, 1307 (2013).

206. *See, e.g.*, K.E.M. v. P.C.S., 38 A.3d 798, 810 (Pa. 2012) ("[P]aternity by estoppel . . . will apply only where it can be shown, on a developed record, that it is in the best interests of the involved child.").

crafting her own identity. This again suggests that judicial oversight is not appropriate, and that an inexpensive administrative procedure could be made available for adults to amend their birth certificates.

C. Post-Majority Parentage: A Blind Spot

States have unthinkingly extended statutes of limitation to adult children. This is part of a larger blind spot: states have not appreciated the importance of post-majority parentage, and instead largely assumed that parentage is only important when the child is a minor.

A recent New Jersey case nicely illustrates this erroneous assumption. There, a legal father sued the genetic father for past child support when the "child" was thirty years old.[207] The relevant statute of limitations barred the suit, but New Jersey had a long history of interpreting such statutes in light of their purposes, and tolling them when necessary.[208] The trial court and the appellate court both tolled the statute of limitations because they saw the purpose of those statutes as "ensur[ing] that each child may establish and enjoy the rights inherent in a parent-child relationship."[209] The New Jersey Supreme Court reversed, holding that the purposes of the paternity statutes in general was to provide financial support to *minors*.[210] Since this was not implicated when the child was an adult, this interest could no longer be furthered, and hence there was no reason to toll the statute of limitation. They also noted that "there comes a time when the defendant 'ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations.'"[211]

Broadly speaking, the reasoning of the trial and appellate courts is far stronger. To see why, assume that it was the *child* who brought the suit. On its face, the logic of the New Jersey Supreme Court would bar suits by the child himself, not just suits by the disgruntled legal father. Although the genetic father's duty to pay child support might be an "ancient obligation,"[212] the adult-child is not. His name is Darren,[213] he is very much

207. R.A.C. v. P.J.S., 380 N.J. Super. 94, 100-02 (2005).

208. *Id.* at 105.

209. *Id*. at 109.

210. R.A.C. v. P.J.S., Jr., 192 N.J. 81, 102 (2007).

211. *Id.* at 96–97.

212. And hence, the specific holding of the case may be correct despite its overbroad reasoning.

213. *Id.* at 100.

alive, and he deserves to have the opportunity to find out who his genetic father is and to have this connection recognized under the law.

New Jersey is not the only state to inadvertently downplay the interests of adult children. Michigan does not list "child" as one of the classes of persons who have standing to bring a paternity action when the relevant parents are married.[214] This might make sense if all the relevant parties had to sue while the child was under eighteen, and hence the child could not sue on her own anyway. But Michigan allows presumed fathers to sue during a divorce, regardless of when it occurs.[215] In Indiana, mothers and genetic fathers can file paternity suits anytime, as long as they do so jointly.[216] Together, they have the power to waive the relevant statute of limitation.[217] So too can the alleged father, as long as he voluntarily provided support for the child.[218] Children, on the other hand, have an inflexible statute of limitation: they only have until they turn twenty to bring suit.[219] North Carolina and Ohio have special statutes that allow presumed fathers to disestablish paternity after they learn that they are not the genetic parent.[220] They can effectively do so anytime.[221] But these states still bar children from bringing paternity suits after they turn eighteen or twenty-three respectively.[222] These patterns are likely inadvertent. They result from ignorance of the adult-child's interests and from political pressures by narrowly focused interest groups like duped dads.

214. MICH. COMP. LAWS ANN. § 722.1441 (West 2021) (mentioning, in four separate parts respectively, standing by the mother, the presumed father, the alleged father, and the government).

215. MICH. COMP. LAWS ANN. § 722.1441(2) (West 2021).

216. IND. CODE ANN. § 31-14-5-3 (West 2021).

217. *Id.*

218. *Id.*

219. IND. CODE ANN. § 31-14-5-2 (West 2021).

220. N.C. GEN. STAT. ANN. § 50-13.13 (West 2021) (allowing suit "within one year of the date the moving party knew or reasonably should have known that he was not the father of the child"); State ex rel. Loyd v. Lovelady, 840 N.E.2d 1062, 1064 (Ohio 2006) (upholding Ohio Revised Code 3119.961 in the face of a state constitutional attack).

221. *See infra* note 222.

222. 17 N.C. INDEX 4TH ILLEGITIMATE CHILDREN § 3 (defining terms in N.C. GEN. STAT. ANN. § 49-14 to reveal statute of limitations of 18 years); OHIO REV. CODE ANN. § 3111.05 (23) (West 2021-2022).

Even the most recent version of the Uniform Parentage Act appears to underappreciate the interests of adult-children. It begins by outlining a basic statute of limitations for paternity suits that requires the adults to sue before the child turns eighteen, but allows the child to sue anytime.[223] This supports the idea that, after the child becomes an adult, she has a far greater interest in her parentage than her current legal parents. But the UPA goes on to bar all paternity suits after the child turns two when the child has two presumed legal parents—such as when a birth mother is married at the time of the birth.[224] There may be good reason to prevent genetic fathers from interfering with otherwise intact families, and there may be good reason to prevent legal parents from upending the parental roles that they previously embraced, but it is doubtful that there is a reason to bar the child herself from filing suit after she becomes an adult.

Again, these omissions are most likely the result of a blind spot; the UPA's authors did not fully appreciate the importance of post-majority parentage.[225]

D. Summary

The state has little, if any, interest in policing parentage after the relevant child becomes an adult. The major child-related concerns evaporate. The state's potential non-child-related interests are weak. Yet states have unthinkingly ossified parentage for adult-children by assuming that parentage disputes are not useful or worthwhile after the child becomes an adult.

IV. PRIVATE INTERESTS: WHOSE BIRTH CERTIFICATE IS IT, ANYWAY?

The previous Part argued that the relevant state interests do not support strong state oversight of post-majority parentage. This suggests that issues pertaining to post-majority parentage, and to amending one's birth certificate as an adult, should be resolved by examining the relevant private interests. This Part catalogues those interests, examines existing laws that offer insights into their respective weights, and begins the process

223. UNIF. PARENTAGE ACT § 608(a) (UNIF. L. COMM'N 2017).

224. *Id.* at § 609(b).

225. This is not surprising given the immense task that these authors took on: to update the laws of parentage to promote equality for same-sex parents and take account of numerous evolutions in the law over the previous decades.

of unearthing normative arguments to resolve conflicts between these interests. Although necessarily preliminary given that this is the first Article to explore these issues, it concludes that the adult-child's interests are weightier than the interests of other individuals.

A. The Child

Legal scholarship often assumes, implicitly, that there is only one proper "subject" of a birth certificate: the child.[226] Common language suggests something similar when we talk about "the child's birth certificate." But the birth certificate commemorates not just the birth of a child, but also the "birth" of the adults' status as parents.[227] The birth certificate reflects a relationship between individuals,[228] not just the existence of one of those individuals. At first blush, it is not clear why only one of the people listed on the birth certificate would have an identity related interest in that document. More work must be done to unpack the interests at stake.

Before delving into this work, a clarification is in order. This Section deals with identity interests. Both parents and children may have identity interests in the birth certificate that records their relationship. Recognizing these conflicting interests does not imperil recent progress of the rights of trans people to amend the sex designation on their birth certificate, [229] even when their parents might object. In the trans context, the identity interests of a parent (a questionable interest in being recognized as the parent of a person of a particular sex)[230] conflict not only with the child's identity interests, but also the child's interests in avoiding discrimination and

226. *See, e.g.*, Appell, *supra* note 9, at 404 ("[T]he birth certificate is not just meaningful for the state; it is also meaningful to *the person* certified."); Gerber & Lindner, *supra* note 147, at 236 (referring to the "*child's* birth certificate"); Samuels, *supra* note 90, at 451 (same); Nancy D. Polikoff, *A Mother Should Not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the Twenty-First Century*, 5 STAN. J. C.R. & C.L. 201, 207 (2009) (same).

227. Ayelet Blecher-Prigat, *Conceiving Parents*, 41 HARV. J. L. & GENDER 119, 120 (2018) ("The birth of a child is also the birth of a parent.").

228. More specifically, a relationship between the two adults (now co-parents) and a relationship between the child and each parent.

229. Judson Adams et al., *Transgender Rights and Issues*, 21 GEO. J. GENDER & L. 479, 534-39 (2020).

230. This interest is questionable because it is in tension with broader commitments to sex equality.

violence.[231] Here the child's interests easily dwarf those of the parent. In the MPE context, discrimination and violence are not issues, and so the main conflict is between identity interests. Even here, the interests of the child are stronger.

Perhaps the child's interest is weightier because the parents might have multiple children, but the child has only one birth certificate. Perhaps the child's interest is weightier because birth is a more significant event than the transformation of the adults into parents.

The simple prevalence of the intuitions that the birth certificate is "the child's" is itself evidence that it is. In our current cultural context, birth certificates appear to be more strongly tied to the child's identity rather than the identity of the parent. This is not inevitable; it is not dictated by logic. But if this is correct as an empirical matter, then in our current cultural moment adult-children have a larger identity-related stake in the birth certificate than their parents do.[232]

After the child becomes an adult, this intuition seems even stronger. Some state statutes list people authorized to amend birth certificates. Parents can amend the certificate while the child is a minor, but sometimes only the child herself can request amendments after she becomes an adult.[233] This makes sense. It would be odd for a parent to be able to unilaterally amend the birth certificate of his 40-year-old daughter to, for example, change her name. This suggests a judgment—admittedly preliminary—that the adult child maintains an interest in her birth certificate that is significantly stronger than that of her legal parents.

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231. *Id.* at 480.

232. These observations also set limits on the scope of the potential identity interests. An adult-child could potentially assert a right to "correct" her grandparent's birth certificate. That birth certificate is part of the adult child's chain of lineage, and this might ground some interest in its contents. But the interests of those not listed on the birth certificate seem far weaker than the interests of those listed on it. In our current cultural context, that birth certificate is the grandparent's. If the grandparent is deceased, we might ask whether some living person could be empowered to carry out the grandparent's potential wishes. This question, however, is beyond the scope of this Article.

233. *See, e.g.*, *Requesting a Correction or Amendment to a Vital Record*, CONN. DEPT. OF PUB. HEALTH https://portal.ct.gov/DPH/Vital-Records/Corrections-and-Amendments [https://perma.cc/32C4-QP9X] (noting that the following persons may amend a birth certificate: "the registrant if at least 18 years of age, or parent or legal guardian of a minor registrant.").

We can gain more traction on this issue by examining related areas of family law. When conflicts arise in the context of family law, they are often governed by the ubiquitous "best interests of the child" standard.[234] Although, as a theoretical matter, it is not obvious that the best interest standard survives the transition to adulthood, scholars and courts have used it to justify reforms that only affect adult children.[235] This standard, when applied to amending birth certificates, clearly favors the preferences of the adult-child. Who is likely to understand and act upon the adult-child's best interest? The adult-child herself. This is even more straightforward if it is in their best interest to respect their autonomy. Applying a best interests standard would strongly suggest that the state should defer to the choices of the adult-child.

The intuition that the adult-child has the strongest interest in her birth certificate finds further support in the practicalities of daily life. After the child becomes an adult, the legal parents no longer have to use the birth certificate. But the child herself may need it to obtain a passport, driver's license, or marriage license. She is the one who will then be confronted with the lie it tells, and experience the resulting expressive harms. This more-direct engagement with the certificate is an additional ground for her heightened interest in its contents.

Notions of autonomy and the desirability of exercising agency over one's life also tend to bolster the interests of the adult child. So far, the child has had the least agency in creating the circumstances of her life. When she finally becomes an adult, it is perhaps inappropriate for the law to continue to empower her parents to control her. Naomi Cahn has argued that neither parents of donor-conceived children, nor donors, should be able to dictate whether the child has knowledge or contact with the donor.[236] Instead, it

234. ABRAMS ET AL., *supra* note 158, at 358, 368, 702, 794, 951 (5th ed. 2019) (discussing parentage, birth certificates, emancipation, custody, adoption, and relocation).

235. Cahn, *supra* note 13, at 1110-11; D.W. v. R.W., 52 A.3d 1043, 1062 (N.J. 2012) (discussing disagreement between trial court, appellate court, and supreme court about the particular role of "best interests" as applied to an adult-child, but all agreeing that it had some role); Reese v. Muret, 150 P.3d 309, 316 (Kan. 2007) (applying a best-interest test regarding paternity actions regardless of whether the "child" is a minor or not); *cf.* In re Adoption of Swanson, 623 A.2d 1095, 1098 (Del. 1993) (discussing whether the best interests test that is commonly used in adoptions has any role to play in adult adoption).

236. Cahn, *supra* note 13, at 1112.

should be up to the "child" after she turns eighteen.[237] This suggests that the interests of the adult-child are weightier than the interests of the legal and genetic parents. Those parents have had their opportunity to craft their identities—as parents, as donors, or something in between. It is perhaps time to finally give agency to the person most affected by those choices: the now-adult-child.

Rejecting these autonomy arguments can lead to a particularly unsavory result in many MPE cases. The parents in those cases, having exercised their state-supported power over their child to keep a secret from the child that she herself views as foundational, now seek the state's assistance in preventing that child's attempt to come to grips with the emotional effects of having to reconstruct an identity that, for decades, she has unknowingly built around that lie.[238] If the state has to choose whether to favor the interests of the adult child, who was in no way responsible for the secret and whose autonomy in forming her identity has been constrained because of it, or the parents who chose to conceal it, it should favor the adult child.

B. The Current Legal Parents

Under the current regime, a change in legal parentage is required in order to change parentage on a birth certificate. This will generally erase a legal parent from the document. This interest against erasure drives an intuition that the non-genetic parent and their co-parent may also have identity interests in maintaining their child's birth certificate. This Section builds on the previous one by exploring whether this interest against erasure disrupts the conclusion that the began to form in the last Section: namely, that the interests of adult children in their birth certificate are weightier than the corresponding interests of their parents. The arguments in the previous Section maintain their independent force. Those arguments—rooted in common intuitions, extrapolations from existing law, expressive harms, and autonomy—all still suggest that the adult-child has a strong interest in the content of her birth certificate. Now those arguments must be reweighed in light of the interests against erasure. This Section begins by introducing current laws that appear to reflect an intuition that,

237. *Id.*

238. Of course, this application of the autonomy argument only applies to parents who knew the relevant information and withheld it. It would not apply to parents who were as surprised as the child to discover the disconnect between genetic and legal parentage.

despite an interest against erasure, the interests of the adult-child are still weightier. It then argues that the parent's interest against erasure, while theoretically weighty, is contingent in a way that the adult-child's interests are not. This has implications for how we might protect and respect the parent's interest.

The laws surrounding adult adoption can give some preliminary guidance about how to weigh a parent's interest against erasure. Generally, *the current legal parents have no right to intervene to prevent the adult adoption*, even though the adoption can do far more than just remove the parent from a birth certificate; it will terminate the existing parent-child relationship and, for example, cut off inheritance rights between the adult-child and her existing legal parents.[239] Legal parents may not even be entitled to notice of the adoption.[240] These rules imply that the autonomy interests of the adult-child are weightier than the parents' interest against various types of erasure.[241]

This intuition may stem in part from a belief that not all parents have identity claims of the same weight. We might not take long to dismiss the interests of a legal father who abandoned the child and her mother long ago.[242] We might conclude that this father has no business interfering in his adult-child's wish to alter legal parentage or amend her birth certificate. But we might bristle at the idea that a dedicated legal parent could be erased in any of these ways.

239. Ausness, *supra* note 8, at 242, 255; Angela Chaput Foy, *Adult Adoption and the Elder Population*, 8 MARQ. ELDER'S ADVISOR 109, 117 (2006) ("Most states do not require consent of the prospective adult adoptee's natural parents.").

240. Sarah Ratliff, *Adult Adoption: Intestate Succession and Class Gifts Under the Uniform Probate Code*, 105 NW. U. L. REV. 1777, 1789 (2011) (noting that most states do not even give notice to existing legal parents).

241. In re Miller, 227 So. 2d 73, 75 (Fla. Dist. Ct. App. 1969) ("[A]dults are cut loose to make such decisions for themselves, independently, and to exercise a wide discretion as to their legal status. Adults may change their names, sue their parents, marry without parental consent, and disinherit their parents. We see no inconsistency in permitting the adoption of an adult as a matter of the adoptee's individual rights and personal freedom regardless of the desires of the natural parent.").

242. This legal father might also be the genetic father, the intentional father, or both. Whatever interests in parenthood these ties create, it is perhaps possible that they can be waived or that they atrophy when unused.

These brief hypotheticals suggest that the most important grounding for the parents' identity interest is their status as functional parents.[243] Both constitutional and state law support this. The Supreme Court has required more than genetics to generate parental rights; they require genetics and some attempt to function as a parent.[244] Genetics complement function, and only together do they create a powerful ground for parental rights.[245] Presumptions of paternity and various de facto parentage doctrines focus on function, even in the absence of genetic connection.[246] The most recent version of the Uniform Parentage Act puts significant weight on function as a ground for determining who is a parent.[247]

Unlike genetic parentage, functional parentage can be difficult to verify. This may be a particularly large problem in the context of adult-children if the court is asked to verify facts that occurred many years ago when the adult was a child.

243. It is possible that a non-functional parent could have weighty interests. For example, a genetic and gestation mother might assert some interests in parenthood that she never waived in a swapped-at-birth case. But these seem rare today and I will not pursue them further. *See* MILANICH, *supra* note 18, at 256 (discussing baby swap cases and concluding that "[b]abies are no longer likely to be swapped in hospitals"). It is also possible that function is only a strong ground when combined with another ground, stemming perhaps from genetics, gestation, or intent. But if the parent is already on the birth certificate, she is already the legal parent, and hence may already have other grounds.

244. NeJaime, *supra* note 166, at 2281 (discussing Lehr v. Robertson, 463 U.S. 248, 262 (1983)).

245. *Id*.

246. *Id.* at 2339 ("Courts have long looked at social attachments and functional criteria in determining de facto parental status."); Feinberg, *supra* note 204, at 246 (discussing marital presumptions as proxies for functional parentage).

247. *See* Courtney G. Joslin, *Nurturing Parenthood Through the UPA* (2017), 127 YALE L.J.F. 589, 599 (2018) ("A core goal of the UPA (2017) is to further a principle that has animated the UPA since its inception—recognizing and protecting actual parent-child bonds."); Courtney G. Joslin, *Preface to the UPA (2017)*, 52 FAM. L.Q. 437, 454-58 (2018) (discussing UPA's de facto parentage provisions).

If the state cannot verify whether the parents have well-grounded claims against erasure, then it cannot separate easy cases from hard ones.[248] But perhaps someone else can.

Consider a state that gives some measure of control to MPEs over their birth certificates. This state is not necessarily ignoring the interests of parents. It is simply delegating the decision about how to weigh the competing interests to the adult child herself.[249] MPEs often take this task seriously and do not simply pursue their own interests without regard for the interests of their parents.

Many MPEs keep the family secret in order to protect their legal parents. Adoptees sometimes hesitate to contact their birth parents because they fear that their adoptive family will feel devalued.[250] These adoptees often wait until their legal parents have died before making contact with their birth family.[251] Some donor-conceived people also weigh the impact that seeking out their donor might have on their legal parents.[252] Outside of adoption or donor conception, many MPEs share something in common with their non-genetic parent: neither knew of the disconnect between legal and genetic parentage. But the MPE may never tell her legal father that truth.[253] Instead, she will bear the weight of that secret—a secret she had

248. The state could create rough rules that might, for example, privilege the parents unless they had their parental rights terminated for abuse or neglect. But note that this would give too much weight to the interests of a parent who, for example, merely informally abandons his children.

249. States could continue to delegate these decisions to the parents. But existing statutes of limitation do not do this. They preclude both parents and children from bringing paternity suits.

250. BETTY JEAN LIFTON, LOST & FOUND: THE ADOPTION EXPERIENCE, 95, 141 (2009).

251. Judith L. Penny, DiAnne Borders & Francie Portnoy, *Reconstruction of Adoption Issues: Delineation of Five Phases Among Adult Adoptees*, 85 J. COUNSELING & DEV. 30, 36 (2007).

252. *See* Everything's Relative with Eve Sturges, *With Great Talent Comes Great Responsibility: Dani Shapiro*, ANCHOR, at 36:00–46:00 (May 7, 2021) https://anchor.fm/ryan-middledorf6/episodes/With-great-talent-comes-great-responsiblity-Dani-Shapiro-ev05of [https://perma.cc/GV9J-KKFP] (Dani noting that had her father been alive, she would have waited to write her book about discovering that she was conceived with donor sperm).

253. *Surprise, You Have a Daughter: A DNA Surprise for Everyone in the Family*, WATERSHED DNA BLOG (August 20, 2018), https://www.watersheddna.com/blog-and-news/amandadnasurprise [https://perma.cc/QAV2-TH5F] ("My goal was never to mention this to my dad, because I know it would

no part in creating—in order to protect her legal father from the disruptive impact of that revelation.[254]

In these cases, adult-children are arguably doing a reasonable job of taking seriously the interests of their parents and weighing them against their own. They are sacrificing their own important projects to protect the psychological well-being of their legal parents. This shows how empowering MPEs is not one-sidedly favoring one party over another, but delegating a sensitive weighing of interests to the person who is simultaneously likely to take seriously the interests of others, and is the least-responsible for creating the issue in the first place.

Of course, we might still worry that some MPEs will incorrectly weigh their parent's interests against erasure. Here, another safeguard emerges. Even parents with well-grounded interests against erasure can at least partially protect themselves in ways that would not interfere with their child's interests. If a child is allowed to alter her birth certificate, current laws often require erasing a legal parent from that *current* document. But they can save the *former* birth certificate. Parents will often have a copy of the birth certificate, and regardless could obtain one before the change. The state could also give them a right to access this historical birth certificate even after the change. Regardless, the parents can hold and preserve this record, and it at least partially confers recognition on them. It says that they *were* the legal parent, even if another document somewhere else says that they are no longer the legal parent. The simultaneous existence of a former and current birth certificate may come close to giving both parent and child access to the birth certificate that they want, even though the child's will be the official one.

This compromise fits into the overall conclusions of this and the previous Sections. Generally, we may have to choose between a regime that ignores the well-grounded interests of adult children—rooted in their identity, autonomy, and the differential expressive harms they experience from their birth certificate—and a regime that imperfectly respects the unverifiable parental interests against erasure. This necessitates making an unfortunate and difficult choice. But both existing law and an initial sketch of several normative factors are suggestive: the adult child's interests will

break his heart. But that would prove difficult over time. I discovered through a different ancestry site that I have a half-sister through my bio dad, and we have connected. I hope to build a relationship with her and want my kids to know her. This will be a much more difficult thing to hide from my dad.").

254. *Id.*

often be weightier, and the adult children themselves are in a good position to conduct the relevant balance.

C. Unwilling New Parents: Identity and Non-Recognition

The law provides several ways to conscript someone into being a parent against their will.[255] In the context of adult-children, the most relevant of these conscriptive laws is the paternity suit. These suits convert genetic parentage into legal parentage. They have two important limits. First, they do not apply to adoptions or donor-conception.[256] That is, adopted people and donor-conceived children cannot use paternity suits to convert genetic parentage into legal parentage.[257] This is because birth parents and donors have arguably been promised that they would not be legal parents.[258] I will discuss these special situations in Section V.B. This Section focuses on other genetic parents, such as genetic fathers who did not know that they had conceived a child, or genetic fathers who never intended to be legal parents. It canvases existing law and doctrine to try to identify the weight that current intuitions might give to the interests of these fathers, and outlines two normative arguments that support those intuitions.

Existing state laws heavily favor the interest of children—even adult children—over the interests of genetic fathers to avoid parentage. Many states have no statute of limitation or a lengthy one where the child has only one legal parent.[259] Even when the child has two legal parents, some states allow that child to bring a paternity suit eighteen to twenty-three years after her birth,[260] potentially eighteen to twenty-three years after the relevant genetic parent came to believe and rely on the fact that they were not the

255. For example, they might have given birth to a surrogate child, but the relevant state does not recognize such contracts. *See* JOSLIN ET AL., *supra* note 11, at § 4:4.

256. *See infra* note 302–304 and accompanying text.

257. UNIF. PARENTAGE ACT §102 (UNIF. L. COMM'N 2017).

258. *Id.*

259. *See supra* note 182 and accompanying text.

260. *See, e.g.*, MO. ANN. STAT. § 210.828 (West 2021) (statute of limitation is 18 or 21 depending on the circumstances); WIS. STAT. ANN. § 893.88 (West 2022) (statute of limitation is 19 years); N.J. STAT. ANN. § 9:17-45 (West 2021) (statute of limitation is 23 years).

child's parent. A few states have no statute of limitation regardless.[261] Overall, states have shown a willingness to impose burdens on the genetic father. Shorter statutes of limitation are justified on the basis of the interests of the child, and rarely, if ever, do states or scholars credit the interests in repose of the genetic parent.[262] These policies suggest that a genetic parent does not have a strong interest in resisting legal parentage when the adult-child wants the parental relationship recognized.

When states must choose between the interests of genetic fathers in not being legal parents and the interest of the child, they choose the interests of the child even when the father's interest is at its strongest. Several cases confront a genetic father's legal parentage when that genetic father was the victim of statutory rape.[263] In other cases, the genetic father was unconscious or drugged.[264] Still other cases deal with genetic fathers who were deceived into thinking that the sexual act they consented to could not beget a child.[265] In every one of these cases, courts have held that the genetic father was the legal father, and hence was obligated to pay child support.[266] Although some scholars have critiqued these cases, and the relevant conflicts are more complicated than courts appear to recognize,[267] courts have steadfastly maintained that genetic paternity does not require any degree of fault.

Although the stakes are lower on both sides in the MPE context—because the adult-child no longer needs child support, and the father will no

261. *See* VA. CODE ANN. § 20-49.10 (West 2022); ARIZ. REV. STAT. ANN. § 25-804 (2022) (providing a limitations period of 18 years for child support issues, but not other paternity issues); Brummond v. Lucio, 407 P.3d 553, 556 (Ariz. Ct. App. 2017).

262. Although, as I will discuss later, the hidden logic of paternity law might include a desire to protect the sexual freedom of adult men. *See infra* Section V.A.

263. *See, e.g.*, State *ex rel.* Hermesmann v. Seyer, 847 P.2d 1273, 1274 (Kan. 1993); San Luis Obispo Co. v. Nathaniel J., 50 Cal. App. 4th 842 (Cal. Ct. App. 1996).

264. S.F. v. State *ex rel.* T.M., 695 So. 2d 1186, 1187 (Ala. Civ. App. 1996); *In re* Paternity of Derek S.H., 2002 WI App. 89, ¶ 2, 252 Wis.2d 766.

265. *See, e.g.*, Wallis v. Smith, 22 P.3d 682, 684 (N.M. Ct. App. 2001).

266. Michael J. Higdon, *Fatherhood by Conscription: Nonconsensual Insemination and the Duty of Child Support*, 46 GA. L. REV. 407, 425–430 (2012); Emily J. Stolzenberg, *The New Family Freedom*, 59 B.C. L. REV. 1983, 2010 (2018) ("Courts' uniform rejection of tort-based 'birth control fraud' claims further demonstrates the strict-liability logic of paternity law.").

267. Stolzenberg, *supra* note 266, at 2010–12.

longer be obligated to pay it—the cases above imply that courts would favor the interests of the adult-child.

Setting aside the difficult but rare cases of fathers who are victims of rape, we should favor the interest of adult children. The child is the person who is least responsible for her situation. She is also the person most affected by the content of her birth certificate; she has to engage with the document and experience the expressive harms it creates. The unwilling father, in contrast, bears at least some responsibility for the adult-child's situation. Further, he never has to engage with the new birth certificate. For him, it can remain a far more abstract and distant piece of paper. These twin factors of relative responsibility and relative harm each suggest that the adult-child's interest is weightier.

D. Summary

The intuition that the birth certificate is really "the child's" is supported by a more detailed examination of the various interests at stake. Adult-children should have the ability to bring paternity suits without the consent of their existing legal parents and without significant barriers rooted in the non-recognition-related interests of genetic parents.

V. Two Concrete Proposals and a Future Possibility

This Part proposes two concrete legal reforms. Both seek to give adult-children greater control over their parentage. It then gestures toward a radical reorientation of post-majority parentage that roots parentage in consent rather than genetics, function, marriage, or any of the other current grounds for legal parentage.

A. Statutes of Limitation

Simple changes in the law could drastically reduce the obstacles that Ava faced. Consider first a child with a legal mother and a presumed legal parent (perhaps her spouse). States could simply abandon the statute of limitations for paternity suits brought by the child herself, after she

becomes an adult.[268] Some states already do this, but they are in the minority.[269]

This reform would also at least partially rebalance one part of paternity laws: the part that subordinated the interests of women and children to the interests of adult men. As discussed above, short statutes of limitation can serve the interests of children.[270] But they can also serve the interests of adult men who do not want to take responsibility for their genetic children. The history of paternity laws reveals that they did not simply track pre-theoretic notions of who the "real" father was. They were and are the result of political decisions shaped by those with political power. In the starkest example, the children conceived between white slaveowners and their slaves were considered black.[271] Their genetic tie to their father was given no legal weight. In contrast, when a white woman with a white husband gave birth to a mixed race baby, genetics suddenly mattered a lot.[272] These

268. In some states, these laws would have retroactive effect only if the legislature explicitly endorsed this retroactivity. In other states, retroactivity is barred by the state constitution if the previous limitations period has already passed. *Compare* Doe A. v. Diocese of Dall., 917 N.E.2d 475, 486 (Ill. 2009) ("[O]nce a claim is time-barred, it cannot be revived through subsequent legislative action without offending the due process protections of our state's constitution."), *with* Doe v. Hartford Roman Cath. Diocesan Corp., 119 A.3d 462, 504 (Conn. 2015) (holding that statutes of limitation are procedural in nature, and retroactive applications do not implicate substantive rights). Yet even in states that do not allow retroactivity, it is necessary to analyze *whether* the previous limitations period has passed. If the previous limitations period was subject to equitable tolling, and the facts indicate that tolling is appropriate, then no vested right to be free from litigation would have arisen, and the case would not be barred by the previous statute of limitation. *See* Ralda-Sanden v. Sanden, 2013 IL App (1st) 121117, ¶ 29 (holding, as a matter of first impression, that statute of limitations in paternity suits are subject to equitable tolling); *cf.* T.B. III v. N.B., 478 S.W.3d 504, 508 (Mo. Ct. App. 2015) ("Because no exceptions to the limitation are written into the [paternity] statute, we are not at liberty to insert one."). This suggests that, in addition to statutory law, common law interpretations can also significantly affect the power of adult children to amend legal parentage.

269. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-803 (2022).

270. *See supra* Section III.A.

271. MILANICH, *supra* note 18, at 20.

272. *Id.* at 21.

inconsistencies are not unique to the era of slavery.[273] For several centuries, jurists have asserted that maternity was knowable, and paternity was always uncertain.[274] Yet this unknowability was deployed strategically and selectively to achieve the political goals of the day. In the eighteenth and nineteenth centuries, the law's embrace of paternal uncertainty gave adult men sexual freedom, while punishing the unmarried women they impregnated for their immorality.[275] Paternal uncertainty, however, was rarely a barrier to imposing legal paternity within a marriage.[276] Again, the choice of paternity laws served various societal interests and sometimes reflected the power of some members of society over others.[277]

Today, statutes of limitation that run until the child turns eighteen or twenty-one still offer too much protection for genetic fathers. Modern DNA testing eliminates the concern that evidence will be stale.[278] These men may have interests worthy of protecting, at least under some circumstances. But it is unlikely that those interests are weightier than those of the child,[279] who took no part in the decisions that lead to her conception.[280]

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273. *Id.* at 205 ("In assessing the social value of truth, context was everything. In the case of immoral relationships and illegitimate paternity, truth-telling technologies could discipline the reprobate and punish the guilty. In the case of married couples and legitimate children, it might have the opposite effect, and morality might best be served by discretion, fiction, and suppression.").

274. *Id.* at 11-13.

275. *Id.*; Polikoff, *supra* note 226, at 209 ("Discrimination against children born outside marriage and their mothers was the primary method of enforcing the prohibition on nonmarital sex.").

276. MILANICH, *supra* note 18, at 197 (noting that the "presumption of marital paternity exists in Anglo-American law and the civil law of continental Europe, as well as Latin American and Middle Eastern legal systems. It is 'as close to a cultural universal in law as we get.'").

277. *Id.* at 71-72 (arguing that blood type analyses gained support in paternity cases in part because they favored men; they did so because that technology could never identify a father, but could absolve purported fathers).

278. R.A.C. v. P.J.S., 880 A.2d 1179, 1185–86 (N.J. Super. Ct. App. Div. 2005).

279. Again, I am setting aside cases where the father was the victim of rape.

280. This is perhaps clearest in the case of a male rapist. He does not have a legitimate interest in not being recognized as the legal father. (Although the mother may have an interest in him not being listed as the legal father). Perhaps surprisingly, some MPE people who learn that their conception story began with rape nonetheless want the power to list the rapist on their birth

Allowing the adult child to establish legal parentage without a constraining statute of limitations creates a better balance of the relevant interests. The genetic father will not have to pay child support and, as discussed below, there may be few even collateral legal consequences that flow from parentage of adult children.[281] The child, on the other hand, has a strong identity interest in having her father recognized under the law as such. Allowing the child only a few years after she turns eighteen to vindicate this interest is insufficient, and inappropriately subordinates the interests of the adult-child to the interests of her absentee genetic parent.

Similar arguments apply to children with a legal father who obtained that status by virtue of signing a VAP. In many states, VAPs cannot be challenged outside of a very short period.[282] This ensures that the child has a stable source of child support. These limitations should not apply to challenges by the child after she becomes an adult.[283] Since the adult child is no longer eligible for child support, the policy considerations around solidifying a source for that support do not apply.

Like some portions of paternity law more broadly, some VAP policy is designed to protect men against false attributions of (genetic) paternity, and the law should at least also be sensitive to the interests of adult children. Under federal law, VAPs can be set aside on the basis of "fraud, duress, or material mistake of fact."[284] In some states, these claims can be brought without a robust statute of limitations.[285] This exception is designed to protect legal fathers who were the victim of fraud—the mother told them that they were the genetic father and concealed the existence of other

certificate. Laura's mother was certainly a victim of statutory rape—the father was decades older, and the mother was a teenager—and may not have given any consent. Laura wants to alter her birth certificate so that it includes her father's name and his birth date. This, she feels, will give some small degree of recognition to the statutory rape, and provide some small degree of accountability to the rapist. Everything's Relative with Eve Sturges, *Real Talk: When Results Reveal Hard Truths*, ANCHOR (June 25, 2021), https://anchor.fm/ryan-middledorf6/episodes/Real-Talk-When-Results-Reveal-Hard-Truths-e12pocf [https://perma.cc/44MQ-C53K].

281. *See infra* Section VI.A.

282. *See supra* notes 175–181 and accompanying text.

283. Federal law requires that the child be able to challenge a VAP, but only until she turns 18. 42 U.S.C. § 666(a)(5)(A) (2018). This again shows the law's focus on child support.

284. 42 U.S.C. § 666(a)(5)(D)(iii) (2018).

285. Parness & Saxe, *supra* note 177, at 199.

potential progenitors. It is not clear why the child should have to prove that *someone else* (here her father) was defrauded in order to amend her birth certificate.[286] Her identity interest in the birth certificate is the same regardless of the circumstances under which her legal father signed the VAP, and that interest does not wane after she becomes an adult. A potential solution is to abandon the limitations for setting aside VAPs for suits brought by the adult-child herself.[287]

Reforms to statutes of limitation, being targeted and simple, necessarily leave some problems unaddressed. For example, various rules surrounding how to conduct paternity suits when the alleged father has died might affect the ability of MPE people to successfully bring suit.[288] Courts also have a role to play in moving reform forward, because even in the absence of statutory reform, equitable doctrines control when and whether existing statutes of limitation are tolled.[289]

We could also imagine more tailored interventions. As mentioned above in Part III.B.3., the state might create a unique administrative procedure to determine paternity after the child becomes an adult. This procedure could also create an easy pathway to altering one's birth certificate. Alternatively, this procedure might alter birth certificates without altering legal parentage. I will return to possibilities like this when I consider birth certificate reforms in the next Section, and when I consider various objections in Part VI.

Regardless of the particular legal pathway, giving adult children more power to define their own parentage would go a long way toward correcting

286. States may eventually agree. At the moment, state law is unclear about whether this limit only applies when the father challenges it. *See id.* at 194 ("[S]tate laws vary on whether these limits apply to post-sixty-day VAP challenges by nonsignatories.").

287. States could eliminate the relevant statute of limitation. Federal law could be changed to eliminate the requirement of proving "fraud, duress, or material mistake of fact" when it is the adult child who challenges the VAP. One might be able to get to a similar result through statutory interpretation. *See id.* ("The *interpretations* and implementations of these federal statutory limits on signatory challenges vary by state."(emphasis added)).

288. Court can exhume bodies or order relatives to submit to genetic testing, but they are sometimes hesitant to do so. *See* Cummins v. Est. of Reed, 2019 WL 5681194, at *6 (Ky. Ct. App. Nov. 1, 2019). Regardless, if DNA databases continue to grow, they may be able to identify genetic parents with sufficient accuracy to obviate the need to disrupt burial places or invade the privacy of the decedent's relatives.

289. *See supra* note 268.

a system that harms the very people it was supposed to help. The simplest and fastest way to solve a large part of the problem would be to eliminate the statutes of limitation for paternity suits brought by the child herself after she becomes an adult.

B. Birth Certificate Reform

MPE stories add further weight to existing calls for comprehensive birth certificate reform, and also suggest changes and additions to those reforms. As others have argued, states could expand birth certificates to include separate categories for genetic and legal parentage. They could then allow DNA evidence to be dispositive of only the genetic field. However, as currently envisioned, these reforms trigger thorny debates.

Advocates for adopted and donor-conceived children have unsuccessfully sought birth certificate reforms that separate legal and genetic parentage.[290] I'll call these "expanded birth certificate reforms."[291] These efforts have not gained any traction in state legislatures.[292] This is perhaps because currently states defer to federal guidelines on the content of birth certificates in order to promote more uniform birth registration data.[293] Those guidelines do not disentangle genetic and legal parenthood.[294]

Most importantly, reforms that seek to disentangle legal and genetic parentage are tied up in other debates, such as debates about whether adopted or donor-conceived children should have access to information about their genetic origins.[295] Just as a parent might reasonably conclude

290. *See, e.g.*, Kramer, *supra* note 149 ("[W]e would recommend a U.S. Standard Birth Certificate revision expanding the 'two parent only' format to include categories for Legal Parents, Genetic Parents, and Surrogates.").

291. Related reforms seek to create multiple certificates, one of which might list legal parentage, another of which might list genetic parentage. One debate within these reform proposals acknowledges that children are likely only to see their own birth certificate, and discusses how directly the birth certificate should indicate that information is available in other certificates.

292. *See* Email from Elizabeth Samuels (Dec. 1, 2020 14:41 CST) (on file with author).

293. Samuels, *supra* note 90, at 427.

294. *Id.*

295. *See* Naomi Cahn, *The New Kinship*, 100 GEO. L.J. 367, 407-28 (2012); Cahn & Singer, *supra* note 86, at 173.

that revealing that the child was the result of an unintended pregnancy could do more harm than good, she might also decide to withhold information about the child's genetic origins. The tradition of strong parental rights in this country allows parents, not the state, to make these determinations.[296] These parents do not want the state preempting their decisions and providing access to, for example, accurate genetic information. Expanded birth certificate reforms also implicate debates about donor anonymity and the regulation of assisted reproductive technologies.[297]

These reforms could be adjusted so that they do not trigger debates about parental rights. Recognition and access are different, and the set of debates related to providing access can be sidestepped by tailoring reforms to the standard MPE situation, where knowledge is no longer the issue. Birth certificates could include separate fields for genetic parents *if this is requested by the adult child*.[298] This would sidestep arguments about parental rights. After the child turns eighteen, the parents can no longer use their parental rights to justify harnessing the state's assistance in concealing information from their children. The state could remain agnostic about whether the child gains access to accurate genetic information. If the child finds out about the disconnect between legal and genetic parentage, and if they want this reflected on their birth certificate, then and only then would the state allow the adult child to add genetic parentage fields to their birth certificate. Of course, parents might object to this revised reform because they fear it will create a slippery slope, perhaps making it more likely that the state would extend this reform to minor children as well. But this argument requires constraining the rights of adult children in the name of parental rights, which is not consistent with our tradition of parental rights. Further, most justifications for parental rights today are rooted in the best interests of the child.[299] The state offers robust parental rights because, generally, parents possess the best information and the highest motivation

296. *See* Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, 118 MICH. L. REV. 1371, 1373 (2020) (stating that for most of the twentieth century, "parents had authority to make most decisions about their children, subject to state regulation of issues such as education and child labor"); Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Chil*d, 127 YALE L.J. 1448, 1459, 1470-71 (2018).

297. *See* Cahn, *supra* note 295, at 407-28.

298. States might also allow parents of minor children to add genetic parentage fields.

299. *See* Huntington & Scott, *supra* note 296, at 1377.

to act in ways that promote the best interests of their children.[300] Given this ground, it would be ironic if parental rights were used to justify actions that harm the adult-child.

MPE stories also highlight the need to address amendment policy, even under existing expanded birth certificate reforms. Currently, birth certificate reforms ignore this. But states must still decide which fields on a birth certificate can be amended, when, and under what circumstances. States should still remove the statutes of limitation that prevent adult children from bringing paternity suits. Under an expanded birth certificate regime, paternity suits brought by adult children could be limited in their effect. Instead of altering legal parentage, such paternity suits might only affect who is listed as a genetic parent.

My conversations with MPEs suggest that most of them would be satisfied with expanded birth certificates. One of the primary benefits is that MPEs could obtain recognition of their genetic parents without ousting a legal parent, and without disrupting the existing rules surrounding legal parentage. Their birth certificates would no longer tell a lie, precisely because they would tell a fuller story. Some MPEs question whether expanded birth certificates would be sufficient for them. They might want their birth certificate to do something other than just refrain from telling a lie. They might view their birth certificate as reflecting "who I should have been."[301] Under this logic, an MPE might want a birth certificate that reflected the nuclear family that she would have been raised in absent her legal parents' lies or her genetic parent's denials. Expanded birth certificates do not achieve this as directly as reforms that replace a legal parent on the birth certificate. But for most MPEs, expended birth certificates would be sufficient. For all MPEs, it would likely be a step in the right direction.

Expanded birth certificates could also benefit adopted and donor-conceived children. This is particularly important because reforming statute of limitations to amend legal parentage does not help these children. Adopted and donor-conceived children cannot alter legal parentage through paternity suits.[302] Donor statutes in many states explicitly provide

300. *Id.* at 1416.

301. Telephone Interview with "Renee" (October 15, 2021).

302. *See, e.g.*, UNIF. PARENTAGE ACT §102 (UNIF. L. COMM'N 2017) (defining "alleged genetic parent" for purposes of a paternity suit to exclude "an individual whose parental rights have been terminated" or "a donor"). Note that to be a "donor" one must comply with relevant state statutes on gamete donation.

that donors cannot be conscripted into legal parentage based on genetics.[303] States also relieve genetic parents of their status as legal parents when children are adopted.[304] If these policies remain, they should extend to the post-majority context.

This is where expanded birth certificates can alter the relevant questions. If legal and genetic parentage are listed separately, then the question becomes whether birth parents or donors can be added to the "genetic parent" field on the adult child's birth certificate. I make no strong claims here. States continue to debate whether adoptees have the right to know the identity of their genetic parents.[305] Related debates appear in the context of donor conception. In part, these debates pit the identity-related interests of children against the privacy interests of their genetic parents.

Regardless of how these conflicts are resolved, expanded birth certificates can do some good. If states decide that the adult child's interests in having her genetic parentage recognized is weightier than the donor or birth parent's interest against recognition, then it could allow adult children to fill in the genetic fields on their birth certificates. Even if the state privileges the genetic parent's interests, expanded birth certificates can offer at least some benefits. Like Emma, other donor-conceived children could list "donor" in the genetic parent field on their birth certificate. According to Emma, this was sufficient to ensure that her birth certificate no longer told a lie. At least some adopted children might respond similarly and appreciate (at least as a second-best solution) a birth certificate that listed their genetic parents as "redacted by adoption" or something similar.

JOSLIN ET AL., *supra* note 11, at § 3:13. Note also that donors can sometimes seek parentage based on something other than their genetic connection, for example when they function as a parent. *Id.* at § 3:16.

303. JOSLIN ET AL., *supra* note 11, at § 3:13.

304. 2 C.J.S. *Adoption Of Persons* § 135 (2022); *see also* Cahn, *supra* note 93, at 13 ("[V]irtually all states protect the secrecy of biological parents.").

305. *Compare* N.Y. PUB. HEALTH Law § 4138-3(a) (McKinney 2021), *with* IOWA CODE ANN. § 144.24A.1 (West 2021). For a discussion of the trend toward allowing more access, and the remaining barriers, see Nina Williams-Mbengue, *Adult Adoptee Access to Original Birth Certificates*, 24 NAT'L CONFERENCE OF STATE LEGISLATURES (June 2016), https://www.ncsl.org/research/human-services/adult-adoptee-access-to-original-birth-certificates.aspx [https://perma.cc/TKR4-C47S].

C. Elective Parentage

In other contexts, scholars have sought identity regimes that "expand the legal . . . space to resist prevailing conceptions of identity,"[306] "better accommodate new types of families,"[307] and break state monopolies.[308] The reforms above take the first steps toward these goals in the realm of post-majority parentage. This Section explores how these projects can be pursued more fully.[309] Unlike the previous two Sections, the proposal here is offered not as a concrete and feasible reform, but as a jumping off point for future conversations and future work.

The reforms above sought to give adult-children a greater voice in determining their parentage. But in order to generate pragmatic reforms, that voice was constrained. Adult-children would still be limited to adding people to a birth certificate who fit one of the state's definitions of "parent." For example, they can remove a parent-by-marriage from their birth certificate and replace that person with a parent-by-genetics. They can do so because the state has already recognized both marriage and genetics as legitimate grounds for parentage. But the reforms above don't allow the adult-child to expand the definition of parenthood itself.

Moving beyond these limits, the state could allow private parties to control legal parentage by rooting post-majority parentage in consent. To do so, states could build off of existing procedures for VAPs.[310] As discussed above, VAPs allow a legal mother and a man to jointly consent to that man's

306. Clarke, *supra* note 9, at 750.

307. *Id*. at 751.

308. Lamm, *supra* note 9, at 12 ("[T]he time is ripe for individuals to seize control of their gender identities and prevent government identification documents from curtailing or undermining the totality of their livelihoods.").

309. *See* Appell, *supra* note 9, at 372 ("[B]irth registration and the certificate play a keen role in creating, revising, and maintaining individual identity, but largely without the control or assent of the person identified.").

310. Other scholars have proposed expanding VAPs, but all in the context of minor children. *See, e.g.*, Parness & Saxe, *supra* note 177, at 179; Jessica Feinberg, *A Logical Step Forward: Extending Voluntary Acknowledgments of Parentage to Female Same-Sex Couples*, 30 YALE J.L. & FEMINISM 99, 99-100 (2018); Katharine K. Baker, *The DNA Default and Its Discontents: Establishing Modern Parenthood*, 96 B.U. L. REV. 2037, 2089 (2016); Melanie B. Jacobs, *Parental Parity: Intentional Parenthood's Promise*, 64 BUFF. L. REV. 465, 466-67 (2016); Richard F. Storrow, *Parenthood by Pure Intention: Assisted Reproduction and the Functional Approach to Parentage*, 53 HASTINGS L.J. 597, 679 (2002).

legal status as the father. Generally, VAPs can only be used when there is no legal father yet.[311] For Ava, one partial solution would be to allow a VAP even when there is a legal father. Some states already do something like this.[312] In Texas, one VAP can undo and replace another: the mother, the previously acknowledged father, and an alleged father can sign a VAP that effectively trades one father for the other.[313] For post-majority parentage, if all of the relevant parties agree—for example, Ava, her legal parents and her genetic parent—then the state could allow them to alter legal parentage. Although this confluence of consent might not be sufficient for minor children, where the state's interest in stability might override the preferences of the parents, it should be sufficient for adult-children. To highlight the difference, a different form, with different rules, could be created for post-majority changes to parentage. This Article tentatively calls such a form a Voluntary Acknowledgment of Post-majority Parentage, or a VAPP.

The rules governing these hypothetical VAPPs could be adjusted to give more or less power to adult-children. The rules could do so by altering whose consent is required to alter post-majority parentage.[314] Even if the consent of many people—the adult-child, the current legal parents, and the new parents—are all required, VAPPs could do a great deal of good. They could provide recognition for marginalized families, assist MPEs attempting

311. Parness & Townsend, *supra* note 175, at 69-70.

312. *Id.* at 65-66.

313. *See* TEX. FAM. CODE ANN. § 160.303 (West 2021) (outlining procedures for Acknowledgements of Paternity paired with Denials of Paternity); *see also* 410 ILL. COMP. STAT. 535/12(4), (5)(a) (2021).

314. There are two straightforward answers to the question of whose consent should be required. First, the consent of the adult-child herself should be required. Her identity interests and her self-narrative are the core motivators of these reforms in the first place. Second, the consent of the new legal parent should be required (assuming that this parent does not meet any conscriptive criteria for parentage). An actor who plays a loving parent on TV might be surprised and dismayed if she were to learn that thousands of people had listed her as their new mother. More controversially, the state could allow the adult-child and the new parent to alter parentage without the consent of the existing parents. I do not take a position on this; it implicates potential moral duties that adult-children owe the parents who raised them. The state could also require non-objection rather than consent, which would have implications for whether VAPPs could be used when one of the relevant potential signatories had already died.

to correct their birth certificates,[315] and create a larger conversation about the very meaning of parenthood.

VAPPs could help affirm family forms excluded from official recognition. Consider the following common situation: a lesbian couple asks a friend to informally donate sperm.[316] This allows the couple to both avoid the high costs of going to a fertility doctor and to have a fuller understanding of who the donor is.[317] This child's birth certificate may reflect her lesbian birth mother and the male friend who informally donated sperm.[318] This adult-child may well want to amend her birth certificate to remove the male friend and replace him with the *person who actually acted as a parent*: her other mother. Similarly, an adult-child may wish to recognize the role that her stepparent played in raising her. Adult-children should not be precluded from formally recognizing these functional parentage relationships.

For MPEs, VAPPs could sometimes provide a better pathway to recognition than adult adoption. First and foremost, adult adoption is imbued with meaning. Adoption signifies a deep commitment to functioning as a parent going forward. This is not what many MPE people want. Ava and other MPE people are often open to developing a parent-child relationship, but they don't have one yet and would not want to signal their commitment to that goal through adoption.[319] Second, adult adoption would generally have unwelcome legal consequences. Adult adoption is largely the result of judicial interpretation of adoption statutes that were designed with child-

315. Some MPEs are lucky enough to have legal parents who support their efforts to come to grips with their origins. For example, Emma's legal parents supported her attempts to alter her birth certificate. Other MPEs are not so lucky.

316. *See* Deborah L. Forman, *Exploring the Boundaries of Families Created with Known Sperm Providers: Who's in and Who's Out?*, 19 U. PA. J.L. & SOC. CHANGE 41, 42 (2016) (collecting stories of informal sperm donation).

317. *See id.* at 64.

318. *See id.* at 48.

319. The cultural meaning of adoption also limited its use as a substitute for same-sex marriage pre-*Obergefell*. Gwendolyn L. Snodgrass, *Creating Family Without Marriage: The Advantages and Disadvantages of Adult Adoption Among Gay and Lesbian Partners*, 36 BRANDEIS J. FAM. L. 75, 84 (1998) (discussing the psychological mismatch between adoption and romantic partnerships to explain why it was not a popular option).

adoptees in mind.[320] Because of this, adult adoption unnecessarily carries forward a policy designed for children: it terminates the parent-child relationship between the adult child and *both* of the child's existing legal parents.[321] MPEs may want to preserve their legal relationship with at least one of their legal parents.[322] Adult adoption does not allow this.[323] Third, and most pragmatically, adoption statutes often contain requirements that MPEs cannot or would not meet. In some states, adult adoption can only occur if the adopting adult acted as a functional parent during the adoptee's childhood or if the adult child is disabled.[324] Other states require

320. *See* Foy, *supra* note 239, at 111; Peter T. Wendel, *The Succession Rights of Adopted Adults: Trying to Fit A Square Peg into A Round Hole*, 43 CREIGHTON L. REV. 815, 838 (2010) ("The law of adoption assumes that the typical adoptee is a child, a minor. The institution of adoption was not developed with an eye towards adult adoption.").

321. Angie Smolka, *That's the Ticket: A New Way of Defining Family*, 10 CORNELL J.L. & PUB. POL'Y 629, 639 (2001) ("One problematic aspect is that adult adoption . . . destroys the adoptee's legal relationship with his natural parents, also terminating inheritance."); *see, e.g.*, KAN. STAT. ANN. § 59-2118 (2022) ("Upon adoption, all the rights of birth parents to the adopted person, including their right to inherit from or through the person, shall cease.").

322. This might be true even if the MPE abhorred both of their legal parents. Ava's goal is to correct the lie on her birth certificate. A birth certificate that erased her functional and genetic mother would just tell a different lie.

323. One possible solution is to extend so-called "second-parent adoptions" to the adult adoption context. In a second-parent adoption, one legal parent retains parental rights, and now shares them with the adopting parent. Jane S. Schacter, *Constructing Families in A Democracy: Court, Legislatures and Second-Parent Adoption*, 75 CHI.-KENT L. REV. 933, 934 (2000); JOSLIN ET AL., *supra* note 11, at § 5.2. It is unclear whether courts would extend second-parent adoptions to the MPE context. One core rationale behind interpreting adoption statutes to allow second-parent adoptions is that doing so respects the existing functional family unit. *Id*. This would not be the result in MPE cases, where adult adoption would more likely disrupt existing nuclear family structures. For an example of a statute embracing second-parent adult adoption, see CONN. GEN. STAT. ANN. § 45a-734(d) (West 2021). But note that this might carry unwelcome meaning for the new parents, by expressing a desire to be co-parents or to link their lives together in some similar way.

324. *See* Ausness, *supra* note 8, at 256-58; Rebekah Yahoves, *Adult Adoption*, ADOPTION.ORG (Feb. 28, 2019), https://adopting.org/adult-adoption [https://perma.cc/Z292-JUQ9] ("Most states require a previous parent/child relationship between two parties before allowing an adult adoption."); OHIO

cohabitation or the consent of the adopter's spouse.[325] These requirements reflect and reinforce traditional notions of parenting.

Because VAPPs would not carry the cultural baggage of adoption and might not contain limitations that force adult adoptions to track preconceived notions of parenthood, they could open up a space to contest and shape what it means to be a parent or child. Parentage could be created even in the absence of both the genetic and functional aspects of parenthood; a younger person could be the parent of an older person,[326] and the parties would not necessarily commit to any specific type of functional relationship. In short, VAPPs could allow people to create legal parentage in situations that deviate from its state-defined incarnations.

There is a great deal more to work out before creating a functional VAPP system. Should VAPPs allow more than two parents?[327] What should happen when one of the people whose consent is required—a legal parent, for example—died years before an MPE discovery?[328] A fuller accounting of

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REV. CODE ANN. § 3107.02 (West 2021-2022) (allowing adult adoption in cases of adult disability, former functional parenting relationship, or current step-parent relationship); ARIZ. REV. STAT. ANN. § 14-8101 (2021) (allowing adoptions of those over 21 only if the adoptee is "a current or previous stepchild or a niece, nephew, cousin or grandchild of the adopting person" or in some foster care situations); WYO. STAT. ANN. § 1-22-102 (2021) (allowing adult adoption when "[t]he adopting parent was a stepparent, grandparent or other blood relative, foster parent or legal guardian who participated in the raising of the adult when the adult was a child").

325. Ausness, *supra* note 8, at 256-59.

326. In contrast, several states require that the adopting person be older than the adult adoptee. *See* Sarah Ratliff, *Adult Adoption: Intestate Succession and Class Gifts Under the Uniform Probate Code*, 105 NW. U. L. REV. 1777, 1788 (2011).

327. The answer is clearly "Yes" if the goal is to disrupt state monopolies over parentage. But, answering affirmatively may require more extensive amendments to collateral areas of law.

328. The legal parent's interest may be rooted in identity claims; they have an interest in maintaining their identity as a parent. But those interests may evaporate upon death. After all, the dead person will never learn that their legal status has changed. *See generally* Sean Hannon Williams, *Gossip and Gore: A Ghoulish Journey into A Philosophical Thicket*, 116 MICH. L. REV. 1187 (2018) (discussing whether the dead have interests). But if one legal parent remains alive, perhaps their identity interest includes being a legal parent, and being legal co-parents with the deceased person. Issues also arise if the proposed new legal parent is deceased. Should the executor of his will, or his existing

VAPPs and elective parentage more broadly will be the subject of future work. It is enough here to highlight their productive potential. By allowing elective legal parentage (at least after the child becomes an adult), the state opens up a site for people to pursue their identity projects, get recognition of their families, and begin a cultural conversation about what parentage means.

VI. OBJECTIONS

Because there is a still a great deal to work out with a system of elective parentage, this Part focuses on objections to the two concrete reforms above. (Although, of course, many of the comments here would also have implications for various systems of elective parentage.) This Part addresses two objections: that post-majority alterations to parentage will have unwelcome collateral consequences for other areas of law that use the parent-child relationship to trigger rights or obligations, and that the reforms might promote genetic essentialism.

A. Recalibrating Collateral Effects of Parentage

Many legal entitlements depend on identifying parents and children. The parent-child relationship is relevant, for example, to intestate succession,[329] standing to file a wrongful death claim,[330] and grandparent visitation.[331] Readers may worry that each of the above reforms could create unintended consequences for these collateral areas of law. There is little to worry about. Post-majority alterations to parentage are not new, and there is no indication that these alterations cause noticeable problems in collateral areas of law. Even if expanding the frequency of post-majority alterations to parentage might create problems, there are easy legislative solutions.

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legal children, or some other proxy decision-maker, be able to sign a VAPP on his behalf? I do not address these issues here.

329. UNIF. PROB. CODE §§ 1-201, 2-119 to -121 (2020) (referring to the Uniform Parentage Act for its definition of "parent").

330. *See, e,g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 71.004(a) (West 2021); CAL. CIV. PROC. CODE § 377.60(a) (West 2022); FLA. STAT. § 768.18 (2021).

331. *See* Michael K. Goldberg, *A Survey of the Fifty States' Grandparent Visitation Statutes*, 10 MARQ. ELDER'S ADVISOR 245, 246-48 (2009).

Consider, first, post-majority alterations of *legal* parentage. Many states allow one adult to adopt another, at least under some circumstances.[332] At least twenty states allow someone, in some contexts, to bring a paternity suit anytime. A few states have no statutory statute of limitations for paternity suits.[333] A few other states allow adult children to bring paternity suits without a statute of limitation, but only when the child has no presumed father.[334] Conversely, a few others allow this only when the child has a presumed father.[335] An increasing number of states allow duped dads to bring paternity suits at any time.[336] Finally, several other states allow someone (other than the child or duped dad) to bring paternity actions anytime.[337] All of these states already allow post-majority alterations to legal parentage.

There is no indication that these states have experienced a flood of problems in other contexts that rely on the state's definition of parent and child, such as intestacy, grandparent visitation, or wrongful death. This suggests that allowing adult children to alter legal parentage would, similarly, not disrupt the underlying goals of these collateral areas of law.[338]

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332. Ausness, *supra* note 8, at 252.

333. These states include Georgia, Massachusetts, Arizona, and Virginia.

334. *See, e.g.*, 750 ILL. COMP. STAT 46/607 (2021); WYO. STAT. ANN. § 14-2-806 – 807 (2021).

335. *See, e.g.*, MO. ANN. STAT. §§ 210.826(1), 210.828 (West 2021); KAN. STAT. ANN. § 23-2209 (2021); MONT. CODE ANN. § 40-6-108 (2021).

336. *See, e.g.*, TEX. FAM. CODE ANN. § 160.607 (West 2021); OHIO REV. CODE ANN. § 3119.961 (West 2021-2022); DEL. CODE ANN. tit. 13, § 8-607 (2021-2022); N.C. GEN. STAT. ANN. § 110-132 (2021) (allowing duped dads to bring a suit at any time in the VAP context); ARIZ. REV. STAT. ANN. § 25-812 (2021) (same); WIS. STAT. § 767.805 (2021) (same); *see also* GA. CODE ANN. § 19-7-54 (2020) (allowing duped dad to disestablish paternity any time before all child support is fully paid).

337. *See, e.g.*, ALA. CODE § 26-17-607 (presumed fathers); UTAH CODE ANN. § 78B-15-607 (legal parents, any time before a divorce proceeding); IND. CODE ANN. § 31-14-5-3 (alleged father and mother, filing jointly).

338. Nor are there disruptions to federal definitions of parent and child for immigration purposes. Immigration law has its own definitions of parentage, and they generally would not give effect to post-majority changes to legal parentage. For example, the genetic father of a child born out of wedlock would not be a "parent" of an MPE for purposes of immigration unless he developed a bona fide relationship with the MPE before she married or turned 21. 8 U.S.C.A. § 1101(b)(1)(D).

This should not be a surprise. To the extent that altering legal parentage alters intestate succession, the relevant parties can simply write a will; the failure to write a will after being involved in a successful paternity suit, for example, suggests that the decedent had no strong preferences that default rules might thwart. Courts have already grappled with how adoption affects grandparent visitation, and this provides a ready analogy to guide other changes to legal parentage.[339] Finally, it is not clear whether post-majority alterations to legal parentage would make wrongful death statutes better or worse at achieving their goals. Wrongful death statutes primarily compensate people who lose financial support from the deceased.[340] When an adult alters her legal parentage, it is not clear which parent—the non-genetic former legal parent or the genetic new legal parent—is more likely to provide or receive support. Currently, we do not know enough about these new family forms to make an informed judgment.

To the extent that states are hesitant to take even a small risk of disrupting collateral areas of law, simple complementary legislation could prevent any ripple effects. For example, a statute might state that, unless otherwise expressly indicated, statutory references to parent or child are defined with reference to legal parentage as would exist without the benefit of the newly expanded statute of limitation. This would be easy to track if the state created a new statute saying that, regardless of any other provision to the contrary, adult-children may bring paternity suits anytime. This customized remedy could also avoid courts and use a simple administrative procedure to determine paternity and to alter birth certificates. This regime might require the state to keep a record of the legal parentage that existed prior to the action, and that record would be used for purposes of, for example, wrongful death suits. It could even mandate that a small notation be placed on the new birth certificate, such as "amended under the Post-Majority Parentage Act," which would flag to other state actors that another version of the birth certificate might be required with regards to the

339. *See* LEG. RTS. CHILD. REV. § 3:6 ("[S]ome courts have distinguished between adoption by a family member and adoption by a stranger. If the adoption is by a stepparent, rather than a stranger, courts tend to find that visitation is in a child's best interests because the grandparent visits will not disturb or interfere with the family relationship already in existence."); Raney v. Blecha, 605 N.W.2d 449, 453 (Neb. 2000) (holding that adoption terminates a grandparent's right to seek visitation for the first time, but does not terminate visitation orders obtained before the adoption); In re G.R., 863 N.E.2d 323, 326 (Ind. Ct. App. 2007) (same).

340. Sean Hannon Williams, *Lost Life and Life Projects*, 87 IND. L.J. 1745, 1753 (2012).

statutory definitions of parent and child within, for example, grandparent-visitation statutes. Overall, these methods of granting MPE people power over their parentage would provide the state with more time to consider how post-majority changes to legal parentage should affect collateral areas of law, if at all, based on the unique purposes behind each of those laws.

Similar legislation could dampen the potential impact of expanded birth certificates. A statute might state that, unless otherwise expressly indicated, the genetic fields on an expanded birth certificate have no legal effect. Accordingly, legal parentage would control standing to bring a wrongful death suit or a suit for grandparent visitation unless the relevant statute itself authorized, for example, "legal or genetic" relatives to sue.

Far from disrupting collateral areas of law, the reforms suggested in this Article offer opportunities for them to better accomplish their underlying goals. Different areas of law could better achieve their purposes if they used customized definitions of parentage. States already do this. One can be a parent for purposes of the family code without being a parent under the relevant wrongful-death statute.[341] That is, each area of law might have its own definition of parentage. Similarly, different statutes of limitation might apply depending on whether parentage is being used to trigger intestacy rights, create standing to file a wrongful death claim, or to support grandparent visitation.[342] Expanding birth certificates to include both genetic and legal parentage offers collateral areas of law more opportunities to choose which definition best furthers their purpose. The same can be said even when birth certificates only record legal parentage, as long as the state keeps a record of past amendments. In some contexts, legal parentage at age eighteen might be the best proxy for whatever the state is trying to identify. In other contexts, it might be legal parentage at death. Regardless, more

341. In re Paternity of C.A.V.M., 728 N.W.2d 636, 643 (Wis. 2007) ("[T]he policies and purposes behind the paternity provisions . . . relate to the care and support of a mother during pregnancy and the birth, care, and custody of a child. . . . None of the policies and purposes contemplate a parent's right to bring a paternity action for the sole purpose of then bringing a separate wrongful death action.").

342. *See* LeSage v. Dirt Cheap Cigarettes & Beer, Inc., 102 S.W.3d 1, 4 (Mo. 2003) (en banc) (approving different statutes of limitations and different procedural requirements for paternity suits under the family code and paternity determinations for purposes of inheritance, owing to their differing purposes); Taylor v. Hoffman, 544 S.E.2d 387, 395 (W. Va. 2001) ("Limitations provisions included within the paternity statute are inapplicable to a civil action by a child born out of wedlock seeking to inherit from his or her father.").

information offers more opportunities, while complementary legislation can give the state time to consider whether to take advantage of those opportunities.

B. Genetic Essentialism

One of the benefits of eliminating statutes of limitation is that it gives adult-children a voice in determining their own parentage. But the state still maintains its monopoly over the substantive criteria that adult-children can use to add and oust a parent. Currently, that criterion is genetics. Only genetic parents can be conscripted into legal parentage, and legal parents can only be ousted by a paternity suit if they lack a genetic connection to the child. Only allowing post-majority parentage changes when they make legal and genetic parentage align could promote genetic essentialism.[343] So too could giving genetics a privileged place on an expanded birth certificate, compared to, for example, functional parentage. Laws that privilege genetics may send a message that parentage is or should be rooted in genetics. This may serve to further naturalize traditional families and further alienate non-traditional ones.[344] One possible response is to also adopt VAPPs, which could be radically anti-essentialist. But even setting this aside, neither of the two concrete reforms creates a serious risk of promoting genetic essentialism.

The marginal impact of lengthened statutes of limitations on perceptions of genetic essentialism seems infinitesimally small. The larger context of legal parentage already places a great deal of weight on

343. Jennifer S. Hendricks, *Fathers and Feminism: The Case Against Genetic Entitlement*, 91 TUL. L. REV. 473, 475 (2017) ("[G]enetic essentialism . . . is an ideological commitment to genes and DNA as 'the core, the most important constituent part of who we are as human beings.'"); Cahn, *supra* note 295, at 418 (noting that recognizing the importance of gamete donation might "raise the danger of overemphasizing one's genetic identity, *or genetic essentialism*," but ultimately concluding that "[t]his objection is . . . unpersuasive" (emphasis added)).

344. Baker, *supra* note 18, at 2063. Although, note that part of why MPE discoveries are destabilizing is rooted in the new understanding those events engender regarding how contingent one's life is. The MPE person may now understand that their lives could have been very different had their genetic parents raised them, and they might even be a different person. This reifies the importance of nurture and is anti-essentialist.

genetics.[345] For non-marital births, paternity is largely determined by genetics.[346] Even for marital births, genetics lurks in the background. Marital children have default legal parents at birth, and those defaults were often good proxies for genetic parentage.[347] Regardless of whether the birth mother was married, paternity suits can change parentage, but only on the basis of genetics.[348] Genetics remains a trump card in most states, at least for a few years after the child's birth, allowing the husbands of birth mothers to avoid legal paternity.[349]

The regime as a whole may promote genetic essentialism,[350] but the marginal impact of tweaking the statute of limitations seems minimal. The expressive impact will also be reduced by the vast ignorance that people have about the law. Statutes of limitation are technical legal doctrines. Few people could read the relevant statutory language and hear anything expressed, let alone genetic essentialism.[351]

345. Hendricks, *supra* note 343, at 489 (noting that "all states have committed to genetic essentialism to some extent in their substantive law"); Susan Ayres, *Paternity Un(Certainty): How the Law Surrounding Paternity Challenges Negatively Impacts Family Relationships and Women's Sexuality*, 20 J. GENDER RACE & JUST. 237, 253 (2017) (lamenting that "legal discourse has shifted away from the more complex rights discourse and best interests of the child analysis to a discourse placing highest value on scientific [DNA] truth").

346. Baker, *supra* note 18, at 2043-49; *id.* at 2049 ("Today, VAPs are the primary means of establishing parentage in children born to unwed mothers. The federal statute does not explicitly require that VAPs be based on genetics, but state regulations usually explicitly or implicitly make them genetically conditional.").

347. Katharine K. Baker, *Quacking Like a Duck? Functional Parenthood Doctrine and Same-Sex Parents*, 92 CHI.-KENT L. REV. 135, 157 (2017).

348. Harris, *supra* note 171, at 317.

349. *Id.*

350. Of course, it also may not. Many aspects of this complex system would seem to counteract any message of genetic essentialism. For example, presumptions of paternity rooted in marriage may elevate function or intent over genetics, states are precluded from requiring DNA tests before VAPs become effective, and de facto parentage laws reinforce the importance of functional parenthood.

351. Media might play a role in forming whatever message is ultimately heard by the public. The reporting on Emma's story could be seen as promoting genetic essentialism, because Emma was seeking to have her birth certificate align with genetic truths. But that same story also talked about how Emma's full

It is also far from clear that expanded birth certificates will have a marginal impact on genetic essentialism. On the one hand, they give genetics a privileged status by listing it on the birth certificate. On the other, they reinforce that genetic parentage is not the same as legal parentage. Predicting the messages that people will hear is always fraught with uncertainty, and this is especially so here, where there are multiple plausible interpretations of what an expended birth certificate expresses.

If anything, it is the secrecy and lies that MPE people have been subjected to that promote genetic essentialism. In the past, parents who adopted or used donor gametes were encouraged to hide this fact from the child.[352] The fear was that this knowledge would hinder the bonds between child and adult.[353] This fear expresses genetic essentialism. Allowing adult children to recognize both their genetic and legal parents reinforces the ways that parentage stems from multiple sources.[354]

Ensuring that adult-children have the option for this recognition also respects a diversity of views about the importance of genetics as one of many possible sources of parentage. Some MPE people may want genetics recognized. Others strongly assert that their legal parents are their only real parents and that genetics are irrelevant. The fact that the choice to seek recognition is decentralized and the way expanded birth certificates problematize essentialist views of parentage each reduce the likelihood that these reforms will promote genetic essentialism at all. It almost certainly will not do so to such a significant degree that we should continue to victimize MPE people by forcing them to live with a birth certificate that, in their eyes, tells a lie.

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brother declined to change his birth certificate, and felt that the genetic revelation was unimportant to his life narrative. *See* Rowley, *supra* note 7. Stories or laws that reflect and respect heterogeneity in how people construct their life narratives do not promote genetic essentialism.

352. Lucy Frith et al., *Secrets and Disclosure in Donor Conception*, 40 SOCIO. HEALTH & ILLNESS 188, 190 (2018).

353. Fiona Darroch & Ian Smith, *Establishing Identity: How Direct-to-Consumer Genetic Testing Challenges the Assumption of Donor Anonymity*, 59 FAM. CT. REV. 103, 107 (2021).

354. This message could be reinforced further by adding other fields to the expanded birth certificate, like functional parentage. This may not be as feasible to verify, however, as genetic parentage. To the extent that the state has an interest in verifying claims on birth certificates, this might justify including genetic parentage and not functional parentage.

CONCLUSION

The above stories, introduced for the first time in this Article, cast parentage issues in an entirely new light. When the New Jersey Supreme Court held that there was no reason for the state to entertain a paternity suit after the child becomes an adult, they were only half right. While the *state* no longer has an interest in policing parentage, the adult-child herself retains a strong interest in the determination and recognition of her parentage. The state could make substantial progress toward respecting this interest by simply eliminating the statute of limitations for paternity suits brought by the adult-child herself. It could also respond to the joint voices of adoptees, donor-conceived children, and MPEs and create expanded birth certificates. Finally, it could explore purely elective parentage. Regardless of the particular avenues of reform, Ava and other adult MPEs deserve to have a voice in defining their parentage. In this newly revealed space of post-majority parentage, the state should yield its monopoly over parentage. Instead of resolving the DNA dilemma for everyone, the state should decentralize this deeply intimate decision. It should empower adult-children—the people who, so far, have exercised the least control over parentage issues—to resolve the DNA dilemma for themselves.