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Lauren Revoldt Fertelmes

CONSTITUTIONAL LAW—EQUAL PROTECTION—SUSPECT CLASSIFICATION—ILLEGITIMACY—INTESTATE SUCCESSION—The United States Supreme Court has held a state intestate succession statute which denies illegitimate children the right to inherit from their father's estate to be a violation of equal protection.

Trimble v. Gordon, 430 U.S. 762 (1977).

Deta Mona Trimble, the illegitimate but openly acknowledged[1] daughter of an intestate father, was excluded from participation in her father's estate[2] by the Probate Division of the Circuit Court of Cook County, Illinois. The court relied upon section 12 of the Illinois Probate Code[3] which allows illegitimate children to inherit by intestate succession from their mothers but impliedly refuses such a right in the estate of their fathers. Legitimate children, however, may inherit by intestate succession from both their mothers and fathers under Illinois law.[4]

Deta Mona and her mother sought review of the circuit court's decision, alleging that section 12 violated the equal protection clause of the fourteenth amendment by invidiously discriminating on the basis of illegitimacy. The Illinois Supreme Court allowed direct appeal and, in an oral opinion delivered from the bench, rejected appellant's constitutional challenges[5] on the basis of an earlier state decision, *In re Estate of Karas,*[6] and on authority of the

1. On January 2, 1973, the Circuit Court of Cook County, Illinois, had entered a paternity order declaring the deceased, Sherman Gordon, to be the father of Deta Mona Trimble, and ordered Gordon to pay $15 per week for her support. He complied with the order and openly acknowledged her as his child. Trimble v. Gordon, 430 U.S. 762, 764 (1977).

2. The court determined Gordon's father, mother, brother, two sisters, and half-brother to be the heirs of the estate. The estate consisted of a 1974 Plymouth valued at $2,500. *Id.*

3. ILL. ANN. STAT. ch. 3, § 12 (Smith-Hurd 1961). The Probate Act of 1975 repealed § 12 as of January 1, 1976 and replaced it with ILL. ANN. STAT. ch. 3, § 2-2 (Smith-Hurd Supp. 1978). However, the part of § 12 at issue here has not been materially altered by § 2-2 and the courts continued to refer to the provision as § 12. The statute now provides:

> An illegitimate child is heir of his mother and of any maternal ancestor and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take by descent any estate which the parent would have taken, if living. A child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father's child is legitimate.

4. ILL. ANN. STAT. ch. 3, § 2-1(b) (Smith-Hurd Supp. 1978).

5. *See* 430 U.S. at 765.

6. 61 Ill. 2d 40, 329 N.E.2d 234 (1975). The court in *Karas* sustained the constitutionality of § 12 against all constitutional challenges including those presented in an amicus brief filed by the appellants in *Trimble.* 430 U.S. at 765.

Supreme Court's decision in *Labine v. Vincent*.[7] The United States Supreme Court noted probable jurisdiction[8] to consider the constitutionality of the statutory classification.[9] In a 5-4 decision, the Court reversed, holding that the legitimacy distinction for intestate succession violated the equal protection clause of the fourteenth amendment.[10] In reaching this conclusion, the Court rejected the statutory justifications for discriminating against illegitimates set forth in *Labine*, and relied upon by the Illinois court, of promoting legitimate family relationships, of providing efficient methods of property disposition, and the absence of an "insurmountable barrier."[11]

Justice Powell, speaking for the majority, held that a classification based on illegitimacy was not generally a "suspect" classification which required the Court's most exacting scrutiny.[12] Although the personal attributes of illegitimacy are similar to those which have been held to be suspect, the analogy was insufficient to require strict scrutiny.[13] Nevertheless, the majority required more than just the promulgation of *some* legitimate state purpose: the statutory classification must, at the very least, bear a rational relationship to the state aim in order to withstand the constitutional challenges of the equal protection clause.[14] Thus, focusing on the reasoning of the

7. 401 U.S. 532 (1971) (intestate succession law barring illegitimate children from sharing equally with legitimate children in father's estate is within state's power to establish rules for protection of family life and for disposition of property).

8. 424 U.S. 964 (1976).

9. Although appellant contended below that § 12 also discriminated on the basis of race and sex, the Court did not reach this argument. 430 U.S. at 765 & n.10.

10. *Id.* at 776.

11. *See* notes 12-32 and accompanying text *infra*. The Court also refused to sustain the constitutionality of § 12 on the theory that the Illinois Probate Act mirrored the presumed intentions of the citizens as to the disposition of their property at death. This argument was not relied upon by the Illinois Supreme Court as a legitimate state purpose after a detailed examination of the history and text of § 12. The Supreme Court declined to review any additional purpose ignored by the highest court in the state. 430 U.S. at 774-76.

12. 430 U.S. at 767. Under equal protection analysis, certain classifications which involve sensitive and fundamental personal rights, such as those based on race or national origin, have been held by the Court to be "suspect," requiring the most rigid scrutiny and a *compelling* governmental interest as justification. This standard of strict review is an exception to the general standard that a statutory classification is constitutionally valid as long as it is rationally related to a legitimate governmental objective. *See generally Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969). *See also* Mathews v. Lucas, 427 U.S. 495 (1976) (Court rejected the argument that classifications based on illegitimacy are "suspect").

13. 430 U.S. at 767 (citing Mathews v. Lucas, 427 U.S. at 505-06).

14. 430 U.S. at 766. The Court applied the standard set forth in previous decisions involv-

Illinois Supreme Court in *In re Karas*,[15] the Court asked whether section 12 was a valid means of promoting the purported state interests of encouraging legitimate family relationships and providing an efficient method of property disposal.[16]

Justice Powell recalled that the Supreme Court in *Labine v. Vincent*[17] had held that a state's interest in promoting legitimate family relationships was an acceptable justification for a classification based on illegitimacy.[18] Here, however, the majority believed the state court inappropriately relied on *Labine* without a complete constitutional analysis of the statute's justification and its rational relationship to the state purpose.[19] The majority declared that section 12 could bear, at best, only a minimal relationship to the promotion of legitimate families.[20] Such an attempt by the state to influence the actions of men and women by imposing sanctions or disabilities on their illegitimate children was seen to be not only ineffectual[21] but contrary to our system of justice.[22] Only the parents, the majority stated, have the ability to conform their conduct to the norms of society and any children of illegitimate relationships are powerless to change either their parent's actions or their own status. Further, it is inherent in our system of justice that legal burdens must bear some relationship to the individual wrongdoers. Since a child can in no way be responsible for his illegitimacy, the

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ing the constitutionality of classifications based on illegitimacy. *See* note 12 *supra*. *See also* Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164 (1972)(illegitimacy distinction in workmen's compensation statutes held unconstitutional where classification bore no significant relation to statutory purposes).

15. 61 Ill. 2d at 48, 329 N.E.2d at 238.

16. 430 U.S. at 768.

17. 401 U.S. 532 (1971).

18. 430 U.S. at 768. The *Labine* decision overruled constitutional challenges to Louisiana's intestate succession laws that barred illegitimate children from sharing equally with legitimate children in their father's estate, holding the statutory scheme to be within the state power to establish rules for the protection and strengthening of family life and for disposition of property. 401 U.S. at 535-40.

19. 430 U.S. at 769. The Court indicated that the *Labine* opinion also contained only a superficial equal protection analysis. As a result, *Labine* was not in line with other equal protection decisions and has been limited as a precedent in subsequent decisions. *See id.* at 767 n.12, 768.

20. *Id.* at 768-69.

21. *See* Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 173 (1972) (Court rejected the argument that "persons will shun illicit relations because the offspring may not one day reap the benefits of workmen's compensation").

22. 406 U.S. at 175.

Court found it unjust to penalize the child by imposing the disabilities upon him.[23]

Secondly, Justice Powell rejected the state's concern in establishing an orderly method of property disposition as a valid justification for the statute.[24] Although the majority acknowledged the state's problems in proving paternity and preventing spurious claims, such difficulties, the Court believed, did not justify total statutory disinheritance.[25] Unlike the Illinois court, which failed to consider a middle ground between complete exclusion and a case by case approach to the proof of paternity, the Court found that there were some categories of illegitimate children whose inheritance rights could be recognized without upsetting an efficient disposition of property.[26] When a man is found to be the father through a paternity action and ordered to support the child—as in Deta Mona's case, for example—such a state adjudication should be sufficient to allow a share in the estate since it would not adversely affect state interests.[27] Thus, in the opinion of the Court, the statute was flawed in not carefully considering these alternatives,[28] thereby extending far beyond the needs of any purported state purpose.[29]

Finally, the majority rejected the Illinois court's reliance on *Labine* to conclude that because there was no "insurmountable barrier" preventing an illegitimate child from sharing in her father's estate, section 12 was constitutionally sufficient.[30] Although there

23. 430 U.S. at 769-70.

24. *Id.* at 772.

25. *Id. See also* Gomez v. Perez, 409 U.S. 535, 538 (1973) (problems of proof of paternity cannot be an impenetrable barrier to shield discriminatory statutes denying paternal support to illegitimate children).

26. 430 U.S. at 770-71.

27. *Id.* at 772.

28. *See id.* at 772 n.14. The majority was careful to limit the holding to only those forms of proof, such as a prior adjudication or formal acknowledgement of paternity, which do not compromise the state's interest.

29. *Id.* at 772. *See also* Mathews v. Lucas, 427 U.S. 495 (1976) (statutory classifications in the Social Security Act based on illegitimacy were upheld primarily because the statute did not broadly discriminate between legitimates and illegitimates but was careful to consider alternatives to total exclusion of illegitimates); Jimenez v. Weinberger, 417 U.S. 628, 637 (1974) (Social Security Act benefitting illegitimates without any showing of dependency upon disabled parent held violation of equal protection as statutory definitions are "overinclusive" in that it benefits some legitimated but nondependent children and at the same time excludes some legitimates who are dependent).

30. 61 Ill. 2d at 52, 329 N.E.2d at 240. The decedents in *Karas* and *Trimble* could have left substantial parts of their estates to their illegitimate children by writing a will. Thus, the court said there was no "insurmountable barrier" preventing the illegitimate children from inheriting.

had been a focus on available alternatives and the existence or absence of an "insurmountable barrier" in earlier decisions by the Court,[31] the majority now rejected it as being an analytical anomaly. In an equal protection analysis, the Court found its only task to be a determination of whether the statutory classification was justified by a rational relationship with the promotion of legitimate state objectives. By focusing on possible alternatives of the father, the Court would lose sight of this essential question. The Court refused to avoid the question by a hypothetical reshuffling of the facts which would destroy any discrimination against the appellant and held that available alternatives have no constitutional significance.[32]

Four Justices dissented,[33] claiming *Trimble* to be indistinguishable from *Labine v. Vincent*. Justice Rehnquist, however, filed an additional opinion further denouncing the analysis of the case offered by the majority.[34] Dissatisfied with the Court's confusion and inconsistency on the equal protection clause,[35] Rehnquist concluded that the majority in *Trimble* had, as many courts before, read too much into the clause. The fourteenth amendment was a Civil War amendment and had to be considered in the context of the war fought immediately before its passage. Although the dissent acknowledged that the amendment severely modified the constitutional balance between state and federal governments by giving the Supreme Court the power to strike down state laws which directly violated the fourteenth amendment,[36] Rehnquist reminded the ma-

31. *See* Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 170-71 (1972) (no alternatives available to modify child's position as illegitimate); Labine v. Vincent, 401 U.S. at 539 (no insurmountable barrier prevented illegitimate from sharing in estate).

32. 430 U.S. at 773-74. *See also* Reed v. Reed, 404 U.S. 71 (1971) (no indication that available alternatives have constitutional significance).

33. Chief Justice Burger and Justices Stewart, Blackmun, and Rehnquist filed a dissenting statement.

34. 430 U.S. at 777.

35. Rehnquist noted that since the adoption of the equal protection clause, the Court has been unable to formulate a consistent doctrine which reasonably expounds the intent of those who drafted the clause. Further, even if the framers had imprecise ideas as to the meaning of the clause, the Court has failed to develop a meaning which has served some useful purpose. Instead, Rehnquist viewed the Court's use of the fourteenth amendment as only a threat to legislatures which, in the eyes of the Court, pass illogical or arbitrary laws. *Id.*

36. *See generally* Zwickler v. Koota, 389 U.S. 241, 245-47 (1967). During the nation's first century, Congress relied on state courts to vindicate essential rights arising under the Constitution. But with the adoption of the fourteenth amendment and subsequent legislation, federal courts became the primary tribunals to redress the deprivation of such rights. *See also* H. FLACK, THE ADOPTION OF THE FOURTEENTH AMENDMENT (1908) (discusses the historical

jority that the Court was not a council of revision and was not given power to veto a state law merely because it was felt to be somewhat contrary to the Court's concept of the public interest.[37]

In enforcing the generalities of the fourteenth amendment, Rehnquist believed the majority had succumbed to the temptation to hold any law containing imperfections to be a denial of equal protection.[38] The Court in the past had taken the fourteenth amendment out of the context of the Civil War and extended it beyond the protection of race,[39] to other areas of discrimination, such as national origin,[40] and now to illegitimacy. With this extension, the Court became confused as to what sort of scrutiny was applicable to statutory classifications based on illegitimacy.[41] The majority determined the proper scrutiny to be an analysis of the relation between some state "purpose" in enacting the law and the "means" to carry out that purpose. The dissent pointed out, however, that the state's "purpose" was to make section 12 a part of Illinois statutory law, a purpose which was accomplished. The dissent thought the real question the majority was trying to answer was what "motivated" the legislators to vote for this section: What were they

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incidents connected with the proposal and adoption of the fourteenth amendment to ascertain the purpose of the amendment, the powers intended to be granted to the federal government, and those powers to be prohibited to the states).

37. 430 U.S. at 778.

38. *Id.* at 779.

39. Growing out of the Civil War, the fourteenth amendment was originally held to be aimed at the protection of blacks. *See* Strauder v. West Virginia, 100 U.S. 303 (1880) (fourteenth amendment was designed to provide and protect for blacks all the civil rights which whites enjoy). *See also* Bickel, *The Original Understanding and the Segregation Decision*, 69 HARV. L. REV. 1 (1955) (discussing the history and adoption of the fourteenth amendment as it relates to racial discrimination).

40. *See* Oyama v. California, 332 U.S. 633 (1948) (California Alien Land Law held to deny American citizen equal protection by discrimination based solely on parent's country of origin); Yick Wo v. Hopkins, 118 U.S. 356 (1886) (guarantees of fourteenth amendment held to extend to all persons without regard to differences of race, color, or nationality).

41. In extending the scope of fourteenth amendment equal protection review, the Court has held that classifications based on alienage are inherently suspect, just as are those based on race or nationality. *See In re* Griffiths, 413 U.S. 717 (1973) (state bar examining committee rule denying aliens permission to take the bar examination seen as inherently suspect and subject to close judicial scrutiny); Graham v. Richardson, 403 U.S. 365, 372 (1971) (state statute denying welfare benefits to certain classes of aliens held subject to the close judicial scrutiny as classifications based on race or nationality). Although illegitimacy has never been held to be a suspect classification, the courts have suggested that more than minimal scrutiny is required. *See, e.g.*, Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164 (1972); Labine v. Vincent, 401 U.S. 532 (1971); Glona v. American Guar. & Liab. Ins. Co., 391 U.S. 73 (1968); Levy v. Louisiana, 391 U.S. 68 (1968). *See also* note 11 *supra*.

trying to accomplish and did the act in question accomplish such a "purpose"? Such analysis, Rehnquist believed, required the Court to second-guess a legislative judgment—an area in which the Court has no expertise.[42]

Although this was not the first Court to use this type of analysis in equal protection questions beyond racial discrimination,[43] Rehnquist hoped it would be the last.[44] The dissenting opinion would have held that no statutory classification should be set aside unless there are *no* grounds to justify it. Here, where the Illinois Probate Act was amended to alleviate some of the problems of intestate succession, it was irrelevant under the equal protection clause, the dissent maintained, that section 12 did not alleviate *all* the difficulties. All laws, unless applied to all persons in all places at all times, inevitably impose sanctions or disabilities on some persons but not all. Still, Rehnquist stated, discriminatory laws can not violate the fourteenth amendment unless the means employed are of the type which the drafters of the amendment sought to prohibit.[45]

Both opinions were aware of the statutory development of illegitimates' rights and judicial attempts to afford equal protection to illegitimates within the meaning of the fourteenth amendment. At common law an illegitimate child was considered *nullius filius*, the child of no one, and had no rights of inheritance.[46] The severity of this rule led to many statutory changes granting illegitimates some of the rights denied by common law.[47] The practice of the courts, however, had been to relax the common law disability only to the

42. 430 U.S. at 781-83.

43. *See* Royster Guano Co. v. Virginia, 253 U.S. 412 (1920) (classification must rest upon some ground of difference having a fair and substantial relation to the object of legislation).

44. *See* McDonald v. Board of Election Comm'rs, 394 U.S. 802 (1969) (legislatures are presumed to have acted constitutionally, and statutory classifications will not be set aside if there are grounds conceived to justify them); McGowan v. Maryland, 366 U.S. 420 (1961) (statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it).

45. 430 U.S. at 785-86.

46. The strong belief in the sanctity of marriage, held by the English, is probably responsible for the development of such severe treatment of the product of immoral relations. However, the difficulty in proof of paternity and the fear of fraudulent claims against estates of wealthy land owners has had a substantial impact. *See* Note, *Illegitimacy*, 26 BROOKLYN L. REV. 45, 47 (1960) [hereinafter cited as *Illegitimacy*]. *See generally* 2 J. KENT, COMMENTARIES *212; 1 BLACKSTONE, COMMENTARIES 459 (Chitty ed. 1845).

47. *See Illegitimacy*, *supra* note 46, at 76-79.

extent of such legislation.[48]

Then, in 1968, in the landmark case of *Levy v. Louisiana,*[49] the Supreme Court greatly expanded the rights of illegitimates by declaring a statutory classification based on illegitimacy to be in violation of the fourteenth amendment. The case involved an action on behalf of five illegitimate children to recover under a Louisiana statute[50] for the wrongful death of their mother. Although the state courts dismissed the action claiming the word "child," as used in the statute, meant only "legitimate child," the Supreme Court reversed, holding that the discrimination was invidious and violated the equal protection clause. The legitimacy or illegitimacy of the child bore no relation to the nature of the wrong inflicted on the mother and, therefore, the illegitimate children could not be denied rights which other citizens enjoyed.[51]

After *Levy,* the rights of illegitimates began to receive strong support in many jurisdictions.[52] But in the 1971 case of *Labine v. Vincent,*[53] the Supreme Court severely restricted this trend by refusing to extend the *Levy* rationale into the area of intestate succession. In *Labine,* the guardian of an illegitimate child attacked the constitutionality of Louisiana laws which barred illegitimate children from sharing equally with legitimate children in the estate of an intestate father.[54] The Supreme Court upheld the discriminatory

48. *See* Annot., 41 L. Ed. 2d 1228 (1975).

49. 391 U.S. 68 (1968). *See also* Glona v. American Guar. & Liab. Ins. Co., 391 U.S. 73, 76 (1968) (Harlan, J., dissenting).

50. LA. CIV. CODE ANN. art. 2315 (West Supp. 1967) provides the right to recover damages for wrongful death in favor of the surviving spouse, *child,* or children.

51. 391 U.S. at 70-72.

52. By 1971, eighteen states permitted illegitimate children who had been acknowledged to inherit from their fathers. *See* 38 BROOKLYN L. REV. 428, 440 n.95 (1971).

53. 401 U.S. 532 (1971) (5-4 decision).

54. The trial court dismissed the petition to declare the illegitimate child the sole heir to his father's estate and held that under Louisiana law, legitimate collateral heirs take the property to the exclusion of illegitimate children. Louisiana has carefully regulated many property rights and as a result, a complex statutory scheme of intestate succession has developed. Although legitimate children have an automatic right to inherit from their parents, LA. CIV. CODE ANN. art. 1495 (West 1952), illegitimate children who are never acknowledged have no right to share in the estate of an intestate father and, in some instances, their father may not even bequeath the property to them by will. *Id.* art. 1488. Illegitimate children acknowledged by their fathers are considered "natural children" and have some right to take by intestate succession but only to the exclusion of the state. *Id.* art. 919. However, illegitimate children who are legitimated or adopted may take as any other child. *Id.* art. 1486. Further, all illegitimate children may claim support from the estates of both parents. *Id.* art. 241.

classifications as being within the state's power to make laws regarding the disposition of property. There is no right to inherit guaranteed by the Constitution and as a result, the regulation of property disposition has traditionally been left to the states.[55] Even though the laws may be rigid, they are the deliberate and planned choices of the state legislators which, according to the *Labine* Court, the vague generalities of the fourteenth amendment do not empower the Court to nullify.[56] Any reliance on *Levy,* the Court held, was misplaced in that *Levy* did not say a state could *never* treat an illegitimate child different from a legitimate one.[57] Unjust results are inherent in succession laws as they also tend to discriminate against collateral over ascendant heirs and ascendants over descendents. But such unjust results are not necessarily constitutional defects.[58] Further, in *Levy* the state statute had created an "insurmountable barrier" to the illegitimate child. Under the intestate statutes in *Labine,* however, the father could legitimate the child or, in some cases, write a will if he wished the child to share in the estate. Thus, the *Labine* Court refused to extend *Levy* into the area of intestate succession[59] and declined to overturn a state's choice of laws simply because there were better or more rational alternatives.[60]

The question presented in *Trimble* appears to be indistinguishable from the issue in *Labine,* and *Labine* might properly have been dispositive of the issue here. However, to rely solely on *Labine,* would be to ignore the substantial differences between the Louisiana statutory scheme in *Labine* and the Illinois scheme.[61] The Louisiana statute did not completely exclude any child from receiving benefits.[62] Although illegitimates were divided into two classes, bastards and natural, each were granted limited rights of support.[63]

55. Harris v. Zion's Sav. Bank & Trust Co., 317 U.S. 447, 450 (1943) (privileges conferred to administrator of an estate by federal bankruptcy act did not override state prohibitions since distribution of estates is matter of state law with which Congress has refrained from interfering).

56. 401 U.S. at 540.

57. *Id.* at 536.

58. *Id.* at 537-38.

59. *Id.* at 539.

60. *Id.* at 537.

61. *See* Brief for Appellant at 7, Trimble v. Gordon, 430 U.S. 762 (1977) (emphasizes the substantive differences between the statutory schemes) [hereinafter cited as Brief for Appellant].

62. *See* note 54 *supra.*

63. *Id. See also* LA. CIV. CODE ANN. art. 1488 (West 1952) which reads in part: "Natural

Illinois, however, had no such scheme.[64] The Illinois Probate Act was totally discriminatory between legitimates and illegitimates. There was no provision allowing any illegitimate child the right of support from the estate of the deceased father. In other words, the Illinois statute was not attuned to alternative considerations. Only if the child were made legitimate by both intermarriage and acknowledgement could the child share in the father's estate by intestate succession. Thus, an application of *Labine* was unwarranted since *Labine* was limited by its facts and the unusual Louisiana statutory scheme.[65]

Further, by its reliance on *Labine,* the dissent implied that the Court can not, or should not, review intestate succession laws in terms of the fourteenth amendment.[66] Although the Supreme Court has never before declared an intestacy statute unconstitutional,[67] one of the purposes of judicial review has always been to insure that statutes serve legitimate state purposes without conflicting with the state's duty under the fourteenth amendment to provide equal protection to *all* citizens.[68] Undoubtedly, states have the power to make laws regarding the disposition of property, but when these laws run afoul of a basic right guaranteed by the Constitution, the Court may interfere with state regulatory power, even in areas traditionally reserved to the states.[69] Where the statute appears to invidiously discriminate, the test for validity has been whether the line drawn was a rational one.[70] While the courts can not prevent social opprobrium, they may strike down discriminatory laws where there is no justifiable state interest[71] or where there is no rational relationship

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fathers and mothers can, in no case, dispose of property in favor of their adulterine or incestuous children, unless to the mere amount of what is necessary to their sustenance, or to procure them in an occupation or profession by which to support themselves."

64. *See* note 3 *supra.*

65. *See* Brief for Appellant, *supra* note 61, at 7 (alleging error in the court's reliance upon *Labine* as a valid precedent).

66. *See* 49 TEX. L. REV. 1132, 1134 (1971) (emphasizing that the Court has continually followed a long line of precedents in holding that inheritance laws are exclusively state matters).

67. *Id.* at 1135.

68. *See* 38 BROOKLYN L. REV. 428, 432 (1971).

69. McLaughlin v. Florida, 379 U.S. 184, 191 (1964) (judicial inquiry under equal protection clause extends to racial classifications in Florida cohabitation law where normally wide legislative discretion is allowed).

70. Levy v. Louisiana, 391 U.S. 68, 71 (1968).

71. *See* Jimenez v. Weinberger, 417 U.S. 628 (1974) (equal protection clause is violated where classifications based on status of birth are not justified by legitimate state interest, compelling or otherwise).

between the discrimination and the achievement of that interest.[72] Here is where the *Labine* decision failed. Although the Court properly declared that the state has the power to discriminate, the decision failed to analyze the statutory classification to determine whether there was some reasonable basis for the discrimination which was rationally aimed at the purpose sought to be achieved.[73] It was this additional analysis which properly led the Court in *Trimble* to find section 12 a violation of the fourteenth amendment.[74]

There has been much controversy, however, as to what standard of scrutiny should be used by the Court in reviewing the reasonableness of statutory classifications based on illegitimacy.[75] Although most statutes are usually subjected to only minimal scrutiny, strict scrutiny has been required for statutes bearing classifications based on race[76] or nationality.[77] The real question before the *Trimble* Court should have been whether the strict scrutiny test should be extended to the area of illegitimacy. The *Labine* analysis adopted by the dissent suggested an unusual standard by implying that the power of states to regulate such matters exempts the classification from even minimal scrutiny.[78] The majority in *Trimble,* although going beyond the "toothless" analysis in *Labine,* declined to apply the strict scrutiny test, holding that illegitimacy was not an inherently "suspect" classification such as race or nationality.[79] Such a test was unnecessary in *Trimble* to find the statute unconstitutional, but for further clarification and as a guide to state courts, the strict standard may have been appropriate.

Recent decisions in cases of discrimination against illegitimates

72. *See id.*; Gomez v. Perez, 409 U.S. 535 (1973); Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164 (1972); Levy v. Louisiana, 391 U.S. 68 (1968).

73. *See* 49 TEX. L. REV. 1132, 1137 (1971) (although reasonable justifications can and do exist for discriminating against illegitimates, the goals of family protection and orderly property disposition were not served by the unnecessarily broad statute).

74. *See* notes 17-23 and accompanying text *supra.*

75. *Compare* Labine v. Vincent, 401 U.S. 532 (1971) *with* Glona v. American Guar. & Liab. Ins. Co., 391 U.S. 73, 76 (1968) (dissenting opinion).

76. *See* Loving v. Virginia, 388 U.S. 1, 11 (1967) (equal protection clause demands that miscegenation statute based solely on racial classification be subjected to the most rigid scrutiny).

77. *See* Oyama v. California, 332 U.S. 633, 640 (1948) (Alien Land Law classifications based on nationality held unconstitutional in absence of compelling justification).

78. *See* 430 U.S. at 777.

79. *Id.* at 767. *See also* Mathews v. Lucas, 427 U.S. 495 (1976); note 12 *supra.*

have attributed to such children all the characteristics of other suspect classes.[80] Illegitimacy, just as race or nationality, attaches at birth and is not within control of the individual. Even though personal attributes are unaffected by illegitimacy, the status has always been stigmatized by society. The effect of this societal discrimination has been to deprive innocent children of an equal opportunity to develop both intellectually and emotionally.[81] Such deficiencies tend to increase with age as a result of the child's increasing awareness of his "inferior" status. Thus, to insure an equal opportunity to develop, all classifications of illegitimacy should be regarded as suspect.[82]

Even without the application of the strict scrutiny test, the *Trimble* Court was able to find the classification discriminatory. Such a result, however, should not be viewed as a complete abrogation of all statutory classifications based on illegitimacy. Although it is now well established that the equal protection clause may preclude forms of state discrimination against illegitimate children, the flaw may lie only within the broadness of the particular statutory scheme and its failure to provide a middle alternative between complete statutory disinheritance and a case by case approach. Thus, any future decision would be limited by the facts of the case. At the very least, there must be some rational relationship between the classification and the state purposes sought to be achieved. But the skill of the legislators in avoiding broad discriminatory practices and providing at least for those categories of illegitimate children whose rights would not adversely affect state interests will be determinative.

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80. 427 U.S. at 505.

81. Studies show that illegitimate children have a lower "IQ" than legitimate children of the same race and economic status. *See* Brief for Appellant, *supra* note 61, at 23.

82. The Supreme Court declined to hold the classification to be "suspect" because the roots of the discrimination rest in the conduct of the parents rather than the child and because illegitimacy does not carry an "obvious badge," as does race or sex. *See* Mathews v. Lucas, 427 U.S. at 505-06.