

# CASE NOTES

**Constitutional Law—Equal Protection—Equal Protection Clause Limits Discrimination against Illegitimates Claiming Under Their Intestate Fathers' Estates.** *Trimble v. Gordon*, 97 S. Ct. 1459 (1977).

Deta M. Trimble, an illegitimate child, and her mother as next friend, sought a determination of heirship after Deta's father died intestate.<sup>1</sup> The deceased father had acknowledged Deta as his child and had paid weekly support pursuant to a paternity order.<sup>2</sup> The probate court held that Deta was not an heir of her father<sup>3</sup> within the meaning of section 12 of the Illinois Probate Act.<sup>4</sup> Deta appealed on the ground that section 12 violated the equal protection clause of the United States Constitution because it allowed illegitimate children to inherit by intestate succession only from their mother but allowed legitimate children to inherit by intestate succession from both their father and their mother.<sup>5</sup> The Illinois Supreme Court upheld the constitutionality of section 12.<sup>6</sup> The United States Supreme Court reversed and held that the equal protection clause prohibited discrimination against illegitimate children who claim under their intestate fathers' estates.<sup>7</sup>

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1. *Trimble v. Gordon*, 97 S. Ct. 1459, 1462 (1977).

2. *Id.*

3. *Id.* The Illinois court identified the heirs to be the deceased's father, mother, two sisters, a brother, and a half-brother, all of whom were defendants in this case. The entire estate consisted of a 1974 Plymouth automobile valued at \$2,500. *Id.*

4. ILL. ANN. STAT. ch. 3, § 12 (Smith-Hurd 1961) (current version at ILL. ANN. STAT. ch. 3, § 2-2 (Smith-Hurd Supp. 1977)). The Probate Act of 1975, effective January 1, 1976, repealed and replaced § 12 and the rest of the previous probate act. Section 2-2 of the Probate Act of 1975 differed in some respects from § 12; however, that part of § 12 in issue in *Trimble* was recodified without material change in § 2-2. Because § 12 was used by the Supreme Court in *Trimble v. Gordon*, 97 S. Ct. 1459 (1977), it will be used here when referring to that part of the Probate Act in issue. The relevant portions of § 12 state:

An illegitimate child is heir of its mother and of any maternal ancestor, and of any person from whom its mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such persons and take, by descent, any estate which the parent would have taken, if living. An illegitimate child whose parents intermarry and who is acknowledged by the father as the father's child shall be considered legitimate. ILL. ANN. STAT. ch. 3, § 12 (Smith-Hurd 1961).

5. *Trimble v. Gordon*, 97 S. Ct. 1459 (1977). Deta also challenged § 12 on the basis of sex discrimination, but the Court did not reach this argument. *Id.* at 1463.

6. The Illinois Supreme Court upheld the constitutionality of § 12 in *In re Estate of Karas*, 61 Ill. 2d 40, 329 N.E.2d 234 (1975).

7. *Trimble v. Gordon*, 97 S. Ct. 1459, 1463 (1977).

In *Trimble v. Gordon*<sup>8</sup> the United States Supreme Court first addressed the question of what test it would use to determine whether section 12 violated the equal protection clause of the United States Constitution. The Court rejected the plaintiff's argument that classifications based on illegitimacy should be considered suspect and thus receive strict scrutiny.<sup>9</sup> Instead, the Court decided that the traditional equal protection standard, "that a statutory classification bear some rational relationship to a legitimate state purpose,"<sup>10</sup> was the appropriate test. The Court, however, qualified this test by noting that the scrutiny used in illegitimacy cases was not "toothless."<sup>11</sup>

Having determined the appropriate test to use, the Court then applied that test to each purpose Illinois advanced.<sup>12</sup> First, Illinois argued that section 12 promoted legitimate family relationships.<sup>13</sup> The Court found no rational relationship between illegitimacy classifications and Illinois' justifying purpose of promoting legitimate family relationships. The Court reasoned that during conception the parents would not think about the consequences that would befall their illegitimate children.<sup>14</sup> The Court further stated that legal burdens should bear some rational relationship to individual wrongdoing and that burdening a child who could not possibly be respon-

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8. 97 S. Ct. 1459 (1977).

9. *Id.* at 1463. See note 41 *infra*.

10. *Id.*, citing *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 172 (1972).

11. *Trimble v. Gordon*, 97 S. Ct. 1459, 1463 (1977), citing *Mathews v. Lucas*, 427 U.S. 495, 510 (1976).

12. The Illinois Supreme Court stated that the legislature's overriding purpose in enacting § 12 was "to ameliorate the harsh common-law rule under which an illegitimate child was *filius nullius* and incapable of inheriting from anyone." *Trimble v. Gordon*, 97 S. Ct. 1459, 1464 (1977), quoting *In re Estate of Karas*, 61 Ill. 2d 40, 329 N.E.2d 234, 236-37 (1975).

13. *Id.* at 1464, citing *In re Estate of Karas*, 61 Ill. 2d 40, 329 N.E.2d 234, 238 (1975). The Illinois Supreme Court believed that the desire to promote legitimate family relationships had been recognized in *Labine v. Vincent*, 401 U.S. 532 (1971) as an acceptable goal. The United States Supreme Court distinguished *Labine* by pointing out that Louisiana laws draw classifications based on the character of the child's legitimacy. *Trimble v. Gordon*, 97 S. Ct. 1459, 1464 n.13 (1977). In *Labine* illegitimates who had not been acknowledged had no intestate succession rights from their father. Acknowledged illegitimates were classified as "natural" children who could inherit their fathers' intestate estate to the exclusion only of the state. Unacknowledged illegitimates could not, under most circumstances, inherit from their fathers through his will. The father of "natural" children could bequeath property to them which consisted of one-third or one-fourth of his estate. However, the father could leave property to his "natural" child only if the father was not survived by legitimate children or their heirs. An illegitimate who was legitimized or adopted had the same intestate and testate succession rights as a legitimate child. *Labine v. Vincent*, 401 U.S. 532, 537 (1971).

14. *Trimble v. Gordon*, 97 S. Ct. 1459, 1465 (1977). *But see Labine v. Vincent*, 401 U.S. 532 (1971).

sible for his illegitimate birth was an ineffectual way to deter the parents.<sup>15</sup>

Illinois' second justification for section 12 was the state's interest in protecting orderly property dispositions by avoiding problems of proving paternity and spurious claims.<sup>16</sup> Illinois reasoned that this purpose was rationally related to the classification in section 12 because it was easier to prove who was the mother of an illegitimate child than to prove who was the child's father.<sup>17</sup> The Court recognized that protecting property dispositions is a legitimate state purpose and that section 12 was rationally related to that purpose.<sup>18</sup> However, the Court concluded that section 12 was not "carefully tuned to alternative considerations."<sup>19</sup> Thus, section 12 was not sufficiently related to the goal of protecting property dispositions because Illinois did not have to bar all illegitimates from inheriting from their fathers' intestate estates in order to achieve its goal.<sup>20</sup> The Court said that Illinois could develop more demanding standards, such as formal acknowledgments or prior adjudications, to prove the paternity of illegitimates claiming under their fathers' intestate estates.<sup>21</sup> The Court concluded that a requirement of a prior adjudication or of a formal acknowledgment of paternity would not be unduly burdensome on an illegitimate child claiming his father's estate.<sup>22</sup> Thus, the Court rejected Illinois' second argument because the relationship between the goal of protecting orderly property dispositions and a classification that excluded all illegitimates was not sufficiently rational. The Court implied other more rational alternatives existed.<sup>23</sup>

Illinois next argued that the deceased father could have provided for his illegitimate child by writing a will and that, consequently, section 12 did not create an insurmountable barrier to in-

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15. *Trimble v. Gordon*, 97 S. Ct. 1459, 1465, citing *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972).

16. *Trimble v. Gordon*, 97 S. Ct. 1459, 1465 (1977).

17. *Id.* Illinois also rejected a case-by-case approach to claims based on alleged paternity because of the possibility of abuse. *Id.*

18. *Id.*

19. *Id.* at 1466, citing *Mathews v. Lucas*, 427 U.S. 495, 513 (1976).

20. *Trimble v. Gordon*, 97 S. Ct. 1459, 1465 (1977). The Court pointed out that Deta M. Trimble had been legally determined to be the child of the deceased and that this legal determination should have been sufficient to establish her claim to the estate. *Id.* at 1466.

21. *Id.* at 1466 n.14.

22. *Id.*

23. *Id.* at 1466 (by implication).

heritance by illegitimates.<sup>24</sup> The Supreme Court rejected this argument as irrelevant. The Court reasoned that the true question was whether the promotion of a legitimate state interest justified the illegitimacy classification and not whether the illegitimacy classification might be overcome.<sup>25</sup>

The state argued that section 12 reflected the desires of intestates. They reasoned that section 12 was rationally related to this objective because most persons did not want illegitimates to inherit.<sup>26</sup> The Court, however, concluded that this was not the purpose of section 12 and noted that the Illinois Supreme Court had ignored any theory of presumed intent of intestates.<sup>27</sup> Thus, in effect, the Court said that it would not consider any purpose for this classification unless the state articulated that purpose.

Justice Rehnquist dissented on the ground that the majority had applied an improper test to determine whether section 12 of the Illinois Probate Act violated the equal protection clause.<sup>28</sup> According to Justice Rehnquist, the equal protection clause requires only that the relation between the classification and any hypothetical purpose or state of facts is not "mindless and patently irrational."<sup>29</sup> He concluded that the test the majority used differed from this proper test in two respects. First, the majority required the purpose of the classification to be an actual, articulated purpose.<sup>30</sup> Such a requirement, Justice Rehnquist reasoned, is impossible to meet because it necessitates an inquiry into the motive of each legislator in voting for the classification.<sup>31</sup> The only purpose a legislature has for enacting a classification is to have that classification become law.<sup>32</sup> Thus, the test for equal protection must be based only on any hypothetical purpose or state of facts. Second, the majority required the relation between the classification and its purpose to be more than mini-

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24. *Id.*, citing *In re Estate of Karas*, 61 Ill. 2d 40, 329 N.E.2d 234, 240 (1975). The insurmountable barrier theory was first mentioned in *Labine v. Vincent*, 401 U.S. 532 (1971).

25. *Trimble v. Gordon*, 97 S. Ct. 1459, 1467 (1977). The Court stated that the insurmountable barrier test was an "analytical anomaly." *Id.*

26. *Id.* Illinois further pointed out that it assumed the deceased knew how his estate would be distributed under present Illinois law and that his failure to leave a will manifested his approval of the intestacy provisions. *Id.*

27. *Id.* at 1468.

28. *Id.* at 1468-73 (dissenting opinion).

29. *Id.* at 1473.

30. *Id.* at 1468-73.

31. *Id.* at 1471.

32. *Id.*

mally rational.<sup>33</sup> In Justice Rehnquist's opinion, the effect of this requirement was to substitute the Court's judgment of the most effectual means to obtain a given goal for that of the legislature.<sup>34</sup> He concluded that this substitution was improper for two reasons. First, the legislature is more competent than the Court to determine a workable solution for a problem.<sup>35</sup> Second, and more important, such a substitution of the Court's judgment for that of the legislature is an unconstitutional invasion of the state legislature's authority under the United States Constitution. Justice Rehnquist argued that the 14th amendment does authorize Court interference with the legislature in classifications based on race or alienage,<sup>36</sup> but when race or alienage are not in issue, the only relation the Court can constitutionally require between the classification and its purpose is one that is not "mindless and patently irrational."<sup>37</sup>

*Trimble v. Gordon*<sup>38</sup> is the latest Supreme Court decision concerning illegitimacy. Generally, these cases have turned on the type of classification involved and whether there was a legitimate state purpose for that classification. In 1968 the Supreme Court in *Levy v. Louisiana*<sup>39</sup> held that Louisiana's Wrongful Death Act,<sup>40</sup> which, as interpreted by the state, prevented an illegitimate child from recovering for the death of his mother, violated the equal protection clause.<sup>41</sup> The articulated purpose of the statute was to discourage

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33. *Id.*

34. *Id.* at 1472.

35. *Id.*

36. *Id.* at 1469.

37. *Id.* at 1473. Chief Justice Burger and Justices Stewart and Blackmun dissented without opinion on the authority of *Labine*. *Id.* at 1468.

38. 97 S. Ct. 1459 (1977).

39. 391 U.S. 68 (1968).

40. LA. CIV. CODE ANN. art. 2315 (West 1971). The relevant portion of the statute reads: The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children . . . *Id.*

The Louisiana court held that "child" meant legitimate children. Thus, only legitimates could recover under article 2315. *Levy v. Louisiana*, 391 U.S. 68, 70 (1968).

41. Under the traditional equal protection analysis the Court has required that the means by which a problem is solved be rationally related to the purpose of the classification. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). A statute is presumed to be constitutional and the government need only show that it has some legitimate objective within the police power and that the means adopted were rationally related to that objective. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911).

If the classification was considered suspect by the Court or if it affected a fundamental right, the Court has required the classification to pass muster under the strict scrutiny test.

the birth of illegitimate children.<sup>42</sup> The Court concluded that a person's status at birth had no relation to the kind of harm inflicted on his mother;<sup>43</sup> therefore, the statute was not rationally related to the asserted purpose. The Court's analysis in *Levy*, however, was ambiguous. The Court simply stated that the discrimination was "invidious" and therefore unconstitutional.<sup>44</sup> Although the Court said that it used traditional equal protection analysis,<sup>45</sup> it suggested that any rights usually associated with normal family relationships were very important, if not actually fundamental.<sup>46</sup> The Court's attention in *Levy* to this relationship implied that it used a stricter test than traditional equal protection; however, the exact test the Court used was unclear.

*Labine v. Vincent*,<sup>47</sup> decided three years later, limited the possible impact of *Levy*. In *Labine* an acknowledged illegitimate challenged the constitutionality of a Louisiana intestate succession law<sup>48</sup> that barred illegitimates from sharing equally with legitimates in their fathers' estates. Louisiana argued that its intestate succession laws promoted legitimate family relations and insured orderly dispositions of property after death.<sup>49</sup> The Court concluded that *Levy* did not hold that a state could never treat an illegitimate child differently than a legitimate child.<sup>50</sup> The Court distinguished *Levy* from *Labine* on the ground that the statute in *Levy* had created an

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Loving v. Virginia, 388 U.S. 1, 8-9 (1967); Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 667-68 (1966). Under strict scrutiny the government has the burden of proving that the classification is absolutely necessary to achieve a compelling state interest, that the objective the government seeks to attain is constitutional, and that the classification is the least drastic means available to achieve the asserted compelling goal. Shapiro v. Thompson, 394 U.S. 618, 631-41 (1969).

42. *Levy v. Louisiana*, 391 U.S. 68, 70 (1968).

43. *Id.* at 72.

44. *Id.*

45. See note 41 *supra*.

46. *Levy v. Louisiana*, 391 U.S. 68, 71 (1968). See *Glonn v. American Guar. & Liab. Ins. Co.*, 391 U.S. 73 (1968). *Glonn* held that the denial of a mother's recovery for the wrongful death of her illegitimate child violated the equal protection clause. Louisiana argued that it was dealing with "sin," that "sin" could be dealt with selectively, and that it was not required to pass comprehensive or even consistent measures. The Court stated there was no possible rational basis for assuming that if a mother could not recover for her illegitimate child's death the mother would not have illegitimate children. Women do not have illegitimate children in order to collect upon their death. Thus, the Court found no rational basis between the law and the "sin." *Glonn v. American Guar. & Liab. Ins. Co.*, 391 U.S. 73 (1968).

47. 401 U.S. 532 (1971).

48. LA. CIV. CODE ANN. art. 919 (West 1952).

49. *Labine v. Vincent*, 401 U.S. 532, 536 n.6 (1971).

50. *Id.* at 536. The Court also concluded that *Glonn* was not authority for *Labine*. See note 46 *supra* and accompanying text.

insurmountable barrier to illegitimate children,<sup>51</sup> while in *Labine* the father could have provided for the illegitimate by writing a will. The Court concluded that there was a rational relation between the statute and Louisiana's asserted purposes and upheld the statute.<sup>52</sup> The Court considered and rejected any equal protection analysis that would require Louisiana to enact a statute that was more rationally related to the asserted purposes than the statute in fact enacted.<sup>53</sup>

One year later, in *Weber v. Aetna Casualty & Surety Co.*,<sup>54</sup> the Supreme Court held that Louisiana's workmen's compensation statutes,<sup>55</sup> which denied equal recovery rights to dependent unacknowledged illegitimates, violated the equal protection clause. Louisiana's workmen's compensation statutes did not, like the statute in *Levy*, absolutely bar recovery by illegitimates. The statutes in *Weber* set a maximum amount of compensation for each claim, and legitimate and "natural"<sup>56</sup> children had priority over illegitimate children.<sup>57</sup> If the legitimate or "natural" child received the maximum amount, the illegitimates, even if dependent, received nothing.<sup>58</sup> The purpose of the workmen's compensation statutes was to provide a deceased's close relatives and dependents with a means of recovery for his accidental death.<sup>59</sup> Louisiana advanced three objectives that, it claimed, were rationally related to the classifications. First, Louisiana argued that the statute avoided difficult

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51. *Labine v. Vincent*, 401 U.S. 532, 539 (1971).

52. *Id.* at 536 n.6.

53. *Id.* at 538-39. Justice Brennan dissented. He believed the majority relied on the insurmountable barrier test to distinguish *Levy*. Analyzing *Levy v. Louisiana*, 391 U.S. 68 (1968), he concluded that there was no insurmountable barrier present in *Levy* because the child could have recovered if the mother had acknowledged him. According to Justice Brennan, the majority's reliance on an insurmountable barrier implied that any discrimination able to be overcome would be permissible.

Justice Brennan also observed that the majority repeatedly emphasized Louisiana's power to regulate intestate succession. He believed that this power was not in issue and, therefore, irrelevant to the constitutional question. He reasoned that Louisiana did have an interest in promoting family life and in disposing of property but that the two interests did not provide any basis for discrimination against acknowledged illegitimates because the child was the biological child of the father. *Labine v. Vincent*, 401 U.S. 532, 541-59 (dissenting opinion). Justices Douglas, White, and Marshall joined Justice Brennan in his dissent.

54. 406 U.S. 164 (1972).

55. LA. REV. STAT. ANN. § 23:1232 (West 1964).

56. LA. CIV. CODE ANN. art. 202 (West 1952) defined natural children to be illegitimate children who have been acknowledged by their father.

57. LA. REV. STAT. ANN. § 23:1232 (West 1964).

58. *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 167 (1972).

59. *Id.* at 171.

problems of proof of paternity. The Court summarily dismissed this purpose and noted that its holding did not disturb the state's interest in minimizing problems of proof.<sup>60</sup> Second, Louisiana argued that it had an interest in promoting legitimate family relationships. The Court did not question the validity of this purpose; instead, the Court stated that the statute did not promote such a purpose.<sup>61</sup> Third, Louisiana argued the statute implemented the probable intent of fathers.<sup>62</sup> The Court rejected this objective because dependency was a prerequisite for recovery and because restrictions on legitimating were unduly burdensome.<sup>63</sup> The Court stated that although all statutory classifications must bear some minimal rational relationship to a legitimate state purpose, the Court would use a stricter scrutiny if statutory classifications "approach sensitive and fundamental personal rights."<sup>64</sup> The Court examined the classification in *Weber v. Aetna Casualty & Surety Co.*<sup>65</sup> and concluded that in terms of the purpose of the fund<sup>66</sup> it was not rational to distinguish between legitimates and illegitimates because illegitimates could be dependent. Therefore, burdening all illegitimates had no significant relation to the purpose of the workmen's compensation laws.<sup>67</sup>

The Court in *Weber* virtually ignored Louisiana's asserted purposes for the classification;<sup>68</sup> it also ignored the fact that the money available for workmen's compensation claims was limited. Had the Court used the traditional equal protection analysis of minimum rationality on any state of facts, the Court would necessarily have found a rational relationship. The classification was rationally related to the purpose of the statute to protect dependent children because legitimates and acknowledged illegitimates are more likely to be dependent than unacknowledged illegitimates. Although the Court did not precisely articulate the test it used, it stated that the classification bore no significant relationship to the purpose.<sup>69</sup> Thus,

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60. *Id.* at 174.

61. *Id.* at 173. "Nor can it be thought here that persons will shun illicit relations because the offspring may not one day reap the benefits of workmen's compensation." *Id.*

62. *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 173 (1972).

63. *Id.* at 173-74.

64. *Id.* at 172, citing *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966); *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

65. 406 U.S. 164, 172 (1972).

66. *Id.* at 175.

67. *Id.*

68. See *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972).

69. *Id.* at 175.



the scrutiny the Court used was closer to strict scrutiny than minimum rationality. However, if the Court used neither traditional equal protection analysis nor strict scrutiny, the Court must have held the statute in *Weber* unconstitutional because its relation to the asserted purpose, though rational and not required to be the best possible, was not sufficiently rational.<sup>70</sup>

Before *Trimble*, *Mathews v. Lucas*,<sup>71</sup> decided in 1976, was the latest case on illegitimacy. In *Lucas* illegitimates that were in a classification not presumed to be dependent under a Social Security Act provision<sup>72</sup> argued that the provision was unconstitutional. Under the Act a child was entitled to surviving children's benefits if the child was under 18 or a student under 21 and was dependent at the time of his parent's death.<sup>73</sup> A legitimate child or a child who was able to inherit from the parent under state law was deemed dependent.<sup>74</sup> Dependency was also presumed (1) if the deceased, while living, went through a marriage ceremony with the other parent that but for a nonobvious defect would have been valid, (2) if the decedent had acknowledged the child in writing, (3) if the decedent had been ordered by a court to support the child, or (4) if the decedent had been decreed by a court to be the child's father.<sup>75</sup> The asserted purpose of the provision was to provide benefits for depen-

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70. *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972). See *Jimenez v. Weinberger*, 417 U.S. 628 (1974) (portion of Social Security Act that denied benefits to illegitimates that were not dependent prior to the wage-earner's disability held unconstitutional as denial of equal protection and due process); *New Jersey Welfare Rights Organization v. Cahill*, 411 U.S. 619 (1973) (New Jersey's Assistance to Families of the Working Poor violated equal protection where the program in practical effect denied benefits to illegitimate children that legitimate children received and that were as indispensable to the health and well-being of illegitimates as to legitimates); *Gomez v. Perez*, 409 U.S. 535 (1973) (a state cannot discriminate against illegitimates by judicially forcing fathers of legitimates to provide support and not forcing fathers of illegitimates to provide support); *Beaty v. Weinberger*, 478 F.2d 300 (5th cir. 1973) *aff'd mem.*, 418 U.S. 901 (1974) (section of Social Security Act that excluded the possibility that an illegitimate child born after his father's period of disability began could ever receive children's insurance benefits on account of such disability violated the equal protection clause); *Griffin v. Richardson*, 346 F.Supp. 1226 (D. Md. 1972), *aff'd mem.*, 409 U.S. 1069 (1972) and *Davis v. Richardson*, 342 F. Supp. 588 (D. Conn. 1972), *aff'd mem.*, 409 U.S. 1069 (1972) (illegitimate children were eligible to receive Social Security benefits under the Act but they were denied benefits because four legitimate children were in a "favored class" and the legitimates had exhausted the maximum family allowance, even though the illegitimate child had been acknowledged and supported by the parent. Held: unconstitutional as a violation of due process).

71. 427 U.S. 495 (1976).

72. 42 U.S.C. § 402(d)(1) (1970).

73. *Id.*

74. 42 U.S.C. § 416(h)(2)(A) (1970).

75. 42 U.S.C. § 416(h)(2)(B) (1970); 42 U.S.C. § 416(h)(3) (1970).

dent children of a deceased parent,<sup>76</sup> and the goals advanced to justify the classification were reduction of administrative cost and administrative convenience.<sup>77</sup> The essence of the plaintiff's argument in *Lucas* was that all legitimates and some illegitimates were presumed dependent even though they may not in fact have been dependent.<sup>78</sup> The classifications in the statute were drawn among illegitimates; thus, conclusive denial of benefits to all illegitimates was absent.<sup>79</sup> The Court stated that the goals of the statute were valid, that the classifications had a substantial correspondence to the likelihood of dependency at death, and that the statute was "carefully tuned to alternative considerations."<sup>80</sup> Therefore, the Court concluded that assumed dependency for certain children was rationally related to convenience and reduction of administrative costs, and it upheld the statute.<sup>81</sup>

*Lucas* indicated that the Court would require more than minimum rationality in the relationship between an illegitimacy classification and the purpose of the statute.<sup>82</sup> However, the Court did not state that the statute must employ the best means possible, as would be required had the Court used a strict scrutiny analysis. Thus, after *Mathews v. Lucas*<sup>83</sup> the test that the Court would use to determine whether a classification based on illegitimacy violated the equal protection clause was still unclear.

*Trimble v. Gordon*<sup>84</sup> clarifies several aspects of past illegitimacy decisions. First, *Trimble* clarifies an illegitimate's rights under descent and distribution statutes. A state cannot categorically deny an illegitimate child the right to inherit by intestate succession from his father if the statute specifically confers this right on a legitimate

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76. *Mathews v. Lucas*, 427 U.S. 495, 507 (1976).

77. *Id.* at 509.

78. *Id.* at 502. The unacknowledged illegitimates in *Lucas* fell into the category of children who were not presumed dependent. Because they failed to show their dependency by proof that their father lived with them or supported them, they were denied any Social Security benefits. *Id.* at 501.

79. *Id.* at 512. In *Jimenez v. Weinberger*, 417 U.S. 628 (1974), the Social Security Act provision conclusively denied recovery rights to all illegitimates. See note 70 *supra* and accompanying text.

80. *Mathews v. Lucas*, 427 U.S. 495, 513 (1976). The Court reasoned that most legitimates are dependent on parents for support, that most acknowledged illegitimates are dependent on parents for support, that most illegitimates who have paternity decrees receive support. *Id.* at 513-14, *citing* *Norton v. Weinberger*, 364 F.Supp. 1117, 1128 (D. Md. 1973).

81. *Mathews v. Lucas*, 427 U.S. 495, 510-16 (1976).

82. See *Mathews v. Lucas*, 427 U.S. 495 (1976).

83. 427 U.S. 495 (1976).

84. 97 S. Ct. 1459 (1977).

child.<sup>85</sup> However, because of problems of proof of paternity, the Court suggested that a state can require a more demanding standard of proof of paternity from illegitimates than from legitimates.<sup>86</sup> The Court indicated that once paternity has been established by a prior adjudication or a formal acknowledgment<sup>87</sup> the state must allow illegitimates to inherit from their fathers if legitimates have that right. Thus, in effect, *Trimble* overruled *Labine v. Vincent*<sup>88</sup> because the statute in *Labine* did not allow acknowledged illegitimates to inherit unless there were no other heirs.<sup>89</sup>

Second, *Trimble v. Gordon*<sup>90</sup> clarifies the test the Court uses for illegitimacy classifications. The Court did not use strict scrutiny because it did not require that the state employ the best possible means to achieve its asserted purpose.<sup>91</sup> Therefore, because a suspect classification or an infringement of a fundamental right requires strict scrutiny,<sup>92</sup> illegitimacy classifications are not suspect, and the right to inherit is not fundamental. However, the test for illegitimacy classifications is not minimum rationality because the Court required the statute to be "carefully tuned to alternative considerations."<sup>93</sup> Thus, the Court is requiring an intermediate rationality, the severity of which depends on how greatly the classification infringes on a right that, though not fundamental, is nevertheless important.<sup>94</sup> Further, whether a statute meets this test depends on how difficult it would be, in the Court's judgment, for the legislature to fashion a statute more related to the asserted purpose than the statute in question.<sup>95</sup>

Finally, *Trimble* indicates that there is probably no legitimate state purpose that justifies complete discrimination against all illegitimates. The Court in *Trimble* considered whether four purposes

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85. *Id.* (by implication).

86. *Id.* at 1467. See *Mathews v. Lucas*, 427 U.S. 495 (1976).

87. *Trimble v. Gordon*, 97 S. Ct. 1459, 1466 n.14 (1977).

88. 401 U.S. 532 (1971).

89. The Court in *Trimble* distinguished *Labine v. Vincent*, 401 U.S. 532 (1971) by noting that the Louisiana statute differentiated on the basis of the character of the child's illegitimacy. *Trimble v. Gordon*, 97 S. Ct. 1459, 1464 n.13 (1977). However, the Court stated that where *Trimble* and *Labine* conflicted, *Trimble* controlled. *Trimble v. Gordon*, 97 S. Ct. 1459, 1468 n.17 (1977). See note 13 *supra*.

90. 97 S. Ct. 1459 (1977).

91. *Id.* (by implication).

92. See note 41 *supra* and accompanying text.

93. *Trimble v. Gordon*, 97 S. Ct. 1459, 1466 (1977), citing *Mathews v. Lucas*, 427 U.S. 495, 513 (1976).

94. See *Trimble v. Gordon*, 97 S. Ct. 1459 (1977).

95. *Id.* (by implication).

justified a completely discriminating classification.<sup>96</sup> It rejected the promotion of legitimate family relationships, the protection of orderly property dispositions, and the insurmountable barrier arguments.<sup>97</sup> The Court did not reach Illinois' purpose of reflecting the presumed desires of intestates in the disposition of their estates because that purpose was not properly presented to the Court.<sup>98</sup> Had that purpose been squarely before the Court, however, it, too, would probably have been rejected because the Illinois statute did not provide intestate succession inheritance rights for illegitimate children who were acknowledged or who had paternity orders,<sup>99</sup> facts that probably mirror the intent of fathers.

After *Trimble* illegitimates have acquired a right under descent and distribution statutes that many states, like Texas, have previously denied. The Texas statute before amendment in 1977 was similar to Illinois' section 12.<sup>100</sup> The 1977 amendment in effect provided that if the father had legitimated the child by a voluntary statement of paternity, the child and his issue could inherit from the father, but not from the father's paternal kin, and the father, but not the father's paternal kin, could inherit from the child and his issue.<sup>101</sup> The amendment, however, says nothing about the child being able to inherit after paternity is determined in a paternity hearing. Thus, the 1977 amendment of the Texas Probate Code will probably not save section 42 from being unconstitutional. The Court in *Trimble v. Gordon*<sup>102</sup> indicated that its decision would not have been the same had section 12 allowed inheritance after a prior adjudication or a formal acknowledgement of paternity.<sup>103</sup> Further, the statute in *Mathews v. Lucas*,<sup>104</sup> which the Court upheld, contained provisions allowing for both acknowledgment and paternity or-

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96. *Trimble v. Gordon*, 97 S. Ct. 1459 (1977).

97. *Id.*

98. *Id.* at 1467-68.

99. ILL. ANN. STAT. ch. 3, § 12 (Smith-Hurd 1961).

100. TEX. PROB. CODE ANN. § 42 (1956). The statute, before amendment, read: For the purpose of inheritance to, through, and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his material kindred . . . . Where a man, having by a woman, such child or children shall afterwards intermarry with such woman, such child or children shall thereby by legitimated and made capable of inheriting his estate. *Id.*

101. Tex. Laws 1977, ch. 290, § 1, at 762-63.

102. 97 S. Ct. 1459 (1977).

103. *Id.* at 1466 n.14.

104. 427 U.S. 495 (1976).

ders.<sup>105</sup> The Texas Probate Code amendment adds one of the elements needed to make the statute constitutional, but both elements are probably essential. Consequently, the statute should be further amended to allow illegitimates to inherit by intestate succession from their fathers if there has been a paternity order.

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105. 42 U.S.C. § 402(d)(1) (1970).