10-1978

Lalli v. Lalli

Lewis F. Powell Jr.

Eric - fmc memo.

ea 9/29/78

BENCH MEMORANDUM

TO: Mr. Justice Powell

FROM: Eric

DATE: September 29, 1978 illegit female child

RE: Lalli v. Lalli, No. 77-1115 Father's Estate

I. OVERVIEW

This case is a follow-up to Trimble v. Gordon, 430 U.S. 762 (1977). It concerns the validity under the Equal Protection Clause of a New York statute prohibiting inheritance by an illegitimate child from his intestate father's estate in the

absence of a judicial order of filiation made during the lifetime of the father.

At the outset, I hope I may offer a few thoughts about the analytical approach appropriate to this case and how it relates to equal protection generally. The "two tier" approach to equal protection review arguably has been supplemented with what many insist is a "middle tier," as illustrated by the cases dealing with discrimination on the basis of sex and illegitimacy. Craig v. Boren, 429 U.S. 190 (1976); Trimble, supra. Although in these contexts the Court has declined to apply "strict scrutiny," it has required that "classifications by gender must serve important governmental objectives and must be substantially related to those objectives." Craig, 429 U.S. at 197. As put more pithily in the illegitimacy cases, the scrutiny applied "is not a toothless one." Trimble, 430 U.S. at 767, quoting Matthews v. Lucas, 427 U.S. 495, 510 (1976).

As you observed in your concurrence in Craig, the further subdivision of equal protection analysis is scarcely a welcome development, but the existence of at least three levels of judicial scrutiny is discernible in the Court's decisions. As you probably do, I sincerely hope the Court someday will get its act together and come out with a standard and workable approach -- at least a common verbal formula -- to equal protection problems. This case, however, is not the one in which to press for that concensus. Even if the Court could agree on revised

equal protection language (which is doubtful), the issue in this case is so similar to that in Trimble that the Court is constrained to follow the analysis so recently and carefully set out there. The challenge in Lalli, therefore, is not to formulate an equal protection standard, but to apply one already articulated.

Even though this case will therefore have direct effect on only a single state statute, however, the manner in which it is decided could be important to the Court's future equal protection cases. This is because only in recent years has the Court gotten serious about making a genuine examination of the relation between the effects and purposes of a discriminatory law, which is precisely the inquiry to be made here. In the past, the two-tier analysis often resulted in either the virtually automatic deferral to state legislatures under the traditional rational basis test on the one hand, or the equally predictable rejection of state law under the strict scrutiny test on the other. The current approach, by contrast, is to examine the means-ends "fit" under each of the different levels of scrutiny. Thus, as suggested by your Bakke opinion, it is possible to justify an act of race discrimination on the ground that the state's interest is both compelling and adequately served thereby. As illustrated by Craig and Trimble, it is also possible that although a state's interest is legitimate and not irrationally disserved by a nonsuspect discrimination, the

relation between the means and ends is just too tenuous to stand.

These kinds of results did not used to occur in equal protection cases. They illustrate that an honest inquiry into whether a statutory classification bears a sufficiently substantial relation to the object of the legislation -- precisely the question to be decided in this case -- is becoming a common denominator of equal protection review. The care with which that inquiry is made here should teach something about how it will be made in future cases.

II. THE STATUTE AND THE FACTS OF THE CASE

New York's Estates, Powers and Trusts Law §4-1.2 provides:

> (a) For the purposes of this article:
>
> (1) An illegitimate child is the legitimate child of his mother so that he and his issue inherit from his mother and from his maternal kindred.
>
> (2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child.
>
> (3) The existence of an agreement obligating the father to support the illegitimate child does not qualify such child or his issue to inherit from the father in the absence of an order of filiation made as prescribed by subparagraph (2).

The decendent, Mario Lalli, was murdered on January 7, 1974. He was survived by his wife Rosamond Lalli (the appellee) and by Robert Lalli (appellant) and his sister Maureen Lalli. Robert and Maureen claim to be Mario's children by another woman who had predeceased him. No order of filiation was ever entered as to Robert or his sister. The evidence offered to prove appellant's relationship to Mario consisted of (1) a notarized certificate signed by Mario, giving his consent to Robert's marriage, in which Robert was specifically referred to as "my son"; (2) a baptism certificate naming Mario as Robert's father; and (3) testimony that Mario had lived together with Robert, Maureen, and their mother; had referred to Robert and Maureen as his children; and had regularly supported them with cash payments. Appellee does not directly deny that Robert is Mario's son. The state attorney general, an appellee by intervention, does not admit the relationship, but fails to cite any evidence to the contrary.

Evidence of parentage

After appellee was appointed as administratrix, appellant petitioned the Surrogate's Court for a compulsory accounting. Appellee moved to dismiss, arguing that since appellant claimed to be an

illegitimate child and no order of filiation had been entered as prescribed by §4-1.2, he could not be a distributee entitled to an accounting. Appellant opposed on the ground that §4-1.2 was invalid under the Equal Protection Clause of the Fourteenth Amendment. The court granted the motion to dismiss, and the New York Court of Appeals affirmed.

On appeal to this Court, the judgment was vacated and remanded for further consideration in light of Trimble. The New York attorney general then intervened on the side of Rosamond Lalli. The Court of Appeals decided on remand that its statute was valid under Trimble and therefore adhered to its previous decision. Two judges dissented. Appellant again sought review here, and probable jurisdiction was noted.

On a Trimble remand N.Y. statute held valid

III. THE ISSUES

The precise question for decision is whether the rule that an illegitimate cannot inherit from his father in the absence of an order of filiation entered during the father's lifetime is sufficiently related to a proper state interest to survive an equal protection challenge. Appellant charges that this rule creates two impermissible discriminations. It distinguishes between

Re Q: Is the N.Y. Rule substantially related to a proper state interest

legitimate and illegitimate children, and, since other statutes provide that children born out of wedlock whose parents intermarry are treated as legitimate, it distinguishes between classes of illegitimates.

Other issues lurk in the case, but probably should not be reached. These include the validity of the two-year limitation period beginning at birth for commencing a filiation order proceeding. Appellant has never initiated such proceedings, and that point was not discussed by the lower courts. On the facts of this case, that issue will be moot whether the Court overturns or upholds the requirement that a filiation order be obtained during the father's lifetime. If that requirement is upheld, appellant necessarily loses because his father is already dead; if it is struck down, there will be no need even to commence the paternity proceeding and appellant necessarily wins.

Two year limitation issue is irrelevant.

Another issue urged upon the Court -- this time by the Legal Aid Society of New York City as amicus -- is whether §4-1.2 constitututes sex discrimination It is argued that the statute creates two gender-based classifications. First, it discriminates against women who must support their illegitimate children following their fathers' deaths since it makes the fathers' estates unavailable to help support the children;

Sex discrimination issue not raised below.

second, it discriminates "against illegitimate children on the basis of the sex of the deceased parent from whom they seek to inherit by intestate succession." Amicus Brief at 23. It does not appear that these sex discrimination issues were passed upon or even raised below. The person with obvious standing to raise the first argument, Robert's mother, is not a party (she died well before the action commenced.) Assuming the second argument makes any sense at all, it appears to be nothing more than a circuitous way of describing the illegitimacy-based classification that is properly before the Court. I recommend that the Court not get into the sex discrimination issues.

Appellant makes some suggestion that the state restricts his right to share in the proceeds of a wrongful death action or to compel appellee to commence such a proceeding. He also asks the Court to order the desired accounting. As far as I can tell, the first question was never raised below, and the state contends that appellant would be entitled to his share of such a recovery in any event. The second question should be left for the state courts on remand.

IV. THE ARGUMENTS

A. APPELLANTS

1. Appellant's principal argument is that §4-1.2 is invalid under Trimble because it fails to adopt "a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." Trimble, 430 U.S. at 771. Trimble acknowledged that the states have a proper interest in "assuring accuracy and efficiency in the disposition of property at death," 430 U.S. at 770, and that "[t]he more serious [evidentiary] problems of proving paternity might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." Trimble required, however, that the state's discrimination against illegitimates claiming against their intestate fathers' estates not be grossly overinclusive. Since the Illinois statute in that case precluded inheritance except where the parents intermarried and the father "acknowledged" the child, the Court found that the state had unnecessarily discriminated against many

illegitmates whose paternity could be proven "without jeopardizing the orderly settlement of estates or the dependability of titles passing under intestacy laws." 430 U.S. at 771. Since Trimble statute had overlooked the middle ground that would not make an overbroad disqualification, the statute was insufficiently related to the ends it sought to serve.

Appellant finds the New York law indistinguishable in principle. He argues that insisting upon a judicial order of filiation entered during the father's lifetime + within two yrs of birth to the exclusion of all other forms of proof -- such as the evidence he offers in this case -- precludes inheritance by illegitimates who could prove paternity without threatening the state's interests. He claims that Trimble explicitly said as much in footnote 14 of that opinion: "[f]orms of proof which do not compromise the State's interests . . . clearly would [include] . . . a prior adjudiction or formal acknowledgement of paternity." 430 U.S. at 772 n.14 (emphasis added). Appellant contends that the notarized certificate in which Mario Lalli gave him permission to marry and referred to him as "my son" is precisely the kind of "formal acknowledgement" that Trimble expressly approved. Trimble

Appellant also adopts the reasoning of the two

dissenters on the New York Court of Appeals, Judges Cook and Fuchsberg: Those fathers who openly acknowledge and support their illegitimate children and whose paternity is therefore not in doubt are precisely those who are least likely to become subject to an order of filiation. Seeking such an order is burdensome, it is, in the eyes of many, a distasteful adversary proceeding between family members, and the individuals involved therefore have incentives not to seek it. In other situations in which paternity is not in doubt, the failure to seek the filiation order "is often the product of carelessness or ignorance on the part of those who might institute a proceeding within the statutory limitation, for neither of which should a child suffer." Juris. Statmt. at A-8. Thus, although the "statute is not mindless not totally irrational and a concern for solid proof of paternity is a legitimate state purpose[,] . . . the statutory procedure required has only a tenuous relation to the quantum of proof demanded. Viewed in proper perspective, it . . . places an undue, if not unyielding, burden on those concerned" and is therefore invalid under Trimble. Id. at A-7, A-8.

Views of dissenting judges — these are not in substance

2. Appellant makes the further argument that §4-1.2, viewed together with other statutes, impermissibly discriminates between classes of illegitimate children,

Domestic Relations Law §24 provides that any child whose parents intermarry is legitimate, even if the marriage is void, voidable, or annulled. Thus, illegitimately-born children whose parents intermarry are not subject to §4-1.2, while those whose parents do not must obtain the order of filiation before they can inherit from their fathers.

This kind of categorization within the class of illegitimates is said to run afoul of Jimenez v. Weinberger, 417 U.S. 628 (1974). In that case, Social Security disability insurance benefits were available to illegitimates, without any showing of actual dependence on the disabled wage-earner, only if (1) they could inherit from the wage-earner parent under state law, (2) their illegitimacy was due solely to formal defects in the parents' marriage, or (3) they were legitimated according to state law. Otherwise, no benefits could be received, even upon proof of paternity and actual dependency. The Court found this classification violative of the Fifth Amendment's due process component since the discrimination it entailed was not rationally related to the statute's purpose of preventing spurious claims against the Social Security Trust Fund by those not related to or dependent upon disabled wage earners. The favored class would certainly include many

illegitimate children not actually dependent upon the disabled wage-earner parent, and the disfavored class included many, like the appellants in Jimenez, whose needs clearly were among those the statute was intended to meet.

Appellant contends that distinguishing between children whose parents legitimize them by marrying each other and those whose parents do not is the very discrimination rejected in Jimenez. Appellant is indignant over the New York Court of Appeals' failure to address this point. He argues that it is irrational to insist that paternity be established for some illegitimates by a court decree, while for others the mere fact of a marriage, even an illegal one, replaces that strict requirement of proof.

B. APPELLEE (N.Y. State A/G)

Rosamond Lalli, the administratrix and appellant's original opponent, has not filed a brief on the merits, although she did file a motion to dismiss the appeal. The state attorney general (the state), an appellee by intervention, has filed a merits brief, however.

1. The State, adopting the reasoning of the New York Court of Appeals majority, argues that §4-1.2 is valid under Trimble.[1] It reads that decision as primarily concerned with the fact that the Illinois statute required the marriage of the illegitimate child's parents. This prerequisite, totally beyond the ability of the child to satisfy, was found insufficiently related to the state interests of promoting marriage and facilitating problems of proof of paternity. Since New York does not require the intermarriage of the parents, although under the Domestic Relations law discussed above that is one alternative method of overcoming the restrictions on intestate inheritance by illegitimates, its statute bears only superficial resemblance to that of Illinois.

The New York statute is said to be concerned with but one general state interest which was expressly approved in Trimble: "assuring accuracy and efficiency in the disposition of property at death" in light of the "more serious problems of proving paternity 'rather than

1. The state initially argues from Labine v. Vincent, 401 U.S. 532 (1971), that only minimal scrutiny should be applied. That argument, as New York probably realizes, is not worth much after Trimble, which expressly noted that "subsequent cases have limited [Labine's] force as a precedent." 430 U.S. at 767 n.12. This is most likely just a make-weight argument.

maternity]." 430 U.S. at 770. Section 4-1.2 is merely a statement of the form of proof that will suffice to make that problematic determination.[2]

Applying the analysis of Trimble, the state agrees with the Court of Appeals that §4-1.2 is sufficiently related to the state's proper interest to pass muster under the Equal Protection Clause. Requiring a court order of filiation is said to be not only a highly rational, but perhaps the only practicable generalized method of preventing "imprecise and unduly burdensome methods of establishing paternity." Trimble, 430 U.S. at 772 n.14. Thus, while in particular cases paternity might be indubitably proven even without a filiation order, the relationship, or even the existence, of a great many illegitimates is highly doubtful. By either providing for automatic inheritance by all illegitimates or by permitting them to attempt to prove paternity after the father's death, the state

2. The Court of Appeals rejected without much explanation the argument that footnote 14 in Trimble requires the states to accept a formal, though non-judicial, acknowledgement of paternity by the father. The state attorney general's method of avoiding that problem is to deny that the marriage permission certificate is a formal acknowledgement of paternity at all. Even though Mario Galli there referred to appellant as "my son," the state AG says that the purpose of the document was not to reveal paternity, but to make it possible for appellant to marry. Thus, one cannot be certain why Mario referred to appellant as his son.

would encounter serious difficulties with serving process of probate proceedings and guaranteeing that title to an intestate's property does not become clouded. There are simply too many "unknown" illegitimates to remove obstacles that seem unnecessary when applied to a "known" illegitimate child.

The state acknowledges that many "willing" fathers, precisely because they openly acknowledge and support their illegitimate children, will not be made the subject of a paternity proceeding during their lifetimes. But it is argued that the legislature fully considered this problem and accepted it as the necessary cost of avoiding another, greater evil -- the filing of spurious claims against the estates of innocent men.

The evidence for this position is not insubstantial. Section 4-1.2 was included in a series of proposals that followed an exhaustive study by the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, completed in 1965. This group, known as the Bennet Commission, consisted of surrogates, estate practitioners, and legislators. It stated that the purpose of §4-1.2 was

There was a study in N.Y.

> to grant illegitimates in so far as practicable rights on a par with those enjoyed by legitimate children while protecting innocent

> adults and those rightfully interested in their estates from fraudulent claims of heirship and harassing litigation instituted by those seeking to establish themselves as illegitimate heirs.
>
> . . .
>
> The utmost caution should be exercised to protect innocent men from unjust accusations in paternity claims. To avoid this hazard, no informal method of acknowledgment has been provided for in the recommendations. While a formal acknowledgment alone would be a considerable advance over the statutes of most states allowing inheritance from an acknowledging father, it is felt that the recommendation made here gives even more protection against such hazard. The procedure in other states provides merely that any informal witnessed writing establishing the relationship of father and child between the deceased and the claimant is sufficient to establish paternity, allows paternity to be established after the death of the father, thus affording considerable opportunity for falsification of evidence and inviting harrassing litigation. These problems are eliminated by requiring a court order establishing paternity during the lifetime of the father. State of New York, Commission on Estates, Legis. Doc. 1965 No. 19. 199-200 (1965)

The State argues that the quoted language shows that the commission fully considered and weighed the countervailing interests of the state and the illegitimate heir and struck a balance that, while incapable of doing perfect justice in every case, represents a fully defensible means of protecting proper state interests with a minimum of discrimination against illegitmate children. No more being required under the

Equal Protection Clause as interpreted in Trimble, the Court is invited to leave well enough alone.[3] Had the illegitimate child in Trimble been a New York resident subject to §4-1.2, the state adds, she clearly would have been entitled to inherit from her father.[4]

2. The state gives us virtually no assistance answering appellant's argument that §4-1.2, when viewed together with with Domestic Relations Law §24, impermissibly discriminates between illegitimates whose parents intermarry and those whose parents do not. That point does seem answerable, however.

As I read the opinion, the disapproval in Jimenez of discrimination between classes of illegitimates turned on two factors. First, there was

3. In its opinion, the Court of Appeals remarked "that research of counsel as well as our own has disclosed no relevant materials with respect to the intent of the state legislature in adopting §4-1.2." The court therefore declined to "speculate as to the details of of legislative intentions." Juris. Statmt at A-4. It is unclear whether the court for some reason disregarded the Bennet Commission report or whether the state failed to present it at that stage of the proceedings. I suspect the latter is true, although this might be worth asking about at oral argument.

The point could be important because, as discussed below, Trimble requires attention only to those state interests that actually support a statute, not to those which arguably or conceivably do. It is therefore important to know if there is any reason to suspect that the Bennet Commission report is not reflective of legislative intent.

4. In Trimble there had been a judicial paternity adjudication in conjunction with a support order.

no method whatsoever for illegitimates with clear proof of paternity to receive disability benefits if the state in which they resided did not accept such proof. Thus, the claimants in that case, who were subject to the same Illinois statute later overturned in Trimble, would not have been helped by even a judicial declaration of paternity. Second, the purpose of the statute in Jimenez was "to provide support for dependents of a disabled wage earner," 417 U.S. at 634, and the discrimination against illegitimates was designed to prevent claims by those not actually dependent on the wage earner. Since many of the favored illegitimates were not dependents, while many disfavored illegitimates (such as the claimants) were, the Court found the distinction irrational with respect to the governmental interest intended to be served.

In this case, neither factor is present. Illegitimates within the disfavored class (i.e., those whose parents do not marry) do have at least a limited means of proving paternity; they can seek an order of filiation during the father's lifetime. Further, the purpose of §4-1.2 is not related to dependency; rather, it is designed solely to prevent fraudulent claims against the reputations and estates of deceased men who have not sired the claimants and cannot now prove

otherwise. It is also to preclude even meritorious claims of children whose existence or whereabouts is unknown or whose proof of paternity is so doubtful that the orderly passing of the father's estate would be seriously impaired. These purposes are rationally served by treating as legitimate all children whose parents intermarry. Such marriages are themselves typically a form of proof or acknowledgment of paternity. Moreover, with respect to illegitimate children who have been legitimated by the marriage of their parents, the possibility of unknown claimants or spurious allegations of paternity is diminished. In such situations, as in cases where the children were born legitimately in the first place, the more easily proved maternal relationship makes it relatively simple to identify all children and to screen out false claims. Indeed, for the purposes of inheritance law, there is little difference between a child legitimately born and one born out of wedlock whose parents later marry. Thus, as far as this case is concerned, the alleged discrimination between classes of illegitimates may be indistinguishable from the discrimination between legitimates and illegitimates; if either is permissible, both are, and vice versa.

V. ANALYSIS

I see this as a very close case. Even though the discrimination cuts the same way as that disapproved in Trimble, in some respects it is of a different character and more closely attuned to the state's proper purposes.

Trimble leaves no doubt that the state is properly interested in eliminating risks that the title to property in decedents' estates will not pass in an efficient, orderly manner. Trimble expressly notes that this interest may be served by some degree of discrimination against illegitimates claiming against their intestate fathers' estates. 430 U.S. at 770. The question ultimately boils down to whether making either the marriage of the parents or a court order of filiation issued during the father's lifetime the only acceptable forms of proof of paternity bears a substantial enough relation to the state's interest.

Testing the means-ends "fit" of the statute involves two questions -- one factual, one normative. The factual question is how many of the claims precluded by §4-1.2 would be spurious or doubtful ones, and how many would be by illegitimate children who, like appellant here, could prove paternity quickly and

conclusively after the father's death. The normative question is what ratio of "problem" to "nonproblem" claims should exist before the discrimination is justified.

In Trimble, there was no evidence that the legislature had actually considered the factors relevant to equal protection analysis, and the joint requirement of marriage by the parents and acknowledgment by the father made it likely that a relatively great number of nonproblem claims would be barred. The same is not true here.

The Bennett Commission did not explicitly break its analysis down into the two components mentioned, but consideration of them seems implicit in its report. In order to overturn this statute, the Court would have to conclude that the factual and value judgments of the commission were wrong.

The disposition of the case depends upon the size of the teeth you believe the judicial scrutiny in Trimble really has. My own tendency is to defer to the legislature's judgment as reflected in the report of the Bennett Commission. That body made a considered judgment about how the competing interests of the states and illegitimate children should be balanced. The commission was sensitive to the needs on each side,

positively demonstrated the absence of any animus against the status of illegitimacy (at least that's how I read the entire report), and deliberately chose a middle course that it believed would, on the whole, best serve the equities on both sides.

On the other hand, it is clear that some, perhaps many, illegitimate children who could prove their case without threatening state interests are being hurt by §4-1.2. It would be possible to write an opinion requiring the allowance of some form of nonjudicial proof of paternity after the father's death. Precisely what form should be constitutionally required would need to be considered and articulated carefully.

A final thought: if the New York statute were upheld, I would not worry much about the apparent about-face from Trimble. A carefully drafted opinion could make clear that the precedent being set in these cases does not relate to a categorical approval or disapproval of discrimination against illegitimates, but to the method of analysis the courts employ when they examine state laws under the Equal Protection Clause.

I agree that such an opinion can be written

VI. SUMMARY

I recommend affirming the decision of the New York Court of Appeals. Although the discrimination in this case bears some resemblance to that disapproved in Trimble, it is more substantially related to the proper state objectives of assuring the efficient and orderly passage of decedants' estates than was true of the state law in that case. Although the exclusion of some illegitimates, such as appellant here, will doubtless seem unnecessary on the facts of the particular case, in light of the general problem facing the state the statute is sufficiently related to the interests it seeks to serve to satisfy the Equal Protection Clause.

Should you disagree with this recommendation, it would not be impossible to write a respectable opinion going the other way. The conclusion would be that §4-1.2, while less offensive than the statute at issue in Trimble, still unnecessarily excludes too many illegitimate heirs.

an illegitimate child to inherit from his intestate father's estate. The court engages in sweeping dictum about the operation and purpose of §4-1.2. It says that while the two-year limitation period is an absolute defense to paternity proceedings instituted after the expiration of that time, the father himself may either waive the defense or institute a paternity proceeding himself after the two-year limit.

Estate of Thomas, 87 Misc. 2d 1033, 387 N.Y.S.2d 216 (Surr. Ct. N.Y. Co. 1976). This case actually holds that a father who fails to object to the commencement of paternity proceedings after the two year limit has expired waives that defense. In this case the proceeding was commenced six years after the child's birth, and the filiation order subsequently entered was deemed sufficient to allow inheritance from the father's estate.

In its first opinion in Lalli (the one issued before this Court remanded for futher consideration in light of Trimble), the New York Court of Appeals gave this reason for refusing to reach the validity of the two year limitation period:

> Since this appellant's claim to status as a distributee is foreclosed by the provision of EPTL 4-1.2 (subd. [a], par. [2]) that the order of filiation must be made during the lifetime of the natural father, a provision the constitutionality of which we here uphold, we do not reach the challenge addressed to the separate provision of the statute which requires that the paternity proceeding have been instituted "during the pregnancy of the mother or within two years from the birth of the child" (EPTL 4-1.2, subd. [a], par. [2]). We intimate no views with reference to the asserted unconstitutionality of that provision. Matter of Estate of Lalli, 38 N.Y.2d 77, 340 N.E.2d 721 (1975).

It thus appears both that the NY Court of Appeals has not ruled on the

constitutionality of the two-year limitation period and that the reason it failed to discuss that portion of the statute in its second Lalli opinion was that it did not consider it relevant to the dispostion of the case.

Finally, during argument counsel for appellant said that Ricky M. v. Sharon R., 49 App. Div. 2d 1035, 374 N.Y.S.2d 506 (1975), held that the father of an illegitimate may not institute a paternity proceeding himself. This is not what the case says. The holding is that an unwed father may not, under the New York Family Court Act, institute a paternity proceeding. The court did not reach the constitutionality of that restriction. The court also noted that an unwed father was permitted to maintain a habeas corpus proceeding to regain custody of his child (from the state, I presume), and that in that setting he was entitled to prove his paternity as part of his showing that he was a proper person to prosecute the habeas action.

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N.Y. statute as to right of illegitimate to inherit.

Case is not settled

Henkin (Appellant)

The widow did not appeal ~~is no longer a party~~. Only appellee remaining in case v State.

At appellant was 26 when his father died. At that time, no proceeding was available in N.Y. for legitimizing the son.

Don't know whether there was a will. None probated.

No birth certificate. ~~has been~~ No effort made to find certificate.

N.Y. case cited by Henkin as holding a father cannot apply after two yrs of birth. N.Y. statute has been amended

(49 App Div 2d --

Strum (Cent AG of U.K.)

U.K. Cts do not enforce the "two year" requirement. Also U K C/Appn has not expressly read the provision out of statute, Lower U.K. Ct have. See cases cited p 4 of AG's Brief

Statute enacted in 1967 — decedent died in '74.

Enquire that mother, father or son could have sued.

No attempt made by anyone to legitimize

(Virtually conclusive 2 yr provision is irrational)

Order must be obtained during life time of father — he should have chance to contest (what if he is incompetent?)

Lalli v Lalli

Statute requires Court order during lifetime of father

Q - Is NY Rule reasonably related to a substantial state interest?

Interest (dependability of proof) is substantial.

Close Q whether "reasonably related" to the interest.

In Trimble, marriage and acknowledgment required. We held these unreasonably discriminatory.

Here, in a proceeding by father (or by child), an order of filiation could be entered.

This may be reasonably related

Lalli

Re "two year" clause
is irrelevant in
this case.
As father died
before suit was
instituted, even if
statute is upheld
Appellant loses. Too
late to sue.
If we void statute
Appellant wins
anyway — there would
be no limitation
on proving paternity.
Ry C/appeals expressly
reserved the "two year" issue
in its prior opinion in this case

Affirm 5-4

77-1115 LALLI v. LALLI Conf. 10/6/78

The Chief Justice Affirm

Trimble is distinguishable

Mr. Justice Brennan Reverse

Trimble controls & can't be distinguished

Mr. Justice Stewart Affirm

Trimble does not control

Mr. Justice White Reverse

One basis of footnote
on Trimble

Mr. Justice Marshall Reverse

The father have had 27 years
to file to establish paternity

Mr. Justice Blackmun Affirm

Thus case comes closer to Labine

Mr. Justice Powell Affirm

Trouble does not exhaust.

Mr. Justice Rehnquist Affirm

Mr. Justice Stevens Reverse

The issue is whether R.4. may require this mode of proof above cases where there is no clear + uncontradicted ev. of paternity.

Eric Anderson (Justice Powell) ex 23073

Chambers Draft

ea 11-7-78

Lalli v. Lalli, No. 77-1115

Draft Opinion

Mr. Justice Powell delivered the opinion of the Court.

This case presents a challenge to the constitutionality of § 4-1.2 of New York's Estates, Powers, and Trusts Law,[1] which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

I, e

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed adminstratrix of her husband's estate, Appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from Mario as his children. Rosamond Lalli opposed the petition. She

> "An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during of the pregnancy of the mother or within two years from the birth of the child."

Appellant conceded that he had not obtained an order of filiation during his putative father's lifetime. He contended, however, that § 4-1.2, by imposing this requirement, discriminated against him in violation of the Equal Protection Clause of the Fourteenth Amendment.[3] Appellant tendered certain evidence of his relationship with Mario Lalli, including a notarized document in which Lalli, in consenting to appellant's marriage, referred to him as "my son," and several affidavits by persons who stated that Lalli had acknowledged openly and often that Robert and Maureen were his children.

The Surrogate's court noted that § 4-1.2 had previously, and unsuccessfully, been attacked under the Equal

constitutionality of the statute, In re Belton, 70 Misc. 2d 814, 335 N.Y.S.2d 177 (Sur. Ct. 1972); In re Hendrix, 68 Misc. 2d 439, 444, 326 N.Y.S.2d 646, 651-652 (Sur. Ct. 1971); In re Crawford, 64 Misc. 2d 758, 763, 315 N.Y.S.2d 890, 895 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distributee of Lalli's estate and therefore lacked status to petition for a compulsory accounting.

On direct appeal the New York Court of Appeals affirmed. In re Lalli, 38 N.Y.2d 77, 340 N.E.2d 721 (1975). It understood Labine to require the State to show no more than that "there is a rational basis for the means chosen by the Legislature for the accomplishment of a permissible state objective." In re Lalli, supra, 38 N.Y.2d, at 81, 340 N.E.2d, at 723. After discussing the problems of proof peculiar to establishing paternity, as opposed to maternity, the court concluded that the State was constitutionally entitled to require a judicial decree during the father's lifetime as the exclusive form of proof of paternity.

Appellant appealed the Court of Appeals' decision to this Court, while that appeal was pending, we decided

Trimble. Lalli v. Lalli, 431 U.S. 911 (1976).

On remand,[4] the New York Court of Appeals, with one judge dissenting, adhered to its former disposition. In re Lalli, 43 N.Y.2d 65, 371 N.E.2d 481 (1977). It acknowledged that Trimble contemplated a standard of judicial review demanding more than "a mere finding of some remote rational relationship between the statute and a legitimate state purpose," id., at 67, 371 N.E.2d, at 482, though less than strictest scrutiny. Finding § 4-1.2 to be "significantly and determinatively different" from the statute overturned in Trimble, the court ruled that the New York law was sufficiently related to the State's interest in "the orderly settlement of estates and the dependability of titles to property passing under intestacy laws," id., at 69-70, 371 N.E.2d, at 483, quoting Trimble, supra, at 771, to meet the requirements of equal protection.

Appellant again sought review here, and we noted probable jurisdiction. Lalli v. Lalli, 435 U.S. 921 (1978). We now affirm.

providing that an illegitimate child could inherit from his intestate father only if the father had "acknowledged" the child and the parents had intermarried. The appellant in Trimble was a child born out of wedlock whose father had neither acknowledged her nor married her mother. He had, however, been found to be her father in a judicial decree ordering him to contribute to her support. When the father died intestate, the child was excluded as a distributee because the statutory requirements for inheritance had not been met.

We concluded that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in Mathews v. Lucas, 427 U.S. 495, 506 (1976), and reaffirmed in Trimble, supra, at 767, classifications based on illegitimacy are not subject to "strict scrutiny," they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests. Upon examination, we found that the Illinois law failed that test.

property. Granting that the State was appropriately concerned with the integrity of the family unit, we viewed the statute as bearing only "the most attenuated relationship to the asserted goal." Trimble, supra, at 768. We again rejected the argument that "persons will shun illicit realtionships because the offspring may not reap the benefits" that would accrue to them were they legitimate. Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 173 (1972). The statute therefore was not defensible as an incentive to enter legitimate family relationships.

Illinois' interest in safeguarding the orderly disposition of property at death was more relevant to the statutory classification. We recognized that devising "an appropriate legal framework" in the furtherance of that interest "is a matter particularly within the competence of the individual States." Trimble, supra, at 771. An important aspect of that framework is a response to the often difficult problem of proving the paternity, as opposed to maternity, of illegitimate children and the related danger of spurious claims against intestate estates. See infra, at

children claiming under their mothers' estates or for legitimate children generally." Id., at 770.

The Illinois statute, however, was constitutionally flawed because, by insisting upon not only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant categories of illegitimate children of intestate men [whose] inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." Id., at 771. We concluded that the Equal Protection Clause required that exceptional burdens placed on illegitimate children in the furtherance of proper State objectives must be more "carefully tuned to alternative considerations," id., at 772, quoting Mathews v. Lucas, supra, at 513, than was true of the Illinois statute's overbroad disqualification.

III

The New York statute, enacted in 1965,[5] was intended to soften the rigors of previous law which permitted

As in Trimble, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause.

A

At the outset we observe the § 4-1.2 is different in important respects from the statutory provision overturned in Trimble. The Illinois statute required, in addition to the father's acknowledgment of paternity, the intermarriage of the parents of the illegitimate child as an absolute precondition to inheritance. This combination of requirements eliminated "the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." Trimble, supra, at 770-771. As illustrated by the facts in Trimble, even a judicial declaration of paternity was insufficient to permit inheritance.

Under § 4-1.2, by contrast, the marital status of the parents is irrelevant. The single requirement at issue here is an evidentiary one -- that the paternity of the

estate. See In re Lalli, 43 N.Y.2d, at 68 n. 2, 371 N.E.2d, at 482 n. 2.

A related difference between the two provisions pertains to the State interests said to be served by them. The Illinois law was defended, in part, as a means of encouraging legitimate family relationships. No such justification has been offered in support of § 4-1.2. The Court of Appeals disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimacy, to mold human conduct or to set societal norms." In re Lalli, supra, at 70, 371 N.E.2d, at 483. The absence in § 4-1.2 of any requirement that the parents intermarry or otherwise legitimate a child born out of wedlock and our review of the legislative history of the statute, infra, at __, confirm this view.

Our inquiry, therefore, is focused narrowly. We are asked to decide whether the discrete procedural demands that § 4-1.2 places on illegitimate children bear an evident and substantial relation to the particular state interests this statute is designed to serve.

B.

The primary state goal underlying the challenged aspects of § 4-1.2 is to provide for the just and orderly disposition of property at death.[7] We long have recognized that this is an area with which the States are justifiably concerned. Trimble, supra, at 771; Weber v. Aetna Casualty & Surety Co., supra, at 170; Labine v. Vincent, 401 U.S. 532, 538 (1971); see also Lyeth v. Hoey, 305 U.S. 188, 193 (1938); Mager v. Grima, 8 How. 490, 493 (1850).

This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York surrogate's court has observed, "the birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove." In re Ortiz, 60 Misc. 2d 756, 761, 303 N.Y.S.2d 806, 812 (Sur. Ct. 1969). Proof of paternity, by contrast, frequently is

totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know who is responsible for her pregnancy." (Id. [emphasis in original]); accord, In re Flemm, 85 Misc. 2d 855, 861, 381 N.Y.S.2d 573, 576-577 (Sur. Ct. 1975); In re Hendrix, 68 Misc. 2d, at 443, 326 N.Y.S.2d, at 650; cf. Trimble, supra, at 770, 772.

Thus, a number of problems arise that counsel against treating illegitimate children identically to all other heirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission,[8] consisted of "experienced Surrogates [and] estate practitioners," In re Flemm, supra, at 858, 381 N.Y.S.2d, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19 (hereinafter Commission Report). The statute now codified as § 4-1.2 was included

considered it necessary to impose the strictures of § 4-1.2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decedents. The Commission's perception of some of these difficulties was described by Surrogate Sobel, a member of "the busiest [surrogate's] court in the State measured by the number of intestate estates which traffic daily through this court," In re Flemm, supra, at 857, 381 N.Y.S.2d, at 574 (Sobel, Sur., who participated in some of the Commission's deliberations:

> "An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent. . . . And, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in any estate when there always exists

> procedural statutes and the Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, all illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates. The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many -- some members suggested a majority -- of estates. Id., at 859, 381 N.Y.S.2d, at 575-576; cf. In re Leventritt, 92 Misc. 2d 598, 601-602, 400 N.Y.S.2d 298, 300-301 (Sur. Ct. 1977).

Even where an individual claiming to be the illegitimate child of a deceased man makes himself known, the difficulties facing an estate are likely to persist. Because of the particular problems of proof, spurious claims may be difficult to expose. The Bennett Commission therefore sought to protect "innocent adults and those rightfully interested in their estates from fraudulent claims of heirship and harrassing litigation instituted by those seeking to

As the State's interests are substantial, we now consider the means adopted by New York to further these interests. In order to avoid the problems described above, the Commission recommended a combination of requirements designed to ensure the accurate resolution of claims of paternity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father. As the New York Court of Appeals observed in its first opinion in this case, the "availability [of the putative father] should be a substantial factor contributing to the reliability of the fact-finding process." In re Lalli, 38 N.Y.2d, at 82, 340 N.E.2d, at 724. In addition, requiring that the order be issued during the father's lifetime permits a man to defend his reputation against "unjust accusations in paternity claims," which was a secondary purpose of § 4-1.2. Commission Report 200.

The administration of an estate will be facilitated,

will be much less likely to succeed, or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond, rather than first brought to light when the assets of an estate are in the offing.

Appellant contends that § 4-1.2, like the statute at issue in Trimble, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. Trimble, supra, at 771. He urges that those in his position -- "known" illegitimate children who, despite the absence of an order of filiation obtained during their fathers' lifetimes, can present convincing proof of paternity -- cannot rationally be denied inheritance because they pose none of the risks § 4-1.2 was intended to minimize.[9]

We do not question that there will be some illegitimate children who would be able to establish their relationship to their deceased fathers without serious disruption of the administration of estates and that

inequitable results. Our inquiry under the Equal Protection Clause does not focus on the abstract "fairness" of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the substantial rationality contemplated by the Fourteenth Amendment.

The Illinois statute in Trimble was constitutionally unacceptable because it effected a total statutory disinheritance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far in excess of its justifiable purposes. Section 4-1.2 does not share this defect. Inheritance is barred only where there has been a failure to secure evidence of paternity during the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies a large number of deserving individuals.

The New York courts have interpreted § 4-1.2 liberally and in such a way as to enhance its utility to both father and child without sacrificing its strength as a

Thomas, 87 Misc. 2d 1033, 387 N.Y.S.2d 216 (Sur. Ct. 1976), or even institute such a proceeding himself.[10] N.Y. Jud.; Fam. Ct. Act § 522 (McKinney Supp. 1977); In re Flemm, 85 Misc. 2d, at 863, 381 N.Y.S.2d, at 578. In addition, the courts have excused "technical" failures by illegitimate children to comply with the statute in order to prevent unnecessary injustice. E.g., In re Niles, 53 App. Div. 2d 983, 385 N.Y.S.2d 876 (1976), appeal den. sub nom. Niles v. Beninati, 40 N.Y.2d 809, 392 N.Y.S.2d 1027 (1977) (filiation order may be signed nunc pro tunc to relate back to period prior to father's death when court's factual finding of paternity had been made); In re Kennedy, 89 Misc. 2d 551, 554, 392 N.Y.S.2d 365, 367 (Sur. Ct. 1977) (support order treated as "tantamount to an order of filiation," even though paternity was not specified therein).

As the history of § 4-1.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates in so far as practicable rights of inheritance on a par with those enjoyed by legitimate children," Commission Report 200 (emphasis added), while protecting the important state

Even if we believed that § 4-1.2 could have been written somewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability or feasibility of any possible alternative(s)" to the statutory scheme formulated by New York. Mathews v. Lucas, 427 U.S., at 515. "These matters of practical judgment and empirical calculation are for [the State]. . . . In the end, the precise accuracy of [the State's] calculations is not a matter of specialized judicial competence; and we have no basis to question their detail beyond the evident consistency and substantiality." [11] Id., at 515-516.

IV

We conclude that the requirements imposed by §4-1.2 on illegitimate children who would inherit from their fathers are substantially related to the important state interests the statute is intended to promote. We therefore find no violation of the Equal Protection Clause. The judgment of the New York Court of Appeals, accordingly, is

affirmed

FOOTNOTES

1. 1965 N.Y. Laws, ch. 958, §1. The statute was initially codified as N.Y. Decedent Est. Law § 83-a. In 1966 it was recodified without material change as N.Y. Est., Powers & Trusts Law § 4-1.2. 1966 N.Y. Laws, ch. 952. Further nonsubstantive amendments were made the next year. 1967 N.Y. Laws, ch. 686, §§ 28,29.

2. Section 4-1.2 in its entirety provides:

> "(a) For the purposes of this article:
>
> "(1) An illegitimate child is the legitimate child of his mother so that he and his issue inherit from his mother and from his maternal kindred.
>
> "(2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years

order of filiation made as prescribed by subparagraph (2).

"(4) A motion for relief from an order of filiation may be made only by the father, and such motion must be made within one year from the entry of such order.

"(b) If an illegitimate child dies, his surviving spouse, issue, mother, maternal kindred and father inherit and are entitled to letters of administration as if the decedent were legitimate, provided that the father may inherit or obtain such letters only if an order of filiation has been made in accordance with the provisions of subparagraph (2)."

3. Appellant also claimed that § 4-1.2 was invalid under N.Y. Const., Art. 1, §11. The New York Court of Appeals did not rule on this issue, nor do we. For the same reason we do not to consider whether § 4-1.2 unlawfully discriminates on the basis of sex or whether the administratrix of Mario's estate is required to account for her alleged failure to bring a wrongful death action on behalf of appellant.

4. On remand from this Court, the New York Attorney General

5. See n. 1, supra.

6. Section 4-1.2 requires not only that the order of filiation be made during the lifetime of the father, but that the proceeding in which it is sought have been commenced "during the pregnancy of the mother or within two years from the birth of the child." The New York Court of Appeals declined to rule on the constitutionality of the two-year limitation in both of its opinions in this case because appellant concededly had never commenced a paternity proceeding at all. Thus, if the rule that paternity be judicially declared during the father's lifetime were upheld, appellant would lose for failure to comply with that requirement alone. If, on the other hand, appellant prevailed in his argument that his inheritance could not be conditioned on the existence of an order of filiation, the two-year limitation would become irrelevant since the paternity proceeding itself would be unnecessary. See In re Lalli, 43 N.Y.2d 65, 68 n. 1, 371 N.E.2d 481, 482 n. 1

constitutionality.

7. The presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which that justification for an illegitimacy-based classification was absent. E.g., Jimenez v. Weinberger, 417 U.S. 682 (1974); Gomez v. Perez, 409 U.S. 535 (1973); Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 170 (1972); Levy v. Louisiana, 391 U.S. 68 (1968).

8. The Bennett Commission was created by the New York Legislature in 1961. It was instructed to recommend needed changes in certain areas of state law, including that pertaining to "the descent and distribution of property and the practice and procedure relating thereto." 1961 N.Y. Laws, ch. 731.

9. Appellant claims that in addition to discriminating between illegitimate and legitimate children, § 4-1.2, in

wedlock is nevertheless legitimate if, before or after his birth, his parents marry, even if the marriage is void, illegal or judicially annulled. Appellant argues that by classifying as "legitimate" children born out of wedlock whose parents later marry, New York has, with respect to these children, substituted marriage for § 4-1.2's requirements of proof of paternity. Thus, these "illegitimate" children escape the rigors of the rule unlike their unfortunate counterparts whose parents never marry.

Under § 24, one claiming to be the legitimate child of a deceased man would have to prove not only his paternity but also his maternity and the fact of the marriage of his parents. These additional evidentiary requirements make it reasonable to accept less exacting proof of paternity and to treat such children as legitimate for inheritance purposes.

10. In addition to making intestate succession possible, of course, a father is always free to provide for his illegitimate child by will. See In re Flerm, 85 Misc. 2d 955, 964, 381 N.Y.S.2d 573, 579 (Sur. Ct. 1975)

the notarized document in which Lalli referred to him as "my son" as evidence of paternity. That footnote contains language to the effect that a "formal acknowledgment of paternity" should be sufficient to satisfy the State's interests. The principle that the footnote elaborates, however, is that the States are free to recognize the problems arising from different forms of proof and to select those forms "carefully tailored to eliminate imprecise and unduly burdensome methods of establishing paternity." (Id. at Lalli.) The New York Legislature, through the agency of the Bennett Commission, exercised this judgment when it considered and rejected the possibility of accepting evidence of paternity less formal than a judicial order. Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19, at 200.

Even if New York were constitutionally obliged to accept "formal acknowledgments" of paternity other than judicial orders, it is far from clear that appellant in this case would benefit from such a rule. The word "formal" is

the document offered by appellant in this case may not satisfy even the most liberal definition of "formal acknowledgment." The certificate was executed by Lalli for the purpose of giving appellant permission to marry, not of proving biological paternity. The true import of the words "my son" is thus insolubly ambiguous, illustrating the rationality in New York's decision not to accept such evidence.

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SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix of the Estate of Mario Lalli.
} On Appeal from the Court of Appeals of New York.

[November · -, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a challenge to the constitutionality of § 4-1.2 of New York's Estates, Powers, and Trusts Law,[1] which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate, appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from Mario as his children. Rosamond Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's

again ?

[1] 1966 N. Y. Laws, ch. 656, § 1. The statute was initially codified as N. Y. Decedent Est. Law § 83-a. In 1967 it was recodified without material change as N. Y. Est. Powers and Trusts Law § 4-1.2. 1966 N. Y. Laws, ch. 952. Further nonsubstantive amendments were made the next year. 1967 N. Y. Laws, ch. 680, §§ 28, 29.

children, they were not lawful distributees of the estate because they had failed to comply with § 4–1.2[1] which provides in part:

> "An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during of the pregnancy of the mother or within two years from the birth of the child."

Appellant conceded that he had not obtained an order of filiation during his putative father's lifetime. He contended, however, that § 4–1.2, by imposing this requirement, discriminated against him in violation of the Equal Protection Clause of the Fourteenth Amendment.[2] Appellant tendered certain

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[1] Section 4–1.2 in its entirety provides:

"(a) For the purposes of the estate:

"(1) An illegitimate child is the legitimate child of his mother so that he and his issue inherit from his mother and from his mother's kindred.

"(2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child.

"(3) The existence of an order of filiation declaring the father to support the illegitimate child does not operate to qualify the child or his issue to inherit from the father in the absence of an order of filiation made as provided by subparagraph (2).

"(4) A motion for relief from an order of filiation may be made only by the father, and such motion must be made within one year from the entry of such order.

"(b) If an illegitimate child dies he surviving spouse, issue, mother, or any kindred, and father unless and are entitled to letters of administration as if the decedent were legitimate provided that the father may inherit or obtain such letters only if an order of filiation has been made in accordance with the provisions of subparagraph (2)."

[2] Appellant also claimed that § 4–1.2 was invalid under N. Y. Const.,

evidence of his relationship with Mario Lalli, including a notarized document in which Lalli, in consenting to appellant's marriage, referred to him as "my son," and several affidavits by persons who stated that Lalli had acknowledged openly and often that Robert and Maureen were his children.

The surrogate's court noted that § 4-1.2 had previously, and unsuccessfully, been attacked under the Equal Protection Clause. After reviewing recent decisions of this Court concerning discrimination against illegitimate children, particularly *Labine* v. *Vincent*, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute, *In re Beltov*, 70 Misc. 2d 814, 335 N. Y. S. 2d 177 (Sur. Ct. 1972); *In re Hendrix*, 68 Misc. 2d 439, 444, 326 N. Y. S. 2d 646, 651–652 (Sur. Ct. 1971); *In re Crawford*, 64 Misc. 2d 758, 763, 315 N. Y. S. 2d 890, 895 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distributee of Lalli's estate and therefore lacked status to petition for a compulsory accounting.

On direct appeal the New York Court of Appeals affirmed. *In re Lalli*, 38 N. Y. 2d 77, 340 N. E. 2d 721 (1975). It understood *Labine* to require the State to show no more than that "there is a rational basis for the means chosen by the legislature for the accomplishment of a permissible state objective." *In re Lalli*, *supra*, 38 N. Y. 2d, at 81, 340 N. E. 2d, at 723. After discussing the problems of proof peculiar to establishing paternity, as opposed to maternity, the court concluded that the State was constitutionally entitled to require a judicial decree during the father's lifetime as the exclusive form of proof of paternity.

Appellant appealed the Court of Appeals' decision to this

Art. 1, § 11. The New York Court of Appeals did not rule on this issue, nor do we. For this reason we do not (1) consider whether § 4-1.2 unlawfully discriminates on the basis of sex or whether the administratrix of Mario's estate is required to account for her alleged failure to bring a wrongful death action on behalf of appellant.

Court. While that case was pending here, we decided *Trimble* v. *Gordon*, 430 U. S. 762 (1976). Because the issues in these two cases were similar in some respects, we vacated and remanded to permit further consideration in light of *Trimble*. *Lalli* v. *Lalli*, 431 U. S. 911 (1976).

On remand,[1] the New York Court of Appeals, with one judge dissenting, adhered to its former disposition. *In re Lalli*, 43 N. Y. 2d 65, 371 N. E. 2d 481 (1977). It acknowledged that *Trimble* contemplated a standard of judicial review demanding more than "a mere finding of some remote rational relationship between the statute and a legitimate state purpose." *Id.*, at 67, 371 N. E. 2d, at 482, though less than strictest scrutiny. Finding § 4–1.2 to be "significantly and determinatively different" from the statute overturned in *Trimble*, the court ruled that the New York law was sufficiently related to the State's interest in "the orderly settlement of estates and the dependability of titles to property passing under intestacy laws," *id.*, at 69–70, 371 N. E. 2d, at 483, quoting *Trimble*, *supra*, at 771, to meet the requirements of equal protection.

Appellant again sought review here, and we noted probable jurisdiction. *Lalli* v. *Lalli*, 435 U. S. 921 (1978). We now affirm.

II

We begin our analysis with *Trimble*. At issue in that case was the constitutionality of an Illinois statute providing that an illegitimate child could inherit from his intestate father only if the father had "acknowledged" the child and the parents had intermarried. The appellant in *Trimble* was a child born out of wedlock whose father had neither acknowledged her nor married her mother. He had, however, been found to be her father in a judicial decree ordering him to contribute

[1] On remand from this Court, the New York Attorney General was permitted to intervene as a defendant-appellee. He has filed a brief on the merits and argued the case in this Court. Appellee Executrix-Lalli did not present oral argument and has not filed a brief on the merits.

to her support. When the father died intestate, the child was excluded as a distributee because the statutory requirements for inheritance had not been met.

We concluded that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in *Mathews* v. *Lucas*, 427 U. S. 495, 506 (1976), and reaffirmed in *Trimble*, *supra*, at 767, classifications based on illegitimacy are not subject to "strict scrutiny," they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests. Upon examination, we found that the Illinois law failed that test.

Two state interests were proposed which the statute was said to foster: the encouragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decedent's property. Granting that the State was appropriately concerned with the integrity of the family unit, we viewed the statute as bearing only "the most attenuated relationship to the asserted goal." *Trimble*, *supra*, at 768. We again rejected the argument that "persons will shun illicit relationships because the offspring may not reap the benefits" that would accrue to them were they legitimate. *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 173 (1972). The statute therefore was not defensible as an incentive to foster legitimate family relationships.

Illinois' interest in safeguarding the orderly disposition of property at death was more relevant to the statutory classification. We recognized that devising "an appropriate legal framework" in the furtherance of that interest "is a matter particularly within the competence of the individual States." *Trimble*, *supra*, at 771. An important aspect of that framework is a response to the often difficult problem of proving the paternity, as opposed to maternity, of illegitimate children and the related danger of spurious claims against intestate estates. See *infra*, at ——. These difficulties, we said, "might justify

a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." *Id.*, at 770.

The Illinois statute, however, was constitutionally flawed because, by insisting upon not only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant categories of illegitimate children of intestate men [whose] inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." *Id.*, at 771. We concluded that the Equal Protection Clause required that exceptional burdens placed on illegitimate children in the furtherance of proper State objectives must be more "carefully tuned to alternative considerations" *id.*, at 772, quoting *Mathews* v. *Lucas*, *supra*, at 513 than was true of the Illinois statute's overbroad disqualification.

III

The New York statute enacted in 1965,[1] was intended to soften the rigors of previous law which permitted illegitimate children to inherit only from their mothers. See *infra*, at —. By lifting the absolute bar to paternal inheritance, § 4–1.2 tended to achieve its desired effect. As in *Trimble*, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause.

A

At the outset we observe that § 4–1.2 is different in important respects from the statutory provision overturned in *Trimble*. The Illinois statute required, in addition to the father's acknowledgment of paternity, the intermarriage of the parents of the illegitimate child as an absolute precondition to inheritance. This combination of requirements

[1] See n. 1, *supra*

eliminated "the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." *Trimble*, *supra*, at 770–771. As illustrated by the facts in *Trimble*, even a judicial declaration of paternity was insufficient to permit inheritance.

Under § 4–1.2, by contrast, the marital status of the parents is irrelevant. The single requirement at issue here is an evidentiary one—that the paternity of the father be declared in a judicial proceeding sometime before his death.[6] Had the appellant in *Trimble* been governed by § 4–1.2, she would have been a distributee of her father's estate. See *In re Lalli*, 43 N. Y. 2d, at 68 n. 2, 371 N. E. 2d, at 482 n. 2.

A related difference between the two provisions pertains to the state interests said to be served by them. The Illinois law was defended, in part, as a means of encouraging legitimate family relationships. No such justification has been offered in support of § 4–1.2. The Court of Appeals disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimacy, to mold human conduct or to set societal norms." *In re Lalli*, *supra*, at 70, 371 N. E. 2d,

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[6] Section 4–1.2 requires not only that the order of filiation be made during the lifetime of the father, but that the proceeding in which it is sought have been commenced "during the pregnancy of the mother or within two years from the birth of the child." The New York Court of Appeals declined to rule on the constitutionality of the two year limitation in both of its opinions in this case because appellant concededly had never commenced a paternity proceeding at all. Thus, if the rule that paternity be judicially declared during the father's lifetime were upheld, appellant would lose for failure to comply with the requirement above. If, on the other hand, appellant prevailed on his argument that his interests could not be conditioned on the existence of an order of filiation, the two-year limitation would become irrelevant since the paternity proceeding itself would be unnecessary. See *In re Lalli*, 43 N. Y. 2d 65, 68 n. 1, 371 N. E. 2d 482, 482 n. 1 (1977); *In re Lalli*, 38 N. Y. 2d 77, 80 n. *, 340 N. E. 2d 721, 723 n. * (1975). For the same reason, the two-year limitation is not before us, and we express no views on its constitutionality.

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at 453. The absence in § 4–1.2 of any requirement that the parents intermarry or otherwise legitimate a child born out of wedlock and our review of the legislative history of the statute, *infra*, at —, confirm this view.

Our inquiry, therefore, is focused narrowly. We are asked to decide whether the discrete procedural demands that § 4–1.2 places on illegitimate children bear an evident and substantial relation to the particular state interests this statute is designed to serve.

B

The primary state goal underlying the challenged aspects of § 4–1.2 is to provide for the just and orderly disposition of property at death.[7] We long have recognized that this is an area with which the States are justifiably concerned. *Trimble*, *supra*, at 771; *Weber* v. *Aetna Casualty & Surety Co.*, *supra*, at 170; *Labine* v. *Vincent*, 401 U. S. 532, 538 (1971); see also *Lyeth* v. *Hoey*, 305 U. S. 188, 193 (1938); *Mayer* v. *Grima*, 8 How. 490, 493 (1850).

This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York surrogate's court has observed, "the birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove." *In re Ortiz*, 60 Misc. 2d 756, 761, 303 N. Y. S. 2d 806, 812 (Sur. Ct. 1969). Proof of paternity, by contrast, frequently is difficult when the father is not part

[7] The presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which that justification for an illegitimacy based classification was absent. *E. g.*, *Jimenez* v. *Weinberger*, 417 U. S. 628 (1974); *Gomez* v. *Perez*, 409 U. S. 535 (1973); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 170 (1972); *Levy* v. *Louisiana*, 391 U. S. 68 (1968).

of a formal family unit. "The putative father often goes his way unconscious of the birth of a child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know *who* is responsible for her pregnancy." *Ibid.* (emphasis in original); accord, *In re Flamm*, 85 Misc. 2d 855, 861, 381 N. Y. S. 2d 573, 576-577 (Sur. Ct. 1975); *In re Hendrix*, 68 Misc. 2d, at 443, 326 N. Y. S. 2d, at 650; cf. *Trimble, supra*, at 770, 772.

Thus, a number of problems arise that counsel against treating illegitimate children identically to all other heirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission,[*] consisted of "experienced Surrogates [and] estate practitioners." *In re Flamm, supra*, at 858, 381 N. Y. S. 2d, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19 (hereinafter Commission Report). The statute now codified as § 4-1.2 was included.

Although the overarching purpose of the proposed statute was "to alleviate the plight of the illegitimate child," Commission Report 20, the Bennett Commission considered it necessary to impose the strictures of § 4-1.2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decedents. The Commission's perception of some of these difficulties was described by Surrogate Sobel, a member of "the busiest [surrogate's] court in

[*] The Bennett Commission was created by the New York Legislature in 1951. It was instructed to recommend needed changes in certain areas of state law, including those pertaining to "the descent and distribution of property and the practice and procedure relating thereto." 1951 N. Y. Laws, ch. 751.

the State measured by the number of intestate estates which traffic daily through this court." *In re Flamio*, *supra*, at 857, 381 N. Y. S. 2d, at 574 (Sobel, S.), who participated in some of the Commission's deliberations:

> "An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent. . . . And, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in any estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogate's Courts since title to real property passes under such decree. Our procedural statutes and the Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, *all* illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates. The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many—some practicers suggested a majority—of estates." *Id.*, at 859–381 N. Y. S. 2d, at 575–576; cf. *In re Leventritt*, 92 Misc. 2d 598, 601–602, 400 N. Y. S. 208, 309–311 (Sur. Ct. 1977).

Even where an individual claiming to be the illegitimate child of a *deceased* man makes himself known, the difficulties

facing an estate are likely to persist. Because of the particular problems of proof, spurious claims may be difficult to expose. The Bennett Commission therefore sought to protect "innocent adults and those rightfully interested in their estates from fraudulent claims of heirship and harassing litigation instituted by those seeking to establish themselves as illegitimate heirs." Commission Report 199.

C

As the State's interests are substantial, we now consider the means adopted by New York to further these interests. In order to avoid the problems described above, the Commission recommended a combination of requirements designed to ensure the accurate resolution of claims of paternity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father. As the New York Court of Appeals observed in its first opinion in this case, the "availability [of the putative father] should be a substantial factor contributing to the reliability of the fact-finding process." *In re Lalli*, 38 N. Y. 2d, at 82, 341 N. E. 2d, at 724. In addition, requiring that the order be issued during the father's lifetime permits a man to defend his reputation against "unjust accusations in paternity claims" which was a secondary purpose of § 4–1.2. Commission Report 200.

The administration of an estate will be facilitated, and the possibility of delay and uncertainty minimized, where the entitlement of an illegitimate child to notice and participation is a matter of judicial record before the administration commences. Fraudulent assertions of paternity will be much less likely to succeed, or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond, rather than first brought to light when the assets of an estate are in the offing.

Appellant contends that § 4–1.2, like the statute at issue

in *Trimble*, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. *Trimble*, *supra*, at 771. He urges that those in his position—"known" illegitimate children who, despite the absence of an order of filiation obtain during their fathers' lifetimes, can present convincing proof of paternity—cannot rationally be denied inheritance because they pose none of the risks § 4–1.2 was intended to minimize.[9]

We do not question that there will be some illegitimate children who would be able to establish their relationship to their deceased fathers without serious disruption of the administration of estates and that, as applied to such individuals, § 4–1.2 appears to operate unfairly. But few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquiry under the Equal Protection Clause does not focus on the abstract "fairness" of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the ~~substantial~~ rationality contemplated by the Fourteenth Amendment.

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[9] Appellant claims that in addition to discriminating between illegitimate and legitimate children, § 4–1.2, in conjunction with N. Y. Dom. Rel. Law § 24 (McKinney 1977), impermissibly discriminates between classes of illegitimate children. Section 24 provides that a child conceived out of wedlock is nevertheless legitimate if, before or after his birth, his parents marry, even if the marriage is void, illegal or judicially annulled. Appellant argues that by classifying as "legitimate" children born out of wedlock whose parents later marry, New York has, with respect to these children, established stringent § 4–1.2's requirements of proof of paternity. Thus, these "legitimate" children escape the rigors of the rule unlike their illegitimate counterparts whose parents never marry.

Under § 24, one claiming to be the legitimate child of a deceased man would have to prove not only his paternity but also his maternity and the fact of the marriage of his parents. These additional evidentiary requirements make it reasonable to accept less exacting proof of paternity and to treat such children as legitimate for inheritance purposes.

The Illinois statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disinheritance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far in excess of its justifiable purposes. Section 4–1.2 does not share this defect. Inheritance is barred only where there has been a failure to secure evidence of paternity during the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies a large number of deserving individuals.

The New York courts have interpreted § 4–1.2 liberally and in such a way as to enhance its utility to both father and child without sacrificing its strength as a procedural prophylactic. For example, a father of illegitimate children who is willing to acknowledge paternity can waive his defenses in a paternity proceeding, *e. g., In re Thomas*, 87 Misc. 2d 1033, 387 N. Y. S. 2d 216 (Sur. Ct. 1976), or even institute such a proceeding himself." N. Y. Jud.; Fam. Ct. Act § 522 (McKinney Supp. 1977); *In re Flemm*, 85 Misc. 2d, at 863, 381 N. Y. S. 2d, at 578. In addition, the courts have excused "technical" failures by illegitimate children to comply with the statute in order to prevent unnecessary injustice. *E. g., In re Niles*, 53 App. Div. 2d 983, 385 N. Y. S. 2d 870 (1976), appeal den., *sub nom. Niles v. Bonnati*, 40 N. Y. 2d 800, 392 N. Y. S. 2d 1027 (1977) (filiation order may be signed *nunc pro tunc* to relate back to period prior to father's death when court's factual finding of paternity had been made); *In re Kennedy*, 89 Misc. 2d 551, 554, 392 N. Y. S. 2d 365, 367 (Sur. Ct. 1977) (support order treated as "tantamount to an order of filiation," even though paternity was not specifically therein).

As the history of § 4–1.2 clearly illustrates the New York Legislature desired to "grant to illegitimates in so far as prac-

[29] In addition to the ongoing intestate succession possible, of course, a father is always free to provide for his illegitimate child by will. See *In re Flemm*, 85 Misc. 2d 855, 864, 381 N. Y. S. 2d 573, 578 (Sur. Ct. 1975).

fertile rights of inheritance on a par with those enjoyed by legitimate children," Commission Report, 201 (emphasis added), while protecting the important state interests we have described. Section 4-1.2 represents a [reconsidered] legislative judgment as to how this balance best could be achieved.

Even if we believed that § 4-1.2 could have been written somewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability or feasibility of any possible alternative[s]" to the statutory scheme formulated by New York. *Mathews* v. *Lucas*, 427 U. S., at 515. "These matters of practical judgment and empirical calculation are for [the State]. . . . In the end, the precise accuracy of [the State's] calculations is not a matter of specialized judicial competence and we have no basis to question their detail beyond the evident consistency and substantiality." *Id.*, at 515-516.[11]

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[11] Appellant argues that a footnote in *Trimble* v. *Gordon*, 430 U. S. 762, 772 n. 14 (1977), requires New York to accept the notarized document in which Lalli referred to herself as "any son" as evidence of paternity. That footnote contains language to the effect that a "formal acknowledgment of paternity" should be sufficient to satisfy the State's interests. The principle that the Justices [illegible] is that the States are free to recognize the problems arising from different forms of proof and to select those forms "carefully tailored to eliminate expensive and unduly burdensome methods of establishing paternity." *Ibid.* The New York Legislature, through the agency of the Report Commission, exercised the judgment which it regarded as best and rejected the possibility of accepting evidence of paternity less than [illegible] judicial Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Laws of Estates, Legislative Doc. 1965, No. 20, p. 200.

Even if New York were constitutionally obliged to accept "formal acknowledgments" of paternity other than judicial orders, it is far from clear that appellant in the case would benefit from such a rule. The word "formal" in this context is not necessarily synonymous with "witnessed" or "notarized." It may require a more regularized procedure approved by a court or agency of government. In any event, the document offered by appellant in this case may not satisfy even the most liberal definition of "formal acknowledgment." The certificate was [illegible] carefully

IV

We conclude that the requirements imposed by § 4–1.2 on illegitimate children who would inherit from their fathers are substantially related to the important state interests the statute is intended to promote. We therefore find no violation of the Equal Protection Clause. The judgment of the New York Court of Appeals, accordingly, is

Affirmed.

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exercised by Lalli for the purpose of giving appellee permission to marry, not of proving biological paternity. The true import of the words "my son" is thus decidedly ambiguous, illustrating the ration[ale] by [which] New York's decision not to accept such evidence.

Eric Anderson

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~~CHAMBERS~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–1115

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix of the Estate of Mario Lalli.
} On Appeal from the Court of Appeals of New York.

[November ---, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a challenge to the constitutionality of § 4–1.2 of New York's Estates, Powers, and Trusts Law,[1] which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from Mario as his children. Rosamond Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's

[1] 1965 N. Y. Laws, ch. 958, § 1. The statute was initially codified as N. Y. Decedent Est. Law § 83-a. In 1966 it was recodified without material change as N. Y. Est. Powers and Trusts Law § 4–1.2. 1966 N. Y. Laws ch. 952. Further non-substantive amendments were made the next year. 1967 N. Y. Laws, ch. 680, §§ 38, 39.

children, they were not lawful distributees of the estate because they had failed to comply with § 4-1.2[1] which provides in part:

> "An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child."

Appellant conceded that he had not obtained an order of filiation during his putative father's lifetime. He contended, however, that § 4-1.2, by imposing this requirement, discriminated against him in violation of the Equal Protection Clause[2] of the Fourteenth Amendment.[3] Appellant tendered certain

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[1] Section 4-1.2 in its entirety provides:

"(a) For the purpose of this article:

"(1) An illegitimate child is the legitimate child of his mother so that he and his issue inherit from his mother and from his maternal kindred.

"(2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child.

"(3) The existence of an agreement obligating the father to support the illegitimate child does not qualify such child or his issue to inherit from the father in the absence of an order of filiation made as provided by paragraph (2).

"(4) A motion for relief from an order of filiation may be made only by the father and such motion must be made within one year from the entry of such order.

"(b) If an illegitimate child dies, his surviving spouse, issue, mother, maternal kindred and father inherit and are entitled to letters of administration as if the decedent were legitimate, provided that the father may inherit or be so lettered only if an order of filiation has been made in accordance with the provisions of subparagraph (2)."

[2] Appellant also claimed that § 4-1.2 was invalid under N. Y. Const.,

evidence of his relationship with Mario Lalli, including a notarized document in which Lalli, in consenting to appellant's marriage, referred to him as "my son," and several affidavits by persons who stated that Lalli had acknowledged openly and often that Robert and Maureen were his children.

The Surrogate's court noted that § 4-1.2 had previously, and unsuccessfully, been attacked under the Equal Protection Clause. After reviewing recent decisions of this Court concerning discrimination against illegitimate children, particularly *Labine* v. *Vincent*, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute, *In re Bolton*, 70 Misc. 2d 814, 335 N. Y. S. 2d 177 (Sur. Ct. 1972); *In re Hendrix*, 68 Misc. 2d 430, 444, 326 N. Y. S. 2d 646, 651, 652 (Sur. Ct. 1971); *In re Crawford*, 64 Misc. 2d 758, 763, 315 N. Y. S. 2d 800, 805 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distributee of Lalli's estate and therefore lacked status to petition for a compulsory accounting.

On direct appeal the New York Court of Appeals affirmed *In re Lalli*, 38 N. Y. 2d 77, 340 N. E. 2d 721 (1975). It understood *Labine* to require the State to show no more than that "there is a rational basis for the means chosen by the Legislature for the accomplishment of a permissible state objective." *In re Lalli*, *supra*, 38 N. Y. 2d, at 81, 340 N. E. 2d, at 723. After discussing the problems of proof peculiar to establishing paternity, as opposed to maternity, the court concluded that the State was constitutionally entitled to require a judicial decree during the father's lifetime as the exclusive form of proof of paternity.

Appellant appealed the Court of Appeals' decision to this

Art. I, § 17. The New York Court of Appeals did not rule on the issue, nor do we. For the same reason we do not consider whether § 4-1.2 unlawfully discriminates on the basis of sex or whether the administrator of Mario's estate is required to account for her alleged failure to bring a wrongful death action on behalf of appellant.

Court. While that case was pending here, we decided *Trimble* v. *Gordon*,[1] 430 U. S. 762 (1976). Because the issues in these two cases were similar in some respects, we vacated and remanded to permit further consideration in light of *Trimble*. *Lalli* v. *Lalli*, 431 U. S. 911 (1976).[2]

On remand, the New York Court of Appeals, with one judge dissenting, adhered to its former disposition. *In re Lalli*, 43 N. Y. 2d 65, 371 N. E. 2d 481 (1977). It acknowledged that *Trimble* contemplated a standard of judicial review demanding more than "a mere finding of some remote rational relationship between the statute and a legitimate state purpose." *Id.*, at 67, 371 N. E. 2d, at 482, though less than strictest scrutiny. Finding § 4–1.2 to be "significantly and determinatively different" from the statute overturned in *Trimble*, the court relied that the New York law was sufficiently related to the State's interest in "the orderly settlement of estates and the dependability of titles to property passing under intestacy laws," *id.*, at 69–70, 371 N. E. 2d, at 483 quoting *Trimble*, *supra*, at 771, to meet the requirements of equal protection.

Appellant again sought review here, and we noted probable jurisdiction. *Lalli* v. *Lalli*, 435 U. S. 921 (1978). We now affirm.

II

We begin our analysis with *Trimble*. At issue in that case was the constitutionality of an Illinois statute providing that an illegitimate child could inherit from his intestate father only if the father had "acknowledged" the child and the parents had intermarried. The appellant in *Trimble* was a child born out of wedlock whose father had neither acknowledged her nor married her mother. He had, however, been found to be her father in a judicial decree ordering him to contribute

[1] On remand from this Court, the New York Attorney General was permitted to intervene as a defendant-appellee. He had filed a brief on the merits and argued the case in this Court. Appellee Rosemond Lalli did not present oral argument and has not filed a brief on the merits.

to her support. When the father died intestate, the child was excluded as a distributee because the statutory requirements for inheritance had not been met.

We concluded that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in *Mathews* v. *Lucas*, 427 U. S. 495, 505 (1976) and reaffirmed in *Trimble*, *supra*, at 767, classifications based on illegitimacy are not subject to "strict scrutiny," they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests. Upon examination, we found that the Illinois law failed that test.

Two state interests were proposed which the statute was said to foster: the encouragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decedent's property. Granting that the State was appropriately concerned with the integrity of the family unit, we viewed the statute as bearing only "the most attenuated relationship to the asserted goal." *Trimble*, *supra*, at 768. We again rejected the argument that "persons will shun illicit relationships because the offspring may not reap the benefits" that would accrue to them were they legitimate. *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 173 (1972). The statute therefore was not defensible as an incentive to foster legitimate family relationships.

Illinois' interest in safeguarding the orderly disposition of property at death was more relevant to the statutory classification. We recognized that devising "an appropriate legal framework" in the furtherance of that interest "is a matter particularly within the competence of the individual States." *Trimble*, *supra*, at 771. An important aspect of that framework is a response to the often difficult problem of proving the paternity, as opposed to maternity, of illegitimate children and the related danger of spurious claims against intestate estates. See *infra*, at —. These difficulties, we said, "might justify

a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." *Id.*, at 770.

The Illinois statute, however, was constitutionally flawed because, by insisting upon not only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant categories of illegitimate children of intestate men [whose] inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." *Id.*, at 771. We concluded that the Equal Protection Clause required that exceptional burdens placed on illegitimate children in the furtherance of proper State objectives must be more "carefully tuned to alternative considerations," *id.*, at 772, quoting *Mathews* v. *Lucas*, *supra*, at 513, than was true of the Illinois statute's overbroad disqualification.

III

The New York statute, enacted in 1915,[1] was intended to soften the rigors of previous law which permitted illegitimate children to inherit only from their mothers. See *infra*, at —. By lifting the absolute bar to paternal inheritance, § 4–1.2 tended to achieve its desired effect. As in *Trimble*, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause.

A

At the outset we observe that § 4–1.2 is different in important respects from the statutory provision overturned in *Trimble*. The Illinois statute required, in addition to the father's acknowledgment of paternity, the intermarriage of the parents of the illegitimate child as an absolute precondition to inheritance. This combination of requirements

[1] See n. 1, *supra*.

eliminated "the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." *Trimble*, *supra*, at 770–771. As illustrated by the facts in *Trimble*, even a judicial declaration of paternity was insufficient to permit inheritance.

Under § 4–1.2, by contrast, the marital status of the parents is irrelevant. The single requirement at issue here is an evidentiary one—that the paternity of the father be declared in a judicial proceeding sometime before his death.[4] Had the appellant in *Trimble* been governed by § 4–1.2, she would have been a distributee of her father's estate. See *In re Lalli*, 43 N. Y. 2d, at 68 n. 2, 371 N. E. 2d, at 482 n. 2.

A related difference between the two provisions pertains to the state interests said to be served by them. The Illinois law was defended, in part, as a means of encouraging legitimate family relationships. No such justification has been offered in support of § 4–1.2. The Court of Appeals disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimacy, to mold human conduct or to set societal norms." *In re Lalli*, *supra*, at 70, 371 N. E. 2d,

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[4] Section 4–1.2 requires not only that the order of filiation be made during the lifetime of the father, but that the proceeding in which it is sought have been commenced "during the pregnancy of the mother or within two years from the birth of the child." The New York Court of Appeals declined to rule on the constitutionality of the two-year limitation in both of its opinions in this case because appellant concededly had never commenced a paternity proceeding at all. Thus, if the rule that paternity be judicially declared during the father's lifetime were upheld, appellant would lose for failure to comply with that requirement alone. If, on the other hand, appellant prevailed in his argument that his inheritance could not be conditioned on the existence of an order of filiation, the two-year limitation would become irrelevant since the paternity proceeding itself would be unnecessary. See *In re Lalli*, 42 N. Y. 2d 65, 68 n. 1, 371 N. E. 2d 481, 482 n. 1 (1977); *In re Lalli*, 38 N. Y. 2d 77, 80 n. *, 340 N. E. 2d 721, 723 n. * (1975). ~~If the case concerning the two-year limitation is not before us, and we express no views as to its constitutionality.~~

As the New York Court of Appeals has not passed upon the constitutionality of the two-year limitation, that question is not before us. Our decision today therefore sustains § 4-1.2 under the Equal Protection Clause only with respect to the requirement that a judicial order of filiation be issued during the lifetime of the father of an illegitimate child.

at 483. The absence in § 4–1.2 of any requirement that the parents intermarry or otherwise legitimate a child born out of wedlock and our review of the legislative history of the statute, *infra*, at —, confirm this view.

Our inquiry, therefore, is focused narrowly. We are asked to decide whether the discrete procedural demands that § 4–1.2 places on illegitimate children bear an evident and substantial relation to the particular state interests this statute is designed to serve.

B

The primary state goal underlying the challenged aspects of § 4–1.2 is to provide for the just and orderly disposition of property at death.[6] We long have recognized that this is an area with which the States are justifiably concerned. *Trimble, supra*, at 771; *Weber v. Aetna Casualty & Surety Co., supra*, at 170; *Labine v. Vincent*, 401 U. S. 532, 538 (1971); see also *Lyeth v. Hoey*, 305 U. S. 188, 193 (1938); *Magoon v. Gelpcke*, 8 How. 490, 493 (1850).

This interest is directly implicated by paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York Surrogate's Court has observed, "the birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove." *In re Ortiz*, 60 Misc. 2d 756, 761, 304 N. Y. S. 2d 806, 812 (Sur. Ct. 1969). Proof of paternity, by contrast, frequently is difficult when the father is not part

6 [6] The presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which that justification for an illegitimacy-based classification was absent. *E. g., Stanley v. Illinois*, 405 U. S. 645 (1972); *Gomez v. Perez*, 409 U. S. 535 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 170 (1972); *Levy v. Louisiana*, 391 U. S. 68 (1968).

of a formal family unit. "The putative father often goes his way unconscious of the birth of a child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know *who* is responsible for her pregnancy." *Ibid.* (emphasis in original); accord, *In re Flamm*, 85 Misc. 2d 855, 861, 381 N. Y. S. 2d 573, 576–577 (Sur. Ct. 1975); *In re Hendrix*, 68 Misc. 2d, at 443, 326 N. Y. S. 2d, at 650; cf. *Trimble, supra*, at 770, 772.

Thus, a number of problems arise that counsel against treating illegitimate children identically to all other heirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission[6] consisted of "experienced Surrogates [and] estate practitioners." *In re Flamm, supra*, at 858, 381 N. Y. S. 2d, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19 (hereinafter Commission Report). The statute now codified as § 4–1.2 was included.

Although the overarching purpose of the proposed statute was "to alleviate the plight of the illegitimate child," Commission Report 20, the Bennett Commission considered it necessary to impose the strictures of § 4–1.2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decedents. The Commission's perception of some of these difficulties was described by Surrogate Sobel, a member of "the busiest [surrogate's] court in

[6] The Bennett Commission was created by the New York Legislature in 1961. It was instructed to recommend needed changes in certain areas of state law, including that "pertaining to the descent and distribution of property and the parties and procedure relating thereto." 1961 N. Y. Laws, ch. 731.

the State measured by the number of intestate estates which traffic daily through this court." *In re Flemm*, *supra*, at 867, 381 N. Y. S. 2d, at 571 (Solod, S.) [who participated] in some of the Commission's deliberations:

[I and a participant]

> "An illegitimate if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent . . . And, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogate's Courts since title to real property passes under such decree. Our procedural statutes and the Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, *all* illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates. The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many—some speakers suggested a majority—of estates." *Id.*, at 570, 381 N. Y. S. 2d, at 575–576; cf. *In re Leventritt*, 92 Misc. 2d 598, 601–602, 400 N. Y. S. 2d 298, 300–301 (Sur. Ct. 1977).

Even where an individual claiming to be the illegitimate child of a deceased man makes himself known, the difficulties

facing an estate are likely to persist. Because of the particular problems of proof, spurious claims may be difficult to expose. The Bennett Commission therefore sought to protect "innocent adults and those rightfully interested in their estates from fraudulent claims of heirship and harassing litigation instituted by those seeking to establish themselves as illegitimate heirs." Commission Report 199.

C

As the State's interests are substantial, we now consider the means adopted by New York to further those interests. In order to avoid the problems described above, the Commission recommended a combination of requirements designed to ensure the accurate resolution of claims of paternity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father. As the New York Court of Appeals observed in its first opinion in this case, the "availability [of the putative father] should be a substantial factor contributing to the reliability of the fact-finding process." *In re Lalli*, 38 N. Y. 2d, at 82, 340 N. E. 2d, at 724. In addition, requiring that the order be issued during the father's lifetime permits a man to defend his reputation against "unjust accusations in paternity claims," which was a secondary purpose of § 4–1.2. Commission Report 200.

The administration of an estate will be facilitated and the possibility of delay and uncertainty minimized, where the entitlement of an illegitimate child to notice and participation is a matter of judicial record before the administration commences. Fraudulent assertions of paternity will be much less likely to succeed, or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond, rather than first brought to light when the assets of an estate are in the offing.

the distribution of is/

Appellant contends that § 4–1.2, like the statute at issue

in *Trimble*, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. *Trimble*, *supra*, at 771. He urges that those in his position—"known" illegitimate children who, despite the absence of an order of filiation obtained during their fathers' lifetimes, can present convincing proof of paternity—cannot rationally be denied inheritance because they pose none of the risks § 4-1.2 was intended to minimize.

We do not question that there will be some illegitimate children who would be able to establish their relationship to their deceased fathers without serious disruption of the administration of estates and that, as applied to such individuals, § 4-1.2 appears to operate unfairly. But few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquiry under the Equal Protection Clause does not focus on the abstract "fairness" of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the substantial rationality contemplated by the Fourteenth Amendment.

Appellant claims that in addition to discriminating between illegitimate and legitimate children, § 4-1.2, in conjunction with N. Y. Dom. Rel. Law § 24 (McKinney 1977), impermissibly discriminates between classes of illegitimate children. Section 24 provides that a child conceived out of wedlock is retroactively legitimated if, before or after his birth, his parents marry, even if the marriage is void, voidable, or judicially annulled. Appellant argues that by classifying as "legitimate" children born out of wedlock whose parents later marry, New York has, with respect to these children, substituted marriage for § 4-1.2's requirement of proof of paternity. Thus, these "illegitimate" children escape the rigors of the rule unlike their unfortunate counterparts whose parents never marry.

Under § 24, one claiming to be the legitimate child of a deceased man would have to prove not only his paternity but also his maternity and the fact of the marriage of his parents. These additional evidentiary requirements make it reasonable to accept less exacting proof of paternity and to treat such children as legitimate for inheritance purposes.

The Illinois statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disinheritance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far in excess of its justifiable purposes. Section 4–1.2 does not share this defect. Inheritance is barred only where there has been a failure to secure evidence of paternity during the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies a large number of deserving individuals.

The New York courts have interpreted § 4–1.2 liberally and in such a way as to enhance its utility to both father and child without sacrificing its strength as a procedural prophylactic. For example, a father of illegitimate children who is willing to acknowledge paternity can waive his defenses in a paternity proceeding, *e. g., In re Thomas*, 87 Misc. 2d 1033, 387 N. Y. S. 2d 216 (Sur. Ct. 1976), or even institute such a proceeding himself. N. Y. Jud.; Fam. Ct. Act § 522 (McKinney Supp. 1977); *In re Phenix*, 85 Misc. 2d, at 863, 381 N. Y. S. 2d, at 578. In addition, the courts have excused "technical" failures by illegitimate children to comply with the statute in order to prevent unnecessary injustice. *E. g., In re Niles*, 53 App. Div. 2d 983, 385 N. Y. S. 2d 876 (1976), appeal den. *sub nom. Niles* v. *Bonanti*, 40 N. Y. 2d 809, 392 N. Y. S. 2d 1027 (1977) (filiation order may be signed *nunc pro tunc* to relate back to period prior to father's death when court's factual finding of paternity had been made); *In re Kennedy*, 80 Misc. 2d 551, 554, 392 N. Y. S. 2d 365, 367 (Sur. Ct. 1977) (support order treated as "tantamount to an order of filiation," even though paternity was not specified therein).

As the history of § 4–1.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates *to so far as pre-*

[9] [9]In addition to making intestate succession possible, of course, a father is always free to provide for his illegitimate child by will. *See In re Phenix*, 85 Misc. 2d 855, 861, 381 N. Y. S. 2d 573, 578 (Sur. Ct. 1975).

liable rights of inheritance on a par with those enjoyed by legitimate children." Commission Report 200 (emphasis added), while protecting the important state interests we have described. Section 4–1.2 represents a considered legislative judgment as to how this balance best could be achieved.

Even if we believed that § 4–1.2 could have been written somewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability or feasibility of any possible alternative[s]" to the statutory scheme formulated by New York. *Mathews* v. *Lucas*, 427 U. S., at 515. "These matters of practical judgment and empirical calculation are for [the State]. . . . In the end the precise accuracy of [the State's] calculations is not a matter of specialized judicial competence and we have no basis to question their detail beyond the evident consistency and substantiality." *Id.*, at 515–516.[10]

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[10] Appellant argues that a footnote in *Trimble* v. *Gordon*, 430 U. S. 762, 772 n. 14 (1977), requires New York to accept the notarized document in which Lalli referred to him as "my son" as evidence of paternity. That footnote contains language to the effect that a "formal acknowledgment of paternity" could be sufficient to satisfy the State's interests. The principle that the Constitution requires the States are free to recognize the problems arising from different forms of proof and to afford those forms carefully tailored to eliminate imprecise and unduly burdensome methods of establishing paternity. *Ibid.* The New York Legislature, through the agency of its Law Revision Commission, exercised this judgment when it considered and rejected the possibility of accepting evidence of paternity less formal than a judicial order. Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. (1965), No. 19, at 201.

Even if New York were constitutionally obliged to accept "formal acknowledgments" of paternity other than judicial orders, it is far from clear that appellant in the case would benefit from such a rule. The word "formal" in the context is not necessarily synonymous with "witnessed" or "notarized." It may connote a more regularized procedure approved by a court or agency of government. In any event, the document offered by appellant in this case does not satisfy even the most liberal definition of "formal acknowledgment." The certificate was

IV

We conclude that the requirements imposed by § 4 1.2 on illegitimate children who would inherit from their fathers are substantially related to the important state interests the statute is intended to promote. We therefore find no violation of the Equal Protection Clause. The judgment of the New York Court of Appeals, accordingly, is

Affirmed.

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except that by Lalli for the purpose of giving equal to permission to marry, not of proving biological paternity. The true import of the words "by such" is thus [illegible] ambiguous, illustrating the propensity in New York's judiciary not to accept such evidence.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix of the Estate of Mario Lalli.
} On Appeal from the Court of Appeals of New York.

[November —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a challenge to the constitutionality of § 4-1.2 of New York's Estates, Powers, and Trusts Law,[1] which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from Mario as his children. Rosamond Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's

[1] 1965 N. Y. Laws, ch. 958, § 9. The statute was initially codified as N. Y. Decedent Est. Law § 83-a. In 1967 it was recodified without material change as N. Y. Est., Powers and Trusts Law § 4-1.2. 1967 N. Y. Laws, ch. 932. Further nonsubstantive changes were made the next year. 1968 N. Y. Laws, ch. 686, §§ 28, 29.

children, they were not lawful distributees of the estate because they had failed to comply with § 4–1.2[1] which provides in part:

> "An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child."

Appellant conceded that he had not obtained an order of filiation during his putative father's lifetime. He contended, however, that § 4–1.2, by imposing this requirement, discriminated against him on the basis of his illegitimate birth in violation of the Equal Protection Clause of the Fourteenth

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[1] Section 4–1.2 in its entirety provides:

"(a) For the purpose of this article:

"(1) An illegitimate child is the legitimate child of his mother so that he and his issue inherit from his mother and from the maternal kindred.

"(2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child.

"(3) The existence of an agreement or obligation that a father support the illegitimate child does not qualify such child or its issue to inherit from the father in the absence of an order of filiation made as provided by subparagraph (2).

"(4) A motion for relief from an order of filiation may be made only by the father, and such motion must be made within one year from the entry of such order.

"(b) If an illegitimate child dies, its surviving spouse, issue, mother, maternal kindred and father inherit and are entitled to letters of administration as if the decedent were legitimate, provided that the father may inherit or obtain such letters only if an order of filiation has been made in accordance with the provisions of subparagraph (2)."

Amendment.[1] Appellant tendered certain evidence of his relationship with Mario Lalli, including a notarized document in which Lalli, in consenting to appellant's marriage, referred to him as "my son," and several affidavits by persons who stated that Lalli had acknowledged openly and often that Robert and Maureen were his children.

The Surrogate's Court noted that § 4–1.2 had previously, and unsuccessfully, been attacked under the Equal Protection Clause. After reviewing recent decisions of this Court concerning discrimination against illegitimate children, particularly *Labine* v. *Vincent*, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute, *In re Bolton*, 70 Misc. 2d 814, 335 N. Y. S. 2d 177 (Sur. Ct. 1972); *In re Hendrix*, 68 Misc. 2d 439, 444, 326 N. Y. S. 2d 646, 651–652 (Sur. Ct. 1971); *In re Crawford*, 64 Misc. 2d 758, 763, 315 N. Y. S. 2d 800, 805 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distributee of Lalli's estate and therefore lacked status to petition for a compulsory accounting. /./

On direct appeal the New York Court of Appeals affirmed. *In re Lalli*, 38 N. Y. 2d 77, 340 N. E. 2d 721 (1975). It understood *Labine* to require the State to show no more than that "there is a rational basis for the means chosen by the Legislature for the accomplishment of a permissible state objective." *In re Lalli*, *supra*, 38 N. Y. 2d, at 81, 340 N. E. 2d, at 723. After discussing the problems of proof peculiar to establishing paternity, as opposed to maternity, the court concluded that the State was constitutionally entitled to require a judi-

[1] Appellant also claimed that § 4–1.2 was invalid under N. Y. Const., Art. 1, § 11. The New York Court of Appeals did not rule on this issue, nor do we. We also do not consider whether § 4–1.2 unconstitutionally discriminates on the basis of sex or whether the administrators of Mario's estate is required to account for her alleged failure to bring a wrongful death action on behalf of appellant. The latter question was not considered by the Court of Appeals, and the former was raised for the first time by a brief amicus curiae in this Court.

cial decree during the father's lifetime as the exclusive form of proof of paternity.

Appellant appealed the Court of Appeals' decision to this Court. While that case was pending here, we decided *Trimble v. Gordon*, 430 U. S. 762 (1970). Because the issues in these two cases were similar in some respects, we vacated and remanded to permit further consideration in light of *Trimble*. *Lalli v. Lalli*, 431 U. S. 911 (1970).

On remand[*] the New York Court of Appeals, with one judge dissenting, adhered to its former disposition. *In re Lalli*, 43 N. Y. 2d 65, 371 N. E. 2d 481 (1977). It acknowledged that *Trimble* contemplated a standard of judicial review demanding more than "a mere finding of some remote rational relationship between the statute and a legitimate state purpose." *Id.*, at 67, 371 N. E. 2d, at 482, though less than strictest scrutiny. Finding § 4–1.2 to be "significantly and determinatively different" from the statute overturned in *Trimble*, the court ruled that the New York law was sufficiently related to the State's interest in "the orderly settlement of estates and the dependability of titles to property passing under intestacy laws." *Id.*, at 69–70, 371 N. E. 2d, at 483, quoting *Trimble*, *supra*, at 771, to meet the requirements of equal protection.

Appellant again sought review here, and we noted probable jurisdiction. *Lalli v. Lalli*, 435 U. S. 921 (1978). We now affirm.

II

We begin our analysis with *Trimble*. At issue in that case was the constitutionality of an Illinois statute providing that an illegitimate child could inherit from his intestate father only if the father had "acknowledged" the child and the parents had intermarried. The appellant in *Trimble* was a child

[*] On remand from this Court, the New York Attorney General was permitted to intervene as a defendant-appellee. He has filed a brief on the merits and argued the case in this Court. Appellee Ivanenoff Lalli did not present oral argument and has not filed a brief on the merits.

born out of wedlock whose father had neither acknowledged her nor married her mother. He had, however, been found to be her father in a judicial decree ordering him to contribute to her support. When the father died intestate, the child was excluded as a distributee because the statutory requirements for inheritance had not been met.

We concluded that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in *Mathews v. Lucas*, 427 U. S. 495, 506 (1976), and reaffirmed in *Trimble*, *supra*, at 767, classifications based on illegitimacy are not subject to "strict scrutiny," they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests. Upon examination, we found that the Illinois law failed that test.

Two state interests were proposed which the statute was said to foster: the encouragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decedent's property. Granting that the State was appropriately concerned with the integrity of the family unit, we viewed the statute as bearing only "the most attenuated relationship to the asserted goal." *Trimble*, *supra*, at 768. We again rejected the argument that "persons will shun illicit relationships because the offspring may not reap the benefits" that would accrue to them were they legitimate. *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 173 (1972). The statute therefore was not defensible as an incentive to enter legitimate family relationships.

Illinois' interest in safeguarding the orderly disposition of property at death was more relevant to the statutory classification. We recognized that devising "an appropriate legal framework" in the furtherance of that interest "is a matter particularly within the competence of the individual States." *Trimble*, *supra*, at 771. An important aspect of that framework is a response to the often difficult problem of proving the

paternity of illegitimate children and the related danger of spurious claims against intestate estates. See *infra*, at ——. These difficulties, we said, "might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." *Id.*, at 770.

The Illinois statute, however, was constitutionally flawed because, by insisting upon not only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant categories of illegitimate children of intestate men [whose] inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." *Id.*, at 771. We concluded that the Equal Protection Clause required that a statute placing exceptional burdens on illegitimate children in the furtherance of proper State objectives must be more "carefully tuned to alternative considerations," *id.*, at 772, quoting *Matthews* v. *Lucas*, *supra*, at 513, than was true of the broad disqualification in the Illinois law.

III

The New York statute, enacted in 1965, was intended to soften the rigors of previous law which permitted illegitimate children to inherit only from their mothers. See *infra*, at ——. By lifting the absolute bar to paternal inheritance, § 4–1.2 tended to achieve its desired effect. As in *Trimble*, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause.

A

At the outset we observe that § 4–1.2 is different in important respects from the statutory provision overturned in *Trimble*. The Illinois statute required, in addition to the

father's acknowledgment of paternity, the intermarriage of the parents of the illegitimate child as an absolute precondition to inheritance. This combination of requirements eliminated "the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." *Trimble*, *supra*, at 770-771. As illustrated by the facts in *Trimble*, even a judicial declaration of paternity was insufficient to permit inheritance.

Under § 4-1.2, by contrast, the marital status of the parents is irrelevant. The single requirement at issue here is an evidentiary one—that the paternity of the father be declared in a judicial proceeding sometime before his death.[7] Had the appellant in *Trimble* been governed by § 4-1.2, she would have been a distributee of her father's estate. See *In re Lalli*, 43 N. Y. 2d, at 68 n. 2, 371 N. E. 2d, at 482 n. 2.

A related difference between the two provisions pertains to the state interests said to be served by them. The Illinois law was defended in part, as a means of encouraging legiti-

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[7] Section 4-1.2 requires not only that the order of filiation be rendered during the lifetime of the father, but that the proceeding in which it is sought have been commenced "during the pregnancy of the mother or within two years from the birth of the child." The New York Court of Appeals declined to rule on the constitutionality of the two-year limitation in both of the opinions in the case because appellant concededly had never commenced a paternity proceeding at all. Thus, if the rule that paternity is judicially declared during the father's lifetime were upheld, appellant would not be required to comply with the requirement above. If, on the other hand, appellant prevailed in her argument that her inheritance could not be conditioned on the existence of an order of filiation, the two-year limitation would become irrelevant since the paternity proceeding itself would be unnecessary. See *In re Lalli*, 43 N. Y. 2d 65, 68 n. 2, 371 N. E. 2d 481, 482 n. 2 (1977); *In re Lalli*, 38 N. Y. 2d 77, 80 n. 1, 340 N. E. 2d 721, 723 n. * (1975). As the New York Court of Appeals has not passed upon the constitutionality of the two-year limitation, that question is not before us. Our decision today therefore extends § 4-1.2 under the Equal Protection Clause only with respect to its requirement that a paternity order or filiation be issued during the lifetime of the father or within two years.

state family relationships. No such justification has been offered in support of § 4–1.2. The Court of Appeals disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimacy 'to mold human conduct or to set societal norms'." *In re Lalli*, *supra*, at 70, 371 N. E. 2d, at 483. The absence in § 4–1.2 of any requirement that the parents intermarry or otherwise legitimate a child born out of wedlock and our review of the legislative history of the statute, *infra*, at — , confirm this view.

Our inquiry, therefore is focused narrowly. We are asked to decide whether the discrete procedural demands that § 4–1.2 places on illegitimate children bear an evident and substantial relation to the particular state interests this statute is designed to serve.

B

The primary state goal underlying the challenged aspects of § 4–1.2 is to provide for the just and orderly disposition of property at death.[8] We long have recognized that this is an area with which the States are justifiably concerned. *Trimble*, *supra*, at 771; *Weber v. Aetna Casualty & Surety Co.*, *supra*, at 170; *Labine v. Vincent*, 401 U. S. 532, 538 (1971); see also *Lucas v. Hamm*, 364 U. S. 388, 393 (1965); *Mager v. Grima*, 8 How. 490, 493 (1850).

This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom difficult. As one New York Surrogate's Court has observed, "the birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child

[8] The premise in this area of the State's interest in the orderly disposition of a decedent's property is both distinguishes it from others in which the justification for an illegitimacy-based classification was absent. *E. g.*, *Hooper v. Bernalillo*, 472 U. S. 612 (1974); *Gomez v. Perez*, 409 U. S. 535 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 170 (1972); *Levy v. Louisiana*, 391 U. S. 68 (1968).

remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove." *In re Ortiz*, 60 Misc. 2d 706, 707, 303 N. Y. S. 2d 806, 812 (Sur. Ct. 1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. "The putative father often goes his way unconscious of the birth of a child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know *who* is responsible for her pregnancy." *Ibid.* (emphasis in original); accord, *In re Flouton*, 85 Misc. 2d 855, 861, 381 N. Y. S. 2d 573, 576–577 (Sur. Ct. 1975); *In re Hendrix*, 68 Misc. 2d, at 443, 326 N. Y. S. 2d, at 670; cf. *Trimble*, *supra*, at 770, 772.

Thus, a number of problems arise that counsel against treating illegitimate children identically to all other heirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission,[7] consisted of "experienced Surrogates [and] estate practitioners." *In re Flouton*, *supra*, at 858, 381 N. Y. S. 2d, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19 (hereinafter Commission Report). The statute now codified as § 4–1.2 was included.

Although the overarching purpose of the proposed statute was "to alleviate the plight of the illegitimate child," Com-

[7] The Bennett Commission was created by the New York Legislature in 1961. It was instructed to recommend needed changes in certain areas of state law, including those pertaining to "the descent and distribution of property and the practice and procedure relating thereto." 1961 N. Y. Laws, ch. 791.

mission Report 20, the Bennett Commission considered it necessary to impose the strictures of § 4–1.2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decedents. The Commission's perception of some of these difficulties was described by Surrogate Sobel, a member of "the busiest [surrogate's] court in the State measured by the number of intestate estates which traffic daily through this court." *In re Pfizano*, *supra*, at 857, 381 N. Y. S. 2d, at 574 (sobel, S.), and a participant in some of the Commission's deliberations:

> "An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent, or if he is a distributee in the estate of the kindred of a parent. . . . And, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogate's Courts since title to real property passes under such decrees. Our procedural statutes and the Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, *all* illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates. The point made in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would

be created for many—some members suggested a majority—of estates." *Id.*, at 870, 381 N. Y. S. 2d, at 375–376; cf. *In re Lezcano-Irizarry*, 92 Misc. 2d 598, 600–602, 400 N. Y. S. 2d 298, 300–301 (Sur. Ct. 1977).

Even where an individual claiming to be the illegitimate child of a deceased man makes himself known, the difficulties facing an estate are likely to persist. Because of the particular problems of proof, spurious claims may be difficult to expose. The Bennett Commission therefore sought to protect "innocent adults and those rightfully interested in their estates from fraudulent claims of heirship and harassing litigation instituted by those seeking to establish themselves as illegitimate heirs." Commission Report 198.

C

As the State's interests are substantial, we now consider the means adopted by New York to further these interests. In order to avoid the problems described above, the Commission recommended a ~~combination of~~ requirement designed to ensure the accurate resolution of claims of paternity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father. As the New York Court of Appeals observed in its first opinion in this case, the "availability [of the putative father] should be a substantial factor contributing to the reliability of the fact-finding process." *In re Lalli*, 38 N. Y. 2d, at 82, 340 N. E. 2d, at 724. In addition, requiring that the order be issued during the father's lifetime permits a man to defend his reputation against "unjust accusations in paternity claims," which was a secondary purpose of § 4-1.2. Commission Report 200.

The administration of an estate will be facilitated, and the possibility of delay and uncertainty minimized, where the entitlement of an illegitimate child to notice and participation is a matter of judicial record before the administration

commences. Fraudulent assertions of paternity will be much less likely to succeed, or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond, rather than first brought to light when the distribution of the assets of an estate is in the offing.

Appellant contends that § 4–1.2, like the statute at issue in *Trimble*, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. *Trimble*, *supra*, at 771. He urges that those in his position—"known" illegitimate children who, despite the absence of an order of filiation obtained during their fathers' lifetimes can present convincing proof of paternity—cannot rationally be denied inheritance as they pose none of the risks § 4–1.2 was intended to minimize.[*]

We do not question that there will be some illegitimate children who would be able to establish their relationship to their deceased fathers without serious disruption of the administration of estates and that, as applied to such individuals, § 4–1.2 appears to operate unfairly. But few statutory classifications are entirely free from the criticism that they some-

[*] Appellant claims that in addition to discriminating between illegitimate and legitimate children, § 4–1.2, in conjunction with N. Y. Dom. Rel. Law § 24 (McKinney 1977), impermissibly discriminates between types of illegitimate children. Section 24 provides that a child conceived out of wedlock is nevertheless legitimate if, before or after his birth, his parents marry, even if the marriage is void, illegal or judicially annulled. Appellant asserts that by classifying as "legitimate" children born out of wedlock whose parents later marry, New York has, with respect to these children, substituted marriage for § 4–1.2's requirement of proof of paternity. Thus, these "illegitimate" children escape the rigors of the law unlike their unfortunate counterparts whose parents never marry.

Under § 24, one claiming to be the legitimate child of a deceased man would have to prove not only his paternity but also his birth and the fact of the marriage of his parents. These additional evidentiary requirements make it reasonable to accept less exacting proof of paternity and to treat such children as legitimate for inheritance purposes.

times produce inequitable results. Our inquiry under the Equal Protection Clause does not focus on the abstract "fairness" of a state law but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the rationality contemplated by the Fourteenth Amendment.

The Illinois statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disinheritance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far in excess of its justifiable purposes. Section 4-1.2 does not share this defect. Inheritance is barred only where there has been a failure to secure evidence of paternity during the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies an unnecessarily large number of deserving individuals.

The New York courts have interpreted § 4-1.2 liberally and in such a way as to enhance its utility to both father and child without sacrificing its strength as a procedural prophylactic. For example, a father of illegitimate children who is willing to acknowledge paternity may waive his defenses in a paternity proceeding, *e. g., In re Thomas*, 87 Misc. 2d 1034, 387 N. Y. S. 2d 216 (Sur. Ct. 1976), or even institute such a proceeding himself, N. Y. Jud.; Fam. Ct. Act § 522 (McKinney Supp. 1977); *In re Flamm*, 85 Misc. 2d, at 863, 381 N. Y. S. 2d, at 578. In addition, the courts have excused "technical" failures by illegitimate children to comply with the statute in order to prevent unnecessary injustice. *E. g., In re Niles*, 53 App. Div. 2d 983, 385 N. Y. S. 2d 876 (1976), appeal dism. *sub nom. Niles v. Brainati*, 40 N. Y. 2d 809, 392 N. Y. S. 2d 1027 (1977) (filiation order may be signed *nunc pro tunc* to relate back to period prior to father's death when

[n]

[n] In addition to making intestate succession possible of course, a father is always free to provide for his illegitimate child by will. *See In re Flamm*, 85 Misc. 2d 855, 864, 381 N. Y. S. 2d 573, 578 (Sur. Ct. 1975).

court's factual finding of paternity had been made); *In re Kennedy*, 80 Misc. 2d 551, 554, 362 N. Y. S. 2d 865, 867 (Sur. Ct. 1977) (judicial support order treated as "tantamount to an order of filiation," even though paternity was not specifically declared therein).

As the history of § 4–1.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates *in so far as practicable* rights of inheritance on a par with those enjoyed by legitimate children." Commission Report 200 (emphasis added), while protecting the important state interests we have described. Section 4–1.2 represents a carefully considered legislative judgment as to how this balance best could be achieved.

Even if we believed that § 4–1.2 could have been written somewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability or feasibility of any possible alternative s[] to the statutory scheme formulated by New York. *Matthews* v. *Lucas*, 427 U. S., at 515. "These matters of practical judgment and empirical calculation are for [the State]. . . . In the end, the precise accuracy of [the State's] calculations is not a matter of specialized judicial competence; and we have no basis to question their detail beyond the evident consistency and substantiality." *Id.*, at 515–516.[20]

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[20] Appellant argues that a footnote in *Trimble* v. *Gordon*, 430 U. S. 762, 772 n. 14 (1976), requires New York to accept the unsigned document in which Lalli referred to himself as "my son" as evidence of paternity. That footnote contains language to the effect that a "state acknowledgment of paternity" should be sufficient to satisfy the State's interests. The principle that the footnote elaborates is that the States are free to recognize the problems arising from different forms of proof and to accept those forms "carefully tailored to eliminate imprecise and unjustified inconsistencies in methods of establishing paternity." *Ibid.* The New York Legislature, through the agency of the Bennett Commission, exercised this judgment when it considered and rejected the possibility of accepting evidence of paternity less formal than a judicial order. Fourth Report of

IV

We conclude that the requirement imposed by § 4–1.2 on illegitimate children who would inherit from their fathers is substantially related to the important state interests the statute is intended to promote. We therefore find no violation of the Equal Protection Clause. The judgment of the New York Court of Appeals, accordingly, is

Affirmed.

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the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 21, at 209.

Even if New York were constitutionally obliged to accept "formal acknowledgments" of paternity other than judicial orders, it is far from clear that appellant in this case would benefit from such a rule. The word "formal" in this context is not necessarily synonymous with "witnessed" or "notarized." It may refer to a more legalistic procedure approved by a court or agency of government. In any event, the documents offered by appellant in this case may not satisfy even the most liberal definition of "formal acknowledgment." The certificate of execution by Lalli for the purpose of giving appellee permission to marry, not of proving biological paternity. The true import of the words "my son" is thus ambiguous. In granting the certificate, New York's decision not to accept such evidence

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 14, 1978

Re: 77-1115 - Lalli v. Lalli

Dear Lewis:

Not wanting to retreat from the Court's fine opinion in Trimble, I shall also await the dissent.

Respectfully,

JPS

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 14, 1978

Re: No. 77-1115 - Lalli v. Lalli

Dear Lewis,

I shall await the dissent in this case.

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE W. J. BRENNAN JR.

November 14, 1978

RE: No. 77-1115 Lalli v. Lalli

Dear Lewis:

In due course I shall circulate a dissent in the above.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 14, 1978

Re: No. 77-1115-Lalli v. Lalli

Dear Lewis:

I await the dissent.

Sincerely,

T.M.

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 14, 1978

Re: No. 77-1115, Lalli v. Lalli

Dear Lewis,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix of the Estate of Mario Lalli.
On Appeal from the Court of Appeals of New York.

[November —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a challenge to the constitutionality of § 4-1.2 of New York's *Estates, Powers, and Trusts Law*,[1] which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate, appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from Mario as his children. Rosamond Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's

[1] 1965 N. Y. Laws, ch. 958, § 1. The statute was originally codified as N. Y. Decedent Est. Law § 83-c. In 1966 it was republished without material change as N. Y. Est., Powers and Trusts Law § 4-1.2. 1966 N. Y. Laws, ch. 952. Further nonsubstantive amendments were made the next year. 1967 N. Y. Laws, ch. 680, §§ 18, 20.

children, they were not lawful distributees of the estate because they had failed to comply with § 4–1.2,[*] which provides in part:

> "An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during of the pregnancy of the mother or within two years from the birth of the child."

Appellant conceded that he had not obtained an order of filiation during his putative father's lifetime. He contended, however, that § 4–1.2, by imposing this requirement, discriminated against him on the basis of his illegitimate birth in violation of the Equal Protection Clause of the Fourteenth

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[*] Section 4–1.2 in its entirety provides:

"(a) For the purposes of this article

"(1) An illegitimate child is the legitimate child of his mother so that he and his issue inherit from his mother and from his maternal kindred.

"(2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child.

"(3) The existence of an agreement obligating the father to support the illegitimate child does not qualify such child or his issue to inherit from the father in the absence of an order of filiation made as provided by subparagraph (2).

"(4) A motion for relief from an order of filiation may be made only by the father, and such motion must be made within one year from the entry of such order.

"(b) If an illegitimate child dies, his surviving spouse, issue, mother, maternal kindred and father also are entitled to letters of administration as if the decedent were legitimate, provided that the father may inherit or obtain such letters only if an order of filiation has been made in accordance with the provisions of subparagraph (2)."

Amendment.[2] Appellant tendered certain evidence of his relationship with Mario Lalli, including a notarized document in which Lalli, in consenting to appellant's marriage, referred to him as "my son," and several affidavits by persons who stated that Lalli had acknowledged openly and often that Robert and Maureen were his children.

The Surrogate's Court noted that § 4-1.2 had previously, and unsuccessfully, been attacked under the Equal Protection Clause. After reviewing recent decisions of this Court concerning discrimination against illegitimate children, particularly *Labine* v. *Vincent*, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute, *In re Bolton*, 70 Misc. 2d 814, 335 N. Y. S. 2d 177 (Sur. Ct. 1972); *In re Hendrix*, 68 Misc. 2d 439, 444, 326 N. Y. S. 2d 646, 652 (Sur. Ct. 1971); *In re Crawford*, 64 Misc. 2d 758, 762–763, 315 N. Y. S. 2d 800, 805 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distributee of Lalli's estate and therefore lacked status to petition for a compulsory accounting.

On direct appeal the New York Court of Appeals affirmed. *In re Lalli*, 38 N. Y. 2d 77, 340 N. E. 2d 721 (1975). It understood *Labine* to require the State to show no more than that "there is a rational basis for the means chosen by the Legislature for the accomplishment of a permissible State objective." *In re Lalli*, *supra*, 38 N. Y. 2d, at 81, 340 N. E. 2d, at 723. After discussing the problems of proof peculiar to establishing paternity, as opposed to maternity, the court concluded that the State was constitutionally entitled to require a judi-

[2] Appellant also claimed that § 4-1.2 was invalid under N. Y. Const., Art. 1, § 11. The New York Court of Appeals did not rule on this issue, nor do we. We also do not consider whether § 4-1.2 unconstitutionally discriminates on the basis of sex or whether the administratrix of Mario's estate is required to account for her alleged failure to bring a wrongful death action on behalf of appellant. The latter question was not considered by the Court of Appeals, and the former was raised for the first time by a brief *amicus curiae* in this Court.

ciul decree during the father's lifetime as the exclusive form of proof of paternity.

Appellant appealed the Court of Appeals' decision to this Court. While that case was pending here, we decided *Trimble* v. *Gordon*, 430 U. S. 762 (1977). Because the issues in these two cases were similar in some respects, we vacated and remanded to permit further consideration in light of *Trimble*. *Lalli* v. *Lalli*, 431 U. S. 911 (1977).

On remand,* the New York Court of Appeals, with one judge dissenting, adhered to its former disposition. *In re Lalli*, 43 N. Y. 2d 65, 371 N. E. 2d 481 (1977). It acknowledged that *Trimble* contemplated a standard of judicial review demanding more than "a mere finding of some remote rational relationship between the statute and a legitimate State purpose." *Id.*, at 67, 371 N. E. 2d, at 482, though less than strictest scrutiny. Finding § 4–1.2 to be "significantly and determinatively different" from the statute overturned in *Trimble*, the court ruled that the New York law was sufficiently related to the State's interest in "the orderly settlement of estates and the dependability of titles to property passing under intestacy laws." *Id.*, at 67, 69–70, 371 N. E. 2d, at 482, 483, quoting *Trimble*, *supra*, at 771, to meet the requirements of equal protection.

Appellant again sought review here, and we noted probable jurisdiction. *Lalli* v. *Lalli*, 435 U. S. 921 (1978). We now affirm.

II

We begin our analysis with *Trimble*. At issue in that case was the constitutionality of an Illinois statute providing that a child born out of wedlock could inherit from his intestate father only if the father had "acknowledged" the child and

*On remand from this Court, the New York Attorney General was permitted to intervene as a defendant-appellee. He has filed a brief on the merits and argued the case in this Court. Appellee Ilusciunal Lalli did not present oral argument and has not filed a brief on the merits.

the child had been legitimated by the intermarriage of the parents. The appellant in *Trimble* was born out of wedlock whose father had neither acknowledged her nor married her mother. He had, however, been found to be her father in a judicial decree ordering him to contribute to her support. When the father died intestate, the child was excluded as a distributee because the statutory requirements for inheritance had not been met.

We concluded that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in *Mathews* v. *Lucas*, 427 U. S. 495, 506 (1976), and reaffirmed in *Trimble*, *supra*, at 767, classifications based on illegitimacy are not subject to "strict scrutiny," they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests. Upon examination, we found that the Illinois law failed that test.

Two state interests were proposed which the statute was said to foster: the encouragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decedent's property. Granting that the State was appropriately concerned with the integrity of the family unit, we viewed the statute as bearing "only the most attenuated relationship to the asserted goal." *Trimble*, *supra*, at 769. We again rejected the argument that "persons will shun illicit relationships because the offspring may not one day reap the benefits" that would accrue to them were they legitimate. *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 173 (1972). The statute therefore was not defensible as an incentive to enter legitimate family relationships.

Illinois' interest in safeguarding the orderly disposition of property at death was more relevant to the statutory classification. We recognized that devising "an appropriate legal framework" in the furtherance of that interest "is a matter particularly within the competence of the individual States." *Trimble*, *supra*, at 771. An important aspect of that frame-

work is a response to the often difficult problem of proving the paternity of illegitimate children and the related danger of spurious claims against intestate estates. See *infra*, at ——. These difficulties, we said, "might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." *Id.*, at 770.

The Illinois statute, however, was constitutionally flawed because, by insisting upon not only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant categories of illegitimate children of intestate men [whose] inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." *Id.*, at 771. We concluded that the Equal Protection Clause required that a statute placing exceptional burdens on illegitimate children in the furtherance of proper State objectives must be more "carefully tuned to alternative considerations," *id.*, at 772, quoting *Mathews* v. *Lucas*, *supra*, at 513, than was true of the broad disqualification in the Illinois law.

III

The New York statute, enacted in 1965, was intended to soften the rigors of previous law which permitted illegitimate children to inherit only from their mothers. See *infra*, at ——. By lifting the absolute bar to paternal inheritance, § 4–1.2 tended to achieve its desired effect. As in *Trimble*, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause.

A

At the outset we observe that § 4–1.2 is different in important respects from the statutory provision overturned in

Trimble. The Illinois statute required, in addition to the father's acknowledgment of paternity, the legitimation of the child through the intermarriage of the parents as an absolute precondition to inheritance. This combination of requirements eliminated "the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." *Trimble*, *supra*, at 770–771. As illustrated by the facts in *Trimble*, even a judicial declaration of paternity was insufficient to permit inheritance.

Under § 4–1.2, by contrast, the marital status of the parents is irrelevant. The single requirement at issue here is an evidentiary one—that the paternity of the father be declared in a judicial proceeding sometime before his death.[2] The child need not have been legitimated in order to inherit from his father. Had the appellant in *Trimble* been governed by § 4–1.2, she would have been a distributee of her father's estate. *See In re Lalli*, 43 N. Y. 2d, at 68, n. 2, 371 N. E. 2d, at 482, n. 2.

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[2] Section 4–1.2 requires not only that the order of filiation be made during the lifetime of the father but that the proceeding in which it is sought have been commenced "during the pregnancy of the mother or within two years from the birth of the child." The New York Court of Appeals declined to rule on the constitutionality of the two-year limitation in both of its opinions in this case because appellant concededly had never commenced a paternity proceeding at all. Thus, if the rule that paternity be judicially declared during his father's lifetime were upheld, appellant would lose for failure to comply with that requirement alone. If, on the other hand, appellant prevailed in his argument that his inheritance could not be conditioned on the existence of an order of filiation, the two-year limitation would become irrelevant since the paternity proceeding itself would be unnecessary. *See In re Lalli*, 43 N. Y. 2d 65, 68, n. 1, 371 N. E. 2d 481, 482, n. 1 (1977); *In re Lalli*, 38 N. Y. 2d 77, 81, n. *, 340 N. E. 2d 721, 724, n. * (1975). As the New York Court of Appeals has not passed upon the constitutionality of the two-year limitation, that question is not before us. Our decision today therefore operates § 4–1.2 under the Equal Protection Clause only with respect to the requirement that a judicial order of filiation be sought during the lifetime of the father of an illegitimate child.

A related difference between the two provisions pertains to the state interests said to be served by them. The Illinois law was defended, in part, as a means of encouraging legitimate family relationships. No such justification has been offered in support of § 4-1.2. The Court of Appeals disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimacy, to mold human conduct or to set societal norms." *In re Lalli*, *supra*, at 70, 371 N. E. 2d, at 483. The absence in § 4-1.2 of any requirement that the parents intermarry or otherwise legitimate a child born out of wedlock and our review of the legislative history of the statute, *infra*, at —, confirm this view.

Our inquiry, therefore, is focused narrowly. We are asked to decide whether the discrete procedural demands that § 4-1.2 places on illegitimate children bear an evident and substantial relation to the particular state interests this statute is designed to serve.

B

The primary state goal underlying the challenged aspects of § 4-1.2 is to provide for the just and orderly disposition of property at death.[*] We long have recognized that this is an area with which the States are justifiably concerned. *Trimble*, *supra*, at 771; *Weber v. Aetna Casualty & Surety Co.*, *supra*, at 170; *Labine v. Vincent*, 401 U. S., at 538 (1971); see also *Lyeth v. Hoey*, 305 U. S. 188, 193 (1938); *Mager v. Grima*, 8 How. 490, 493 (1850).

This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom

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[*] The presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which the justification for an illegitimacy-based classification was absent. E. g., *Jimenez v. Weinberger*, 417 U. S. 628 (1974); *Gomez v. Perez*, 409 U. S. 535 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 170 (1972); *Levy v. Louisiana*, 391 U. S. 68 (1968).

difficult. As one New York Surrogate's Court has observed, "the birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily cared by her. That the child is the child of a particular woman is rarely difficult to prove." *In re Ortiz*, 60 Misc. 2d 756, 761, 303 N. Y. S. 2d 806, 812 (Sur. Ct. 1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. "The putative father often goes his way unconscious of the birth of a child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know *who* is responsible for her pregnancy." *Ibid.* (emphasis in original); accord, *In re Flamm*, 85 Misc. 2d 855, 861, 381 N. Y. S. 2d 573, 576–577 (Sur. Ct. 1975); *In re Hendrix*, 68 Misc. 2d, at 443, 326 N. Y. S. 2d, at 650; cf. *Trimble*, *supra*, at 770, 772.

Thus, a number of problems arise that counsel against treating illegitimate children identically to all other heirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission,[7] consisted of "experienced Surrogates [and] estate practitioners." *In re Flamm*, *supra*, at 858, 381 N. Y. S. 2d, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19 (hereinafter Commission Report). The statute now codified as § 4–1.2 was included.

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[7] The Bennett Commission was created by the New York Legislature in 1961. It was instructed to recommend needed changes in certain areas of state law, including that pertaining to "the descent and distribution of property and the practice and procedure relating thereto." 1961 N. Y. Laws, ch. 731, § 1.

Although the overarching purpose of the proposed statute was "to alleviate the plight of the illegitimate child," Commission Report 37, the Bennett Commission considered it necessary to impose the strictures of § 4-1.2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decedents. The Commission's perception of some of these difficulties was described by Surrogate Sobel, a member of "the busiest [surrogate's] court in the State measured by the number of intestate estates which traffic daily through this court." *In re Pfeiffer*, *supra*, at 857, 381 N. Y. S. 2d, at 574 (Sobel, S.), and a participant in some of the Commission's deliberations:

> "An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent. . . . And, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogate's Courts since title to real property passes under such decree. Our procedural statutes and the Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, *all* illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates. The point made

> in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many—some members suggested a majority—of estates." *Id.*, at 859, 381 N. Y. S. 2d at 575-576; cf. *In re Lowenthal*, 92 Misc. 2d 598, 601-602, 400 N. Y. S. 298, 300-301 (Sur. Ct. 1977).

Even where an individual claiming to be the illegitimate child of a deceased man makes himself known, the difficulties facing an estate are likely to persist. Because of the particular problems of proof, spurious claims may be difficult to expose. The Bennett Commission therefore sought to protect "innocent adults and those rightfully interested in their estates from fraudulent claims of heirship and harassing litigation instituted by those seeking to establish themselves as illegitimate heirs." Commission Report 265.

C

As the State's interests are substantial, we now consider the means adopted by New York to further these interests. In order to avoid the problems described above, the Commission recommended a requirement designed to ensure the accurate resolution of claims of paternity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father. As the New York Court of Appeals observed in its first opinion in this case, the "availability [of the putative father] should be a substantial factor contributing to the reliability of the fact-finding process." *In re Lalli*, 38 N. Y. 2d at 82, 341 N. E. 2d at 724. In addition, requiring that the order be issued during the father's lifetime permits a man to defend his reputation against "unjust accusations in paternity claims," which was a secondary purpose of § 4-1.2. Commission Report 266.

The administration of an estate will be facilitated, and the possibility of delay and uncertainty minimized, where the

entitlement of an illegitimate child to notice and participation is a matter of judicial record before the administration commences. Fraudulent assertions of paternity will be much less likely to succeed, or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond, rather than first brought to light when the distribution of the assets of an estate is in the offing.

Appellant contends that § 4-1.2, like the statute at issue in *Trimble*, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. *Trimble*, *supra*, at 771. He urges that those in his position—"known" illegitimate children who, despite the absence of an order of filiation obtained during their fathers' lifetimes, can present convincing proof of paternity—cannot rationally be denied inheritance as they pose none of the risks § 4-1.2 was intended to minimize.[*]

We do not question that there will be some illegitimate children who would be able to establish their relationship to their deceased fathers without serious disruption of the administration of estates and that, as applied to such individuals,

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[*] Appellant claims that in addition to discriminating between illegitimate and legitimate children, § 4-1.2, in conjunction with N. Y. Dom. Rel. Law § 24 (McKinney 1977), unreasonably discriminates between classes of illegitimate children. Section 24 provides that a child conceived out of wedlock is nevertheless legitimate if, before or after his birth, his parents marry, even if the marriage is void, illegal or judicially annulled. Appellant argues that by classifying as "legitimate" children born out of wedlock whose parents later marry, New York has such respect to those children constitutional courage our § 4-1.2's requirement of proof of paternity. Thus, those "illegitimate" children escape the rigors of the rule unlike their unfortunate counterparts whose parents never marry.

Under § 24, one claiming to be the legitimate child of a deceased man would have to prove not only his paternity but also his maternity and the fact of the marriage of his parents. These additional evidentiary requirements make it reasonable to require less exacting proof of paternity and to treat such children as legitimate for inheritance purposes.

§ 4–1.2 appears to operate unfairly. But few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquiry under the Equal Protection Clause does not focus on the abstract "fairness" of a state law, but on whether the statute's relation to the state interests it is intended to promote is so arbitrary that it lacks the rationality contemplated by the Fourteenth Amendment.

The Illinois statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disinheritance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far in excess of its justifiable purposes. Section 4–1.2 does not share this defect. Inheritance is barred only where there has been a failure to secure evidence of paternity during the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies an unnecessarily large number of children born out of wedlock.

The New York courts have interpreted § 4–1.2 liberally and in such a way as to enhance its utility to both father and child without sacrificing its strength as a prophylactic. For example, a father of illegitimate children who is willing to acknowledge paternity can waive his defenses in a paternity proceeding, *e. g.*, *In re Thomas*, 87 Misc. 2d 1033, 387 N. Y. S. 2d 216 (Sur. Ct. 1976), or even institute such a proceeding himself.[*] N. Y. Fam. Ct. Act § 522 (McKinney Supp. 1977); *In re Fleming*, 85 Misc. 2d at 863, 381 N. Y. S. 2d at 578. In addition, the courts have excused "technical" failures by illegitimate children to comply with the statute in order to prevent unnecessary injustice. *E. g.*, *In re Niles*, 53 App. Div. 2d 983, 385 N. Y. S. 2d 876 (1976), appeal dism., 40 N. Y. 2d 809, 392 N. Y. S. 2d 1027 (1977)

[*] In addition to making it extremely unlikely, however, that a father is always free to provide for his illegitimate child by will. *See In re Flowers*, 85 Misc. 2d 835, 864, 381 N. Y. S. 2d 873, 879 (Sur. Ct. 1975)

filiation order may be signed *nunc pro tunc* to relate back to period prior to father's death when court's factual finding of paternity had been made); *In re Kennedy*, 89 Misc. 2d 551, 554, 392 N. Y. S. 2d 365, 367 (Sur. Ct. 1977) (judicial support order treated as "tantamount to an order of filiation," even though paternity was not specifically declared therein).

As the history of § 4-1.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates *in so far as practicable* rights of inheritance on a par with those enjoyed by legitimate children." Commission Report 265 (emphasis added), while protecting the important state interests we have described. Section 4-1.2 represents a carefully considered legislative judgment as to how this balance best could be achieved.

Even if one believed that § 4-1.2 could have been written somewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability or feasibility of any possible alternative[s]" to the statutory scheme formulated by New York. *Matthews* v. *Lucas*, 427 U. S., at 515. "These matters of practical judgment and empirical calculation are for [the State]. . . . In the end, the precise accuracy of [the State's] calculations is not a matter of specialized judicial competence; and we have no basis to question their detail beyond the evident consistency and substantiality." *Id.*, at 515–516.[*]

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[*] Appellee argues that a footnote in *Trimble* v. *Gordon*, 430 U. S. 762, 772 n. 14 (1977), requires New York to accept the notarized documents in which Lalli referred to him as "my son" as evidence of paternity. That footnote contains dictum to the effect that a "formal acknowledgment of paternity" should be sufficient to satisfy the State's interests. The principle that the footnote elaborates is "that the States are free to assess the problems arising from different forms of proof and to adopt those forms carefully tailored to eliminate imposition and unduly burdensome methods of establishing paternity." *Ibid.* The New York legislature, through the agency of the Bennett Commission, exercised this prerogative when it considered and rejected the possibility of accepting

IV

We conclude that the requirement imposed by § 4 1 2 on illegitimate children who would inherit from their fathers is substantially related to the important state interests the statute is intended to promote. We therefore find no violation of the Equal Protection Clause. The judgment of the New York Court of Appeals, accordingly, is

Affirmed.

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evidence of paternity has formal force in a judicial order. Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19, at 266–267.

Even if New York were constitutionally obliged to accept "formal acknowledgements" of paternity other than judicial orders, it is far from clear that appellant in this case would benefit from such a rule. The word "formal" in the context is not necessarily synonymous with "witnessed" or "notarized." It may connote a more legal object: procedure approved by a court or agency of government. In any event, the document offered by appellant in this case does not satisfy even the most liberal definition of "formal acknowledgement." The certificate was executed by Lalli for the purpose of giving appellant permission to marry, not of proving biological paternity. The true import of the words "my son" is thus ambiguous, illustrating the reasonableness of New York's decision not to accept such evidence.

L.F.P.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT Recirculated: 16 NOV 1978

SUPREME COURT OF THE UNITED STATES

No. 77-1115

3

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix of the Estate of Mario Lalli.
} On Appeal from the Court of Appeals of New York.

[November —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a challenge to the constitutionality of § 4-1.2 of New York's Estates, Powers, and Trusts Law,[1] which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate, appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from Mario as his children. Rosamond Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's

[1] 1965 N. Y. Laws, ch. 958, § 1. The statute was initially codified as N. Y. Decedent Est. Law § 83-a. In 1967 it was recodified without material change as N. Y. Est., Powers and Trusts Law § 4-1.2. 1966 N. Y. Laws, ch. 952. Further non-substantive amendments were made the next year. 1967 N. Y. Laws, ch. 666, §§ 28, 29.

children, they were not lawful distributees of the estate because they had failed to comply with § 4–1.2,[*] which provides in part:

> "An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during of the pregnancy of the mother or within two years from the birth of the child."

Appellant conceded that he had not obtained an order of filiation during his putative father's lifetime. He contended, however, that § 4–1.2, by imposing this requirement, discriminated against him on the basis of his illegitimate birth in violation of the Equal Protection Clause of the Fourteenth

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[*] Section 4–1.2 in its entirety provides:

"(a) For the purposes of this article

"(1) An illegitimate child is the legitimate child of his mother so that he and his issue inherit from his mother and from his maternal kindred

"(2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child.

"(3) The existence of an agreement obligating the father to support the illegitimate child does not qualify such child or his issue to inherit from the father in the absence of an order of filiation made as provided by subparagraph (2).

"(4) A motion for relief from an order of filiation may be made only by the father, and such motion must be made within one year from the entry of such order.

"(b) If an illegitimate child dies, his surviving spouse, issue, mother maternal kindred and father inherit and are entitled to letters of administration as if the decedent were legitimate, provided that the father may inherit or obtain such letters only if an order of filiation has been made in accordance with the provisions of subparagraph (2)."

Amendment.[1] Appellant tendered certain evidence of his relationship with Mario Lalli, including a notarized document in which Lalli, in consenting to appellant's marriage, referred to him as "my son," and several affidavits by persons who stated that Lalli had acknowledged openly and often that Robert and Maureen were his children.

The Surrogate's Court noted that § 4–1.2 had previously, and unsuccessfully, been attacked under the Equal Protection Clause. After reviewing recent decisions of this Court concerning discrimination against illegitimate children, particularly *Labine* v. *Vincent*, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute, *In re Bolton*, 70 Misc. 2d 814, 335 N. Y. S. 2d 177 (Sur. Ct. 1972); *In re Hendrix*, 68 Misc. 2d 439, 444, 326 N. Y. S. 2d 640, 652 (Sur. Ct. 1971); *In re Crawford*, 64 Misc. 2d 758, 762–763, 315 N. Y. S. 2d 890, 895 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distributee of Lalli's estate and therefore lacked status to petition for a compulsory accounting.

On direct appeal the New York Court of Appeals affirmed. *In re Lalli*, 38 N. Y. 2d 77, 340 N. E. 2d 721 (1975). It understood *Labine* to require the State to show no more than that "there is a rational basis for the means chosen by the Legislature for the accomplishment of a permissible State objective." *In re Lalli*, *supra*, 38 N. Y. 2d, at 81, 340 N. E. 2d, at 723. After discussing the problems of proof peculiar to establishing paternity, as opposed to maternity, the court concluded that the State was constitutionally entitled to require a judi-

[1] Appellant also claimed that § 4–1.2 was invalid under N. Y. Const. Art. I, § 11. The New York Court of Appeals did not rule on this issue, nor do we. We also do not consider whether § 4–1.2 unconstitutionally discriminates on the basis of sex or whether the administrator of Mario's estate is required to account for her alleged failure to bring a wrongful death action on behalf of appellant. The latter question was not considered by the Court of Appeals, and the former was raised for the first time by a brief *amicus curiae* in this Court.

cial decree during the father's lifetime as the exclusive form of proof of paternity.

Appellant appealed the Court of Appeals' decision to this Court. While that case was pending here, we decided *Trimble* v. *Gordon*, 430 U. S. 762 (1977). Because the issues in these two cases were similar in some respects, we vacated and remanded to permit further consideration in light of *Trimble*. *Lalli* v. *Lalli*, 431 U. S. 911 (1977).

On remand,[1] the New York Court of Appeals, with one judge dissenting, adhered to its former disposition. *In re Lalli*, 43 N. Y. 2d 65, 371 N. E. 2d 481 (1977). It acknowledged that *Trimble* contemplated a standard of judicial review demanding more than "a mere finding of some remote rational relationship between the statute and a legitimate State purpose." *Id.*, at 67, 371 N. E. 2d, at 482, though less than strictest scrutiny. Finding § 4–1.2 to be "significantly and determinatively different" from the statute overturned in *Trimble*, the court ruled that the New York law was sufficiently related to the State's interest in "the orderly settlement of estates and the dependability of titles to property passing under intestacy laws." *Id.*, at 67, 69–70, 371 N. E. 2d, at 482, 483, quoting *Trimble*, *supra*, at 771, to meet the requirements of equal protection.

Appellant again sought review here, and we noted probable jurisdiction. *Lalli* v. *Lalli*, 435 U. S. 921 (1978). We now affirm.

II

We begin our analysis with *Trimble*. At issue in that case was the constitutionality of an Illinois statute providing that a child born out of wedlock could inherit from his intestate father only if the father had "acknowledged" the child and

[1] On remand from the Court the New York Attorney General was permitted to intervene as a defendant-appellee. He has filed a brief on the merits and argued the case in this Court. Appellee Rosamond Lalli did not present oral argument and has not filed a brief on the merits.

the child had been legitimated by the intermarriage of the parents. The appellant in *Trimble* was born out of wedlock whose father had neither acknowledged her nor married her mother. He had, however, been found to be her father in a judicial decree ordering him to contribute to her support. When the father died intestate, the child was excluded as a distributee because the statutory requirements for inheritance had not been met.

We concluded that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in *Mathews* v. *Lucas*, 427 U. S. 495, 506 (1976), and reaffirmed in *Trimble*, *supra*, at 767, classifications based on illegitimacy are not subject to "strict scrutiny," they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests. Upon examination, we found that the Illinois law failed that test.

Two state interests were proposed which the statute was said to foster: the encouragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decedent's property. Granting that the State was appropriately concerned with the integrity of the family unit, we viewed the statute as bearing "only the most attenuated relationship to the asserted goal." *Trimble*, *supra*, at 768. We again rejected the argument that "persons will shun illicit relationships because the offspring may not one day reap the benefits" that would accrue to them were they legitimate. *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 173 (1972). The statute therefore was not defensible as an incentive to enter legitimate family relationships.

Illinois' interest in safeguarding the orderly disposition of property at death was more relevant to the statutory classification. We recognized that devising "an appropriate legal framework" in the furtherance of that interest "is a matter particularly within the competence of the individual States." *Trimble*, *supra*, at 771. An important aspect of that frame-

work is a response to the often difficult problem of proving the paternity of illegitimate children and the related danger of spurious claims against intestate estates. See *infra*, at ——. These difficulties, we said, "might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." *Id.*, at 770.

The Illinois statute, however, was constitutionally flawed because, by insisting upon not only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant categories of illegitimate children of intestate men [whose] inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." *Id.*, at 771. We concluded that the Equal Protection Clause required that a statute placing exceptional burdens on illegitimate children in the furtherance of proper State objectives must be more "carefully tuned to alternative considerations," *id.*, at 772, quoting *Mathews v. Lucas*, *supra*, at 513, than was true of the broad disqualification in the Illinois law.

III

The New York statute, enacted in 1965, was intended to soften the rigors of previous law which permitted illegitimate children to inherit only from their mothers. See *infra*, at ——. By lifting the absolute bar to paternal inheritance, § 4–1.2 tended to achieve its desired effect. As in *Trimble*, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause.

A

At the outset we observe that § 4–1.2 is different in important respects from the statutory provision overturned in

Trimble. The Illinois statute required, in addition to the *father's* acknowledgment of paternity, the legitimation of the child through the intermarriage of the parents as an absolute precondition to inheritance. This combination of requirements eliminated "the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." *Trimble*, *supra*, at 770-771. As illustrated by the facts in *Trimble*, even a judicial declaration of paternity was insufficient to permit inheritance.

Under § 4-1.2, by contrast, the marital status of the parents is irrelevant. The single requirement at issue here is an evidentiary one—that the paternity of the *father* be *declared* in a judicial proceeding sometime before his death.[1] The child need not have been legitimated in order to inherit from his father. Had the appellant in *Trimble* been governed by § 4-1.2, she would have been a distributee of her father's estate. *See In re Lalli*, 43 N. Y. 2d, at 68 n. 2, 371 N. E. 2d, at 482 n. 2.

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[1] Section 4-1.2 requires not only that the order of filiation be made during the lifetime of the father, but that the proceeding in which it is sought have been commenced "during the pregnancy of the mother or within two years from the birth of the child." The New York Court of Appeals declined to rule on the constitutionality of the two-year limitation in both of its opinions in this case because appellant concededly had never commenced a paternity proceeding at all. Thus, if the rule that paternity be judicially declared during the father's lifetime were upheld, appellant would lose for failure to comply with that requirement alone. If, on the other hand, appellant prevailed in her argument that inheritance could not be conditioned on the existence of an order of filiation the two-year limitation would become irrelevant since the paternity proceeding itself would be unnecessary. *See In re Lalli*, 43 N. Y. 2d 65, 68 n. 1, 371 N. E. 2d 481, 482 n. 1 (1977); *In re Lalli*, 38 N. Y. 2d 27, 30 n. *, 340 N. E. 2d 721, 723 n. * (1975). As the New York Court of Appeals has not passed upon the constitutionality of the two-year limitation, that question is not before us. Our decision today therefore applies § 4-1.2 under the Equal Protection Clause only with respect to its requirement that a judicial order of filiation be issued during the lifetime of the father of an illegitimate child.

A related difference between the two provisions pertains to the state interests said to be served by them. The Illinois law was defended, in part, as a means of encouraging legitimate family relationships. No such justification has been offered in support of § 4-1.2. The Court of Appeals disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimacy, to mold human conduct or to set societal norms." *In re Lalli*, *supra*, at 70, 371 N. E. 2d, at 483. The absence in § 4–1.2 of any requirement that the parents intermarry or otherwise legitimate a child born out of wedlock and our review of the legislative history of the statute, *infra*, at —, confirm this view.

Our inquiry, therefore, is focused narrowly. We are asked to decide whether the discrete procedural demands that § 4-1.2 places on illegitimate children bear an evident and substantial relation to the particular state interests this statute is designed to serve.

B

The primary state goal underlying the challenged aspects of § 4–1.2 [9] is to provide for the just and orderly disposition of property at death.[*] We long have recognized that this is an area with which the States are justifiably concerned. *Trimble*, *supra*, at 771; *Weber* v. *Aetna Casualty & Surety Co.*, *supra*, at 170; *Labine* v. *Vincent*, 401 U. S., at 538 (1971); see also *Lyeth* v. *Hoey*, 305 U. S. 188, 193 (1938); *Mager* v. *Grima*, 8 How. 490, 493 (1850).

This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom

[9] The presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which this justification for an illegitimacy-based classification was absent. *E. g.*, *Stanley* v. *Illinois*, 405 U. S. 645 (1972); *Gomez* v. *Perez*, 409 U. S. 535 (1973); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 170 (1972); *Levy* v. *Louisiana*, 391 U. S. 68 (1968).

difficult. As one New York Surrogate's Court has observed, "the birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove." *In re Ortiz*, 60 Misc. 2d 756, 761, 303 N. Y. S. 2d 806, 812 (Sur. Ct. 1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. "The putative father often goes his way unconscious of the birth of a child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know *who* is responsible for her pregnancy." *Ibid.* (emphasis in original); accord, *In re Flomm*, 85 Misc. 2d 575, 581, 381 N. Y. S. 2d 573, 576–577 (Sur. Ct. 1975); *In re Hendrix*, 68 Misc. 2d, at 443, 326 N. Y. S. 2d, at 650; cf. *Trimble*, *supra*, at 770, 772.

Thus, a number of problems arise that counsel against treating illegitimate children identically to all other heirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission,[7] consisted of "experienced Surrogates [and] estate practitioners." *In re Flomm*, *supra*, at 578, 381 N. Y. S. 2d, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19 (hereinafter Commission Report). The statute now codified as § 4–1.2 was included.

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[7] The Bennett Commission was created by the New York Legislature in 1961. It was instructed to recommend needed changes in certain areas of state law, including that pertaining to "the descent and distribution of property and the practice and procedure relating thereto." 1961 N. Y. Laws, ch. 741, § 1.

Although the overarching purpose of the proposed statute was "to alleviate the plight of the illegitimate child." Commission Report 37, the Bennett Commission considered it necessary to impose the strictures of § 4–1.2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decedents. The Commission's perception of some of these difficulties was described by Surrogate Sobel, a member of "the busiest [surrogate's] court in the State measured by the number of intestate estates which traffic daily through this court," *In re Flemm*, *supra*, at 857, 381 N. Y. S. 2d, at 574 (Sobel, S.), and a participant in some of the Commission's deliberations:

> "An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent. . . . And, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process. . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogate's Courts since title to real property passes under such decrees. Our procedural statutes and the Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, *all* illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates. The point made

> in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many -some members suggested a majority- of estates." *Id.*, at 859, 381 N. Y. S. 2d, at 575–576; cf. *In re Lavenstritt*, 92 Misc. 2d 598, 601–602, 400 N. Y. S. 2d 298, 300–301 (Sur. Ct. 1977).

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As the State's interests are substantial, we now consider the means adopted by New York to further these interests. In order to avoid the problems described above, the Commission recommended a requirement designed to ensure the accurate resolution of claims of paternity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father. As the New York Court of Appeals observed in its first opinion in this case, the "availability [of the putative father] should be a substantial factor contributing to the reliability of the fact-finding process." *In re Lalli*, 38 N. Y. 2d, at 82, 340 N. E. 2d, at 724. In addition, requiring that the order be issued during the father's lifetime permits a man to defend his reputation against "unjust accusations in paternity claims," which was a secondary purpose of § 4–1.2. Commission Report 266.

The administration of an estate will be facilitated, and the possibility of delay and uncertainty minimized, where the

entitlement of an illegitimate child to notice and participation is a matter of judicial record before the administration commences. Fraudulent assertions of paternity will be much less likely to succeed, or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond, rather than first brought to light when the distribution of the assets of an estate is in the offing.

Appellant contends that § 4–1.2, like the statute at issue in *Trimble*, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. *Trimble*, *supra*, at 771. He urges that those in his position—"known" illegitimate children who, despite the absence of an order of filiation obtained during their fathers' lifetimes, can present convincing proof of paternity—cannot rationally be denied inheritance as they pose none of the risks § 4–1.2 was intended to minimize.[*]

We do not question that there will be some illegitimate children who would be able to establish their relationship to their deceased fathers without serious disruption of the administration of estates and that, as applied to such individuals,

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[*] Appellant claims that in addition to discriminating between illegitimate and legitimate children, § 4-1.2, in conjunction with N. Y. Dom. Rel. Law § 24 (McKinney 1977), unreasonably discriminates between classes of illegitimate children. Section 24 provides that a child conceived out of wedlock is nevertheless legitimate if, before or after his birth, his parents marry, even if the marriage is void, illegal or judicially annulled. Appellant argues that by classifying as "legitimate" children born out of wedlock whose parents later marry, New York has, with respect to these children, substituted marriage for § 4-1.2's requirement of proof of paternity. Thus, these "legitimate" children escape the rigors of the rule unlike their unfortunate counterparts whose parents never marry.

Under § 24, one claiming to be the legitimate child of a deceased man would have to prove not only his paternity but also his legitimacy and the fact of the marriage of his parents. These additional evidentiary requirements make it reasonable to accept less exacting proof of paternity and to treat such children as legitimate for inheritance purposes.

§ 4–1.2 appears to operate unfairly. But few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquiry under the Equal Protection Clause does not focus on the abstract "fairness" of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the rationality contemplated by the Fourteenth Amendment.

The Illinois statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disinheritance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far in excess of its justifiable purposes. Section 4–1.2 does not share this defect. Inheritance is barred only where there has been a failure to secure evidence of paternity during the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies an unnecessarily large number of children born out of wedlock.

The New York courts have interpreted § 4–1.2 liberally and in such a way as to enhance its utility to both father and child without sacrificing its strength as a procedural prophylactic. For example a father of illegitimate children who is willing to acknowledge paternity can waive his defenses in a paternity proceeding, *e. g., In re Thomas*, 87 Misc. 2d 1033, 387 N. Y. S. 2d 216 (Sur. Ct. 1976), or even institute such a proceeding himself." N. Y. Jud.; Fam. Ct. Act § 522 (McKinney Supp. 1977); *In re Flemm*, 85 Misc. 2d, at 863, 381 N. Y. S. 2d, at 578. In addition, the courts have excused "technical" failures by illegitimate children to comply with the statute in order to prevent unnecessary injustice. *E. g., In re Niles*, 53 App. Div. 2d 983, 385 N. Y. S. 2d 876 (1976), appeal den., 40 N. Y. 2d 809, 392 N. Y. S. 2d 1027 (1977)

" In addition to making intestate succession possible, of course, a father is always free to provide for his illegitimate child by will. *See In re Wilson*, 85 Misc. 2d 855, 864, 381 N. Y. S. 2d 573, 579 (Sur. Ct. 1976)

filiation order may be signed *nunc pro tunc* to relate back to period prior to father's death when court's factual finding of paternity had been made); *In re Kennedy*, 89 Misc. 2d 554, 554, 392 N. Y. S. 2d 363, 367 (Sur. Ct. 1977) (judicial support order treated as "tantamount to an order of filiation," even though paternity was not specifically declared therein).

As the history of § 4-1.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates *in so far as practicable* rights of inheritance on a par with those enjoyed by legitimate children." Commission Report 265 (emphasis added) while protecting the important state interests we have described. Section 4-1.2 represents a carefully considered legislative judgment as to how this balance best could be achieved.

Even if one believed that § 4-1.2 could have been written somewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability or feasibility of any possible alternative[s]" to the statutory scheme formulated by New York. *Mathews* v. *Lucas*, 427 U. S., at 515. "These matters of practical judgment and empirical calculation are for [the State]. . . . In the end, the precise accuracy of [the State's] calculations is not a matter of specialized judicial competence; and we have no basis to question their detail beyond the evident consistency and substantiality." *Id.*, at 515–516.[*]

---

[*] Appellant argues that a footnote in *Trimble* v. *Gordon*, 430 U. S. 762, 772 n. 11 (1977), requires New York to accept the out-of-court document in which Lalli referred to Lisa as "my son" as evidence of paternity. That footnote contains language to the effect that a "formal acknowledgment of paternity" should be sufficient to satisfy the State's interests. The principle that the footnote elaborates is that the States are free to recognize the problems arising from different forms of proof and to select those forms "carefully tailored to eliminate unproven and unduly burdensome methods of establishing paternity." *Ibid.* The New York Legislature, through the agency of the Bennett Commission, exercised this judgment when it considered and rejected the possibility of accepting

IV

We conclude that the requirement imposed by § 4–1.2 on illegitimate children who would inherit from their fathers is substantially related to the important state interests the statute is intended to promote. We therefore find no violation of the Equal Protection Clause. The judgment of the New York Court of Appeals, accordingly, is

Affirmed.

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evidence of paternity less formal than a judicial order. Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 20, at 266–267.

Even if New York were constitutionally obliged to accept "formal acknowledgments" of paternity other than judicial orders, it is far from clear that appellant in this case would benefit from such a rule. The word "formal" in the context is not necessarily synonymous with "written record" or "notarized." It may connote a more ceremonial procedure approved by a court or agency of government. In any event, the document offered by appellant in this case may not satisfy even the most liberal definition of "formal acknowledgment." The certificate was executed by Lalli for the purpose of giving appellee permission to marry, not of proving biological paternity. The true import of the words "my son" is thus ambiguous, distorting the rationality in New York's decision not to accept such evidence.

Eric - Please

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 20, 1978

Re: No. 77-1115 Lalli v. Lalli

Dear Lewis:

Would you add at the end of your opinion in this case the following:

> "For the reasons stated in his dissent in Trimble v. Gordon, 430 U.S. 762, 777 (1977), Mr. Justice Rehnquist concurs in the judgment of affirmance."

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 28 NOV 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix of the Estate of Mario Lalli.
} On Appeal from the Court of Appeals of New York.

[December —, 1978]

MR. JUSTICE BRENNAN, dissenting.

Trimble v. Gordon, 430 U. S. 762 (1977), declares that the state interest in the accurate and efficient determination of paternity can be adequately served by requiring the illegitimate child to offer into evidence a "formal acknowledgment of paternity." *Id.*, at 772 n. 14. The New York statute is inconsistent with this command. Under the New York scheme, an illegitimate child may inherit intestate only if there has been a judicial finding of paternity during the lifetime of the father.

The present case illustrates the injustice of the departure from *Trimble* worked by today's decision sustaining the New York rule. All interested parties concede that Robert Lalli is the son of Mario Lalli. Mario Lalli supported Robert during his son's youth. Mario Lalli formally acknowledged Robert Lalli as his son. *See Matter of Lalli*, 38 N. Y. 2d 77, 79 (1975). Yet, for want of a judicial order of filiation entered during Mario's lifetime, Robert Lalli is denied his intestate share of his father's estate.

not an acknowledgement of paternity

There is no reason to suppose that the injustice of the present case is aberrant. Indeed it is difficult to imagine an instance in which an illegitimate child, acknowledged and voluntarily supported by his father, would ever inherit intestate under the New York scheme. Social welfare agencies, busy as they are with errant fathers, are unlikely to bring paternity proceedings against fathers who support their chil-

dren. Similarly children who are acknowledged and supported by their father are unlikely to bring paternity proceedings against him. First, they are unlikely to see the need for such adversary proceedings. Second, even if aware of the rule requiring judicial filiation orders they are likely to fear provoking disharmony by suing their father. For the same reasons mothers of such illegitimates are unlikely to bring proceedings against the father. Finally, fathers who do not even bother to make out wills (and thus the intestate) are unlikely to take the time to bring formal filiation proceedings. Thus as a practical matter, by requiring judicial filiation orders entered during the lifetime of the father, the New York statute makes it virtually impossible for acknowledged and freely supported illegitimate children to inherit intestate.

Two interests are said to justify this discrimination against illegitimates. First, it is argued, reliance upon mere informal public acknowledgements of paternity would open the door to fraudulent claims of paternity. I cannot accept this argument. I adhere to the view that when "a father has formally acknowledged his child . . . there is no possible difficulty of proof and no opportunity for fraud or error. This purported interest [in avoiding fraud] can offer no justification for distinguishing between a formally acknowledged illegitimate child and a legitimate one." *Labine* v. *Vincent*, 401 U. S. 532, 552 (1971) (BRENNAN, J., dissenting).

But even if any confidence in the accuracy of formal public acknowledgements of paternity were unfounded, New York has available less drastic means of screening out fraudulent claims of paternity. In addition to requiring formal acknowledgments of paternity, New York might require illegitimates to prove paternity by an elevated standard of proof, *e. g.*, clear and convincing evidence, or even beyond a reasonable doubt. Certainly here, where there is no factual dispute as to the relationship between Robert and Mario Lalli, there is no justification for denying Robert Lalli his intestate share.

Second it is argued, the New York statute protects estates from belated claims by unknown illegitimates. I find this justification even more tenuous than the first. Publication notice and a short limitations period in which claims against the estate could be filed could serve the asserted state interest as well, if not better, than the present scheme. In any event, the fear that unknown illegitimates might assert belated claims hardly justifies cutting off the rights of known illegitimates such as Robert Lalli. I am still of the view that the state interest in the speedy and efficient determination of paternity "is completely served by public acknowledgment of parentage and simply does not apply to the case of acknowledged illegitimate children." *Labine* v. *Vincent*, 401 U. S. 532, 538 n. 10 (1971) (Black, J., dissenting).

I see no reason to retreat from our decision in *Trimble* v. *Gordon*. The New York statute on review here, like the Illinois statute in *Trimble*, excludes "forms of proof which do not compromise the State's interests." *Trimble* v. *Gordon*, 430 U. S. 762, 772 n. 14. The statute thus discriminates against illegitimates through means not substantially related to the legitimate interests that the statute purports to promote. I would invalidate the statute.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 28, 1978

Re: No. 77-1115 - Lalli v. Lalli

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 29, 1978

Re: No. 77-1115 - Lalli v. Lalli

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 30, 1978

Dear Lewis:

Re: 77-1115 Lalli v. Lalli

I can join you more heartily if on page 8 line 4, paragraph B you add after "States" the following:

"have an interest of the highest order."

Regards,

WEB

Mr. Justice Powell

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: NOV 30 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix, of the Estate of Mario Lalli.
On Appeal from the Court of Appeals of New York.

[December —, 1978]

MR. JUSTICE BLACKMUN, concurring.

I agree with the result the Court has reached and concur in its judgment. I also agree with much that has been said in the plurality opinion. My point of departure, of course, is at the plurality's valiant struggle to distinguish, rather than overrule, *Trimble* v. *Gordon*, 430 U. S. 762 (1977), decided just last Term and involving a small probate estate (an automobile worth approximately $2,500) and a sad and appealing fact situation. Four Members of the Court, like the Supreme Court of Illinois, found the case "constitutionally indistinguishable from *Labine* v. *Vincent*, 401 U. S. 532 (1971)," and were in dissent. 430 U. S., at 776, 777.

It seems to me that the Court today gratifyingly reverts to the principles set forth in *Labine* v. *Vincent*. What Mr. Justice Black said for the Court in *Labine* applies with equal force to the present case and, as four of us thought, to the Illinois situation with which *Trimble* was concerned.

I would overrule *Trimble*, but the Court refrains from doing so on the theory that the result in *Trimble* is justified because of the peculiarities of the Illinois Probate Act there under consideration. This, of course, is an explanation, but, for me, it is an unconvincing one. I therefore must regard *Trimble* as a troubled [explainable only because of the overtones of its appealing facts, and offering little precedent for constitutional analysis of State nonstate succession laws. If

Trimble is not a derelict, the corresponding statutes of other States will be of questionable validity until this Court passes them, one by one, as being on the *Trimble* side of the line, or the *Vincent-Lalli* side.

Lalli 10

lfp/ss 11/29/78 Lalli (Revised fn 10)

10. The dissent of Mr. Justice Brennan reduces the opinion in Trimble v. Gordon, 430 U.S. 762 (1977) to a simplistic holding that the Constitution requires a state, in a case of this kind, to recognize as sufficient any "formal acknowledgment of paternity". This reading of Trimble is based on a single phrase taken from a single sentence in a footnote. Id., at 772 n. 14. It ignores the broad rationale of the Court's opinion, and the context in which the note and the phrase relied upon appear. The principle that the footnote elaborates, also ignored by the dissent, is that the states are free to recognize the problems arising from the different forms of proof and to select those forms "carefully tailored to eliminated imprecise and unduly burdensome methods of establishing paternity". Id. The New York legislature, through the agency of the Bennett Commission, exercised this judgment when it considered and rejected the possibility of accepting evidence of paternity less formal than a judicial order. Fourth Report of the

obliged to accept some "formal acknowledgments" of paternity other than judicial orders, appellant in this case could not benefit from such a rule. The document relied upon by the dissent is not an acknowledgment of paternity at all. It is a simple "Certificate of Consent," apparently required at the time in New York, consenting to the marriage of a minor. It consists of one sentence:

> "I, who have hereto subscribed my name do hereby consent that Robert Lalli who is my son and who is under the age of 21 is, shall be united in marriage to Janice Bivens by any minister of the gospel or other person authorized by law to solemnize marriages." App. A-16.

Mario Lalli's signature to this was acknowledged before a notary public, but the acknowledgment contains no oath or affirmation as to the truth of the "certificate of consent". Apart from serving a purpose irrelevant to establishing paternity for inheritance purposes, the meaning of the words "my son" is ambiguous.

The important state interests of safeguarding the accurate and orderly disposition of property at

be accepted as adequate proof of paternity regardless of the context in which the statement was made.

Califm

lfp/ss 11/29/78 Califm (fn)

Add a footnote on page 13 or 14 substantially as follows:

The dissenting opinion finds it "difficult to imagine an instance in which an illegitimate child acknowledged and voluntarily supported by his father, would ever inherit intestate under the New York scheme". Ante, at ___. The opinion then speculates without support from the record that virtually no one would utilize the relatively simple New York procedure of obtaining an "order of affiliation" from a court of competent jurisdiction. This view ignores the actual experience evidenced by the large number of New York cases under this statute. It also would substitute a judgment of this Court for that of the Bennett Commission that was particularly concerned with "alleviat[ing] the plight of the illegitimate child", ante, at ___, as well as that of the New York State legislature.

Lalli 10 lfp/ss 11/29/78 Lalli (Revised fn 10)

10. The dissent of Mr. Justice Brennan reduces the opinion in Trimble v. Gordon, 430 U.S. 762 (1977) to a simplistic holding that the Constitution requires a state, in a case of this kind, to recognize as sufficient any "formal acknowledgement of paternity". This reading of Trimble is based on a single phrase taken from a single sentence in a footnote. Id., at 772 n. 14. It ignores the broad rationale of the Court's opinion and the context in which the note and the phrase relied upon appear. The principle that the footnote elaborates, also ignored by the dissent, is that the states are free to recognize the problems arising from the different forms of proof and to select those forms "carefully tailored to eliminate imprecise and unduly burdensome methods of establishing paternity". Ibid. The New York legislature, through the agency of the Bennett Commission, exercised this judgment when it considered and rejected the possibility of accepting evidence of paternity less formal than a judicial order. Fourth Report of the

obliged to accept some "formal acknowledgments" of paternity other than judicial orders, appellant in this case could not benefit from such a rule. The document relied upon by the dissent is not an acknowledgment of paternity at all. It is a simple "Certificate of Consent," apparently required at the time ~~by~~ New York ~~consenting to~~ for the marriage of a minor. It consists of one sentence:

> "I, who have hereto subscribed my name, do hereby consent that Robert Lalli who is my son and who is under the age of 21 years, shall be united in marriage to Janice Bivens by any minister of the gospel or other person authorized by law to solemnize marriages." App. A-16.

Mario Lalli's signature to this (document) was acknowledged before a notary public, but the acknowledgment contains no oath or affirmation as to the truth of the "certificate of consent". ~~Apart from serving a purpose irrelevant~~ Because the certificate was executed for the purpose of giving consent to marry, not of proving biological paternity ~~to establishing paternity for inheritance purposes~~, the meaning of the words "my son" is ambiguous. (5)

The notary did not even have them confirm the identity of the [illegible]

The important state interests of safeguarding the accurate and orderly disposition of property at

be accepted as adequate proof of paternity regardless of the context in which the statement was made.

Lalli

lfp/ss 11/29/78 Lalli (fn ___)

Add a footnote on page 13 or 14 substantially as follows:

The dissenting opinion finds it "difficult to imagine an instance in which an illegitimate child acknowledged and voluntarily supported by his father, would ever inherit intestate under the New York scheme". Post ~~Ante~~, at ___. The opinion then speculates without support from the record that virtually no one would utilize the realitively simple New York procedure of obtaining an "order of affiliation" from a court of competent jurisdiction. This view ignores the actual experience evidenced by the large number of New York cases under this statute. It also would substitute a judgment of this Court for that of the Bennett Commission that was particularly concerned with "alleviat[ing] the plight of the illegitimate child", ~~Supra~~ ~~Ante~~, at ___, as well as that of the New York State legislature.

Circ. pp 1, 5, 8, 9, 12, 14, 15, 16

Brought down 12/11/78

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: 8 DEC 1978

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix of the Estate of Mario Lalli.
On Appeal from the Court of Appeals of New York.

[November —, 1978]

MR. JUSTICE POWELL announced the judgment of the Court in an opinion in which THE CHIEF JUSTICE and MR. JUSTICE STEWART join.

This case presents a challenge to the constitutionality of § 4–1.2 of New York's Estates, Powers, and Trusts Law,[1] which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate, appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from

[1] 1963 N. Y. Laws, ch. 958, § 1. The statute was initially codified as N. Y. Decedent Est. Law § 83–a. In 1966 it was recodified without material change as N. Y. Est., Powers and Trusts Law § 4–1.2. 1966 N. Y. Laws, ch. 952. Further nonsubstantive amendments were made the next year. 1967 N. Y. Laws, ch. 686, §§ 28, 29.

Mario as his children. Rosamond Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's children, they were not lawful distributees of the estate because they had failed to comply with § 4–1.2[*] which provides in part:

> "An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during of the pregnancy of the mother or within two years from the birth of the child."

Appellant conceded that he had not obtained an order of filiation during his putative father's lifetime. He contended, however, that § 4–1.2 by imposing this requirement, discriminated against him on the basis of his illegitimate birth in vio-

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[*] Section 4–1.2 in its entirety provides:

"(a) For the purposes of this article:

"(1) An illegitimate child is the legitimate child of his mother so that he and his issue inherit from his mother and from his maternal kindred.

"(2) An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child.

"(3) The existence of an agreement obligating the father to support the illegitimate child does not qualify such child or his issue to inherit from the father or the issue of an order of filiation made as prescribed by subparagraph (2).

"(4) A motion for relief from an order of filiation may be made only by the father, and such motion must be made within one year from the entry of such order.

"(b) If an illegitimate child dies, his surviving spouse, issue, mother, maternal kindred and father inherit real and personal as heirs of administration as if the decedent were legitimate, provided that the father may inherit or obtain such letters only if an order of filiation has been made in accordance with the provisions of subparagraph (2)."

lation of the Equal Protection Clause of the Fourteenth Amendment.[1] Appellant tendered certain evidence of his relationship with Mario Lalli, including a notarized document in which Lalli, in consenting to appellant's marriage, referred to him as "my son," and several affidavits by persons who stated that Lalli had acknowledged openly and often that Robert and Maureen were his children.

The Surrogate's Court noted that § 4–1.2 had previously, and unsuccessfully, been attacked under the Equal Protection Clause. After reviewing recent decisions of this Court concerning discrimination against illegitimate children, particularly *Labine* v. *Vincent*, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute, *In re Bolton*, 70 Misc. 2d 814, 335 N. Y. S. 2d 177 (Sur. Ct. 1972); *In re Hendrix*, 68 Misc. 2d 430, 444, 326 N. Y. S. 2d 646, 652 (Sur. Ct. 1971); *In re Crawford*, 64 Misc. 2d 758, 762–763, 315 N. Y. S. 2d 890, 895 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distributee of Lalli's estate and therefore lacked status to petition for a compulsory accounting.

On direct appeal the New York Court of Appeals affirmed. *In re Lalli*, 38 N. Y. 2d 77, 340 N. E. 2d 721 (1975). It understood *Labine* to require the State to show no more than that "there is a rational basis for the means chosen by the Legislature for the accomplishment of a permissible State objective." *In re Lalli*, *supra*, 38 N. Y. 2d, at 81, 340 N. E. 2d, at 723. After discussing the problems of proof peculiar to establishing paternity as opposed to maternity, the court concluded

[1] Appellant also claimed that § 4–1.2 was invalid under N. Y. Const., Art. 1, § 11. The New York Court of Appeals did not rule on this issue, nor do we. We also do not consider whether § 4–1.2 unconstitutionally discriminates on the basis of sex or whether the administratrix of Mario's estate is required to assume for her alleged infant ward a wrongful death action on behalf of appellant. The latter question was not considered by the Court of Appeals, and the former was raised for the first time by a brief *amicus curiae* in this Court.

that the State was constitutionally entitled to require a judicial decree during the father's lifetime as the exclusive form of proof of paternity.

Appellant appealed the Court of Appeals' decision to this Court. While that case was pending here, we decided *Trimble* v. *Gordon*, 430 U. S. 762 (1977). Because the issues in these two cases were similar in some respects, we vacated and remanded to permit further consideration in light of *Trimble*. *Lalli* v. *Lalli*, 431 U. S. 911 (1977).

On remand,* the New York Court of Appeals, with one judge dissenting, adhered to its former disposition. *In re Lalli*, 43 N. Y. 2d 65, 371 N. E. 2d 481 (1977). It acknowledged that *Trimble* contemplated a standard of judicial review demanding more than "a mere finding of some remote rational relationship between the statute and a legitimate State purpose." *Id.*, at 67, 371 N. E. 2d, at 482, though less than strictest scrutiny. Finding § 4–1.2 to be "significantly and determinatively different" from the statute overturned in *Trimble*, the court ruled that the New York law was sufficiently related to the State's interest in "the orderly settlement of estates and the dependability of titles to property passing under intestacy laws," *id.*, at 67, 69–70, 371 N. E. 2d, at 482, 483, quoting *Trimble*, *supra*, at 771, to meet the requirements of equal protection.

Appellant again sought review here, and we noted probable jurisdiction. *Lalli* v. *Lalli*, 435 U. S. 921 (1978). We now affirm.

II

We begin our analysis with *Trimble*. At issue in that case was the constitutionality of an Illinois statute providing that a child born out of wedlock could inherit from his intestate father only if the father had "acknowledged" the child and

*On remand from this Court, the New York Attorney General was permitted to intervene as a defendant-respondent. He has filed a brief on the merits and argued the case in this Court. Appellee Rosenthal Lalli did not present oral argument and has not filed a brief on the merits.

the child had been legitimated by the intermarriage of the parents. The appellant in *Trimble* was a child born out of wedlock whose father but mother acknowledged her nor married her mother. He had, however, been found to be her father in a judicial decree ordering him to contribute to her support. When the father died intestate, the child was excluded as a distributee because the statutory requirements for inheritance had not been met.

We concluded that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in *Mathews v. Lucas*, 427 U. S. 495, 505 (1976), and reaffirmed in *Trimble*, *supra*, at 767, classifications based on illegitimacy are not subject to "strict scrutiny," they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests. Upon examination, we found that the Illinois law failed that test.

Two state interests were proposed which the statute was said to foster: the encouragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decedent's property. Granting that the State was appropriately concerned with the integrity of the family unit, we viewed the statute as bearing "only the most attenuated relationship to the asserted goal." *Trimble*, *supra*, at 768. We again rejected the argument that "persons will shun illicit relationships because the offspring may not one day reap the benefits" that would accrue to them were they legitimate. *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 173 (1972). The statute therefore was not defensible as an incentive to enter legitimate family relationships.

Illinois' interest in safeguarding the orderly disposition of property at death was more relevant to the statutory classification. We recognized that devising "an appropriate legal framework" in the furtherance of that interest "is a matter particularly within the competence of the individual States." *Trimble*, *supra*, at 771. An important aspect of that frame-

work is a response to the often difficult problem of proving the paternity of illegitimate children and the related danger of spurious claims against intestate estates. See *infra*, at . These difficulties, we said, "might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." *Id.*, at 770.

The Illinois statute, however, was constitutionally flawed because, by insisting upon not only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant categories of illegitimate children of intestate sires [whose] inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." *Id.*, at 771. We concluded that the Equal Protection Clause required that a statute placing exceptional burdens on illegitimate children in the furtherance of proper State objectives must be more "carefully tuned to alternative considerations," *id.*, at 772, quoting *Mathews* v. *Lucas*, *supra*, at 513, than was true of the broad disqualification in the Illinois law.

III

The New York statute, enacted in 1965, was intended to soften the rigors of previous law which permitted illegitimate children to inherit only from their mothers. See *infra*, at . By lifting the absolute bar to paternal inheritance, § 4-1.2 tended to achieve its desired effect. As in *Trimble*, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause.

A

At the outset we observe that § 4-1.2 is different in important respects from the statutory provision overturned in

Trimble. The Illinois statute required, in addition to the father's acknowledgment of paternity, the legitimation of the child through the intermarriage of the parents as an absolute precondition to inheritance. This combination of requirements eliminated "the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." *Trimble*, *supra*, at 770-771. As illustrated by the facts in *Trimble*, even a judicial declaration of paternity was insufficient to permit inheritance.

Under § 4-1.2, by contrast, the marital status of the parents is irrelevant. The single requirement at issue here is an evidentiary one—that the paternity of the father be declared in a judicial proceeding sometime before his death.[1] The child need not have been legitimated in order to inherit from his father. Had the appellant in *Trimble* been governed by § 4-1.2, she would have been a distributee of her father's estate. See *In re Lalli*, 43 N. Y. 2d, at 68 n. 2, 371 N. E. 2d, at 482 n. 2.

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[1] Section 4-1.2 requires not only that the order of filiation be made during the lifetime of the father, but that the proceeding in which it is sought have been commenced "during the pregnancy of the mother or within two years from the birth of the child." The New York Court of Appeals declined to rule on the constitutionality of the two-year limitation in both of its opinions in this case because appellant conceded that never commenced a paternity proceeding at all. Thus, if the rule that paternity is judicially declared during his father's lifetime were upheld, appellant would have no further opportunity to comply with the requirement above it, on the other hand, appellant asserted in his arguments that his inheritance ought not be conditioned on the existence of an order of filiation, the two-year limitation would become irrelevant since the paternity proceeding itself would be unnecessary. See *In re Lalli*, 43 N. Y. 2d 65, 68 n. 1, 371 N. E. 2d 482, 482 n. 1 (1977); *In re Lalli*, 58 N. Y. 2d 77, 81 n. *, 310 N. E. 2d 521, 523 n. * (1978). As the New York Court of Appeals has not passed upon the constitutionality of the two-year limitation, that question is not before us. Our decision today therefore sustains § 4-1.2 under the Equal Protection Clause only with respect to its requirement that a judicial order of filiation be issued during the lifetime of the father of an illegitimate child.

A related difference between the two provisions pertains to the state interests said to be served by them. The Illinois law was defended, in part, as a means of encouraging legitimate family relationships. No such justification has been offered in support of § 4-1.2. The Court of Appeals disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimacy, to mold human conduct or to set societal norms." *In re Lalli*, *supra*, at 70, 371 N. E. 2d, at 483. The absence in § 4-1.2 of any requirement that the parents intermarry or otherwise legitimate a child born out of wedlock and our review of the legislative history of the statute, *infra*, at —, confirm this view.

Our inquiry, therefore, is focused narrowly. We are asked to decide whether the discrete procedural demands that § 4-1.2 places on illegitimate children bear an evident and substantial relation to the particular state interests this statute is designed to serve.

B

The primary state goal underlying the challenged aspects of § 4-1.2 is to provide for the just and orderly disposition of property at death.[3] We long have recognized that this is an area with which the States have an interest of considerable magnitude. *Trimble*, *supra*, at 771; *Weber v. Aetna Casualty & Surety Co.*, *supra*, at 170; *Labine v. Vincent*, 401 U. S., at 538 (1971); see also *Loeb v. Hoey*, 305 U. S. 188, 193 (1938); *Harper v. Grimes*, 8 How. 490, 493 (1850).

This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved. Establishing maternity is seldom

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[3] The presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which that justification for an illegitimacy based classification was absent. E. g., *Jimenez v. Weinberger*, 417 U. S. 628 (1974); *Gomez v. Perez*, 409 U. S. 535 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 170 (1972); *Levy v. Louisiana*, 391 U. S. 68 (1968).

difficult. As one New York Surrogate's Court has observed, "the birth of the child is a recorded or registered event usually taking place in the presence of others. In most cases the child remains with the mother and for a time is necessarily reared by her. That the child is the child of a particular woman is rarely difficult to prove." *In re Ortiz*, 60 Misc. 2d 758, 761, 303 N. Y. S. 2d 806, 812 (Sur. Ct. 1969). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. "The putative father often goes his way unconscious of the birth of a child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother. Indeed the mother may not know *who* is responsible for her pregnancy." *Ibid.* (emphasis in original); accord, *In re Flamm*, 85 Misc. 2d 855, 861, 381 N. Y. S. 2d 573, 576–577 (Sur. Ct. 1975); *In re Hendrix*, 68 Misc. 2d, at 443, 326 N. Y. S. 2d, at 650; cf. *Trimble*, *supra*, at 770, 772.

Thus, a number of problems arise that counsel against treating illegitimate children identically to all other heirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission,[7] consisted of individuals experienced in the practical problems of estate administration. *In re Flamm*, *supra*, at 858, 381 N. Y. S. 2d, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19 (hereinafter Commission Report). The statute now codified as § 4-1.2 was included.

[7] The Bennett Commission was created by the New York Legislature in 1961. It was instructed to recommend needed changes in certain areas of state law, including "that pertaining to the descent and distribution of property and the practice and procedure relating thereto." 1961 N. Y. Laws, ch. 731, § 1.

Although the overarching purpose of the proposed statute was "to alleviate the plight of the illegitimate child." Commission Report 37, the Bennett Commission considered it necessary to impose the strictures of § 4-1.2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decedents. The Commission's perception of some of those difficulties was described by Surrogate Sobel, a member of "the busiest [surrogate's] court in the State measured by the number of intestate estates which traffic daily through this court," *In re Pfrimmer*, *supra*, at 577, 381 N. Y. S. 2d, at 574 (Sobel, S.), and a participant in some of the Commission's deliberations:

> "An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent, . . . And, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegitimate must be served with process, . . . How does one cite and serve an illegitimate of whose existence neither family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in *any* estate when there always exists the possibility however remote of a secret illegitimate lurking in the buried past of a parent or an ancestor of a class of beneficiaries? Finality in decree is essential in the Surrogate's Courts since title to real property passes under such decree. Our procedural statutes and the Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, all illegitimates must be served with process. This would be no real problem with respect to those few estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "unknown" illegitimates. The point made

in the [Bennett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many—some members suggested a majority—of estates." *Id.*, at 859, 384 N. Y. S. 2d, at 575–576; cf. *In re Lacquatrelli*, 92 Misc. 2d 598, 601–602, 400 N. Y. S. 2d 298, 300–301 (Sur. Ct. 1977).

Even where an individual claiming to be the illegitimate child of a deceased man makes himself known, the difficulties facing an estate are likely to persist. Because of the particular problems of proof, spurious claims may be difficult to expose. The Bennett Commission therefore sought to protect "innocent adults and those rightfully interested in their estates from fraudulent claims of heirship and harassing litigation instituted by those seeking to establish themselves as illegitimate heirs." Commission Report 265.

C

As the State's interests are substantial, we now reconsider the means adopted by New York to further these interests. In order to avoid the problems described above, the Commission recommended a requirement designed to ensure the accurate resolution of claims of paternity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father. As the New York Court of Appeals observed in its first opinion in this case, the "availability [of the putative father] should be a substantial factor contributing to the reliability of the fact-finding process." *In re Lalli*, 38 N. Y. 2d, at 82, 340 N. E. 2d, at 724. In addition, requiring that the order be issued during the father's lifetime permits a man to defend his reputation against "unjust accusations [in paternity claims]," which was a secondary purpose of § 4-1.2. Commission Report 266.

The administration of an estate will be facilitated, and the possibility of delay and uncertainty minimized, where the

entitlement of an illegitimate child to notice and participation is a matter of judicial record before the administration commences. Fraudulent assertions of paternity will be much less likely to succeed, or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond, rather than first brought to light when the distribution of the assets of an estate is in the offing.[7]

Appellant contends that § 4-1.2, like the statute at issue in *Trimble*, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. *Trimble*, *supra*, at 771. He urges that those in his position—"known" illegitimate children who, despite the absence of an order of filiation obtained during their fathers' lifetimes, can present convincing proof of paternity—cannot rationally be denied inheritance as they pose none of the risks § 4-1.2 was intended to minimize.[8]

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[7] In affirming the judgment below, we do not, of course, restrict a State's freedom to require proof of paternity by means other than a judicial decree. Thus, a State may prescribe any formal method of proof, whether it be similar to that provided by § 4-1.2 or some other regularized procedure that would assure the authenticity of the acknowledgment. As we noted in *Trimble*, 430 U. S., at 772 n. 14, such a procedure would be sufficient to satisfy the State's interests. See also n. 11, *infra*.

[8] Appellant claims that, in addition to discriminating between illegitimate and legitimate children, § 4-1.2, in conjunction with N. Y. Dom. Rel. Law § 24 (McKinney 1977), impermissibly discriminates between classes of illegitimate children. Section 24 provides that a child conceived out of wedlock is nevertheless legitimate if, before or after his birth, his parents marry, even if the marriage is void, illegal, or judicially annulled. Appellant argues that by classifying as "legitimate" children born out of wedlock whose parents later marry, New York has, with respect to those children, substituted marriage for § 4-1.2's requirement of proof of paternity. Thus, these "illegitimate" children escape the rigors of the rule unlike their unfortunate counterparts whose parents never marry.

Under § 24, one claiming to be the legitimate child of a deceased man would have to prove not only his paternity but also his maternity and the fact of the marriage of his parents. These additional evidentiary

We do not question that there will be some illegitimate children who would be able to establish their relationship to their deceased fathers without serious disruption of the administration of estates and that, as applied to such individuals, § 4–1.2 appears to operate unfairly. But few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquiry under the Equal Protection Clause does not focus on the abstract "fairness" of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tenuous that it lacks the rationality contemplated by the Fourteenth Amendment.

The Illinois statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disinheritance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far in excess of its justifiable purposes. Section 4–1.2 does not share this defect. Inheritance is barred only where there has been a failure to secure evidence of paternity during the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies an unnecessarily large number of children born out of wedlock.

The New York courts have interpreted § 4–1.2 liberally and in such a way as to enhance its utility to both father and child without sacrificing its strength as a procedural prophylactic. For example, a father of illegitimate children who is willing to acknowledge paternity can waive his defenses in a paternity proceeding, *e. g., In re Thomas*, 87 Misc. 2d 1033, 387 N. Y. S. 2d 215 (Sur. Ct. 1976), or even institute such a proceeding himself.[7] N. Y. Jud.; Fam. Ct. Act § 522

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[6] Statutes make it reasonable to require proof of paternity and to treat such children as legitimate for inheritance purposes.

[7] The decision to forego any state succession possible, of course, is always free to provide for his illegitimate child by will. *See In re Flower*, 85 Misc. 2d 535, 538, 381 N. Y. S. 2d 573, 576 (Sur. Ct. 1975).

(McKinney Supp. 1977); *In re Vivona*, 85 Misc. 2d, at 863, 381 N. Y. S. 2d, at 578. In addition, the courts have excused "technical" failures by illegitimate children to comply with the statute in order to prevent unnecessary injustice. *E. g., In re Niles*, 51 App. Div. 2d 983, 385 N. Y. S. 2d 876 (1976), appeal den., 40 N. Y. 2d 808, 392 N. Y. S. 2d 1027 (1977) (filiation order may be signed *nunc pro tunc* to relate back to period prior to father's death when court's factual finding of paternity had been made); *In re Kennedy*, 80 Misc. 2d 551, 554, 392 N. Y. S. 2d 365, 367 (Sur. Ct. 1977) (judicial support order treated as "tantamount to an order of filiation," even though paternity was not specifically declared therein).

As the history of § 4-1.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates *so far as practicable* rights of inheritance on a par with those enjoyed by legitimate children." Commission Report 265 (emphasis added), while protecting the important state interests we have described. Section 4-1.2 represents a carefully considered legislative judgment as to how this balance best could be achieved.

Even if, as MR. JUSTICE BRENNAN believes, § 4-1.2 could have been written somewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability or feasibility of any possible alternative[s]" to the statutory scheme formulated by New York. *Mathews* v. *Lucas*, 427 U. S., at 515. "These matters of practical judgment and empirical calculation are for [the State]. . . . In the end, the precise accuracy of [the State's] calculations is not a matter of specialized judicial competence; and we have no basis to question their detail beyond the evident consistency and substantiality." *Id.*, at 515-516.[7]

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[7] The logic of MR. JUSTICE BRENNAN would reduce the opinion in *Trimble* v. *Gordon*, 430 U. S. 762 (1977), to a conclusion holding that the Constitution requires a State, in a case of this kind, to recognize a child's right of any formal acknowledgment of paternity. The reading of *Trimble*

We conclude that the requirement imposed by § 4-1.2 on illegitimate children who would inherit from their fathers is substantially related to the important state interests the stat-

is based on a single phrase lifted from a footnote. *Id.*, at 772 n. 14. It ignores both the broad rationale of the Court's opinion and the context in which the note and the phrase relied upon appear. The principle that the footnote elaborates is that the States are free to recognize the problems arising from different forms of proof and to select those forms carefully tailored to eliminate imprecise and unduly burdensome methods of establishing paternity." *Ibid.* The New York Legislature, with the benefit of the Bennett Commission's study, exercised this judgment when it reconsidered and rejected the possibility of accepting evidence of paternity less formal than a judicial order. Fourth Report of the Temporary State Commission on the Modernization Revision and Simplification of the Law of Estates, Legis. Doc. 1965, No. 19, at 265-267.

The "formal acknowledgment" contemplated by *Trimble* is such as would minimize post-death litigation, *i. e.*, a regularly prescribed, legally recognized method of acknowledging paternity. See n. 8, *supra*. It is thus plain that footnote 14 in *Trimble* does not sustain the dissenting opinion. Indeed, the document relied upon by the dissent is not an acknowledgment of paternity at all. It is a simple "Certificate of Consent" that apparently was required at the time by New York for the marriage of a minor. It consists of one sentence:

"This is to certify that I, who have hereto subscribed my name, do hereby consent that Robert Lalli who is my son and who is under the age of 21 years, shall be united in marriage to Janice Bivona by an minister of the gospel or other person authorized by law to solemnize marriages." App. A-16.

Mario Lalli's signature to this document was acknowledged by a notary public, but the certificate contains no oath or affirmation as to the truth of its contents. The notary did no more than confirm the identity of Lalli. Because the certificate was executed for the purpose of giving consent to marry, not of proving biological paternity, the meaning of the words "my son" is ambiguous. One can readily imagine that Carl Robert Lalli's half-brother, who was not Mario's son but who took the surname Lalli and lived as a member of the household, sought permission to marry. Mario might also have referred to him as "my son" on a consent certificate.

The important state interests of safeguarding the accurate and orderly disposition of property at death, emphasized in *Trimble* and reiterated in our opinion today, could be frustrated easily if there were a constitutional

ute is intended to promote. We therefore find no violation of the Equal Protection Clause.

The judgment of the New York Court of Appeals is

Affirmed.

For the reasons stated in his dissent in *Trimble* v. *Gordon*, 430 U. S. 762, 777 (1977), MR. JUSTICE REHNQUIST concurs in the judgment of affirmance.

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tute that any notarized but out-of-court statement identifying an individual as a "child" must be accepted as adequate proof of paternity regardless of the context in which the statement was made.

Go: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

6 Dec 1978

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SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,
v.
Rosamond Lalli, Administratrix of the Estate of Mario Lalli,

On Appeal from the Court of Appeals of New York.

[December —, 1978]

MR. JUSTICE STEWART, concurring.

It seems to me that MR. JUSTICE POWELL's opinion convincingly demonstrates the significant differences between the New York law at issue here and the Illinois law at issue in *Trimble* v. *Gordon*, 430 U. S. 762. Therefore, I cannot agree with the view expressed in the concurring opinion that *Trimble* v. *Gordon* is now "a derelict," or with the implication that in deciding the two cases the way it has this Court has failed to give authoritative guidance to the courts and legislatures of the several States.

lfp/ss 12/9/78 Lalli

This case is here on appeal from the New York Court of Appeals.

A New York statute ~~allows~~ illegitimate children may inherit from their intestate fathers only if they have obtained a judicial order ~~declaring~~ of paternity during the father's lifetime.

Appellant, who claims to be the illegitimate son of Mario Lalli, was not permitted to participate in ~~the administration of~~ Lalli's estate because he had not complied with this statute. The New York Court of Appeals rejected appellant's argument that the statute denied him equal protection of the law in violation of the Fourteenth Amendment.

Our prior decisions have made clear that statutes creating classifications based on illegitimacy are invalid unless they are substantially related to ~~permissible~~ important governmental interests. We think the New York statute satisfies this test.

The States have an important interest in the just and orderly disposition of property upon the death.

Determining rule for paternity of children

Determining paternity of children born out of wedlock often creates vexing evidentiary problems in the administration of estates. Following a study by a Special Commission, New York has chosen to require a judicial form of proof, ~~of paternity~~, recorded during the father's lifetime. ~~It was thought that a simple~~ A judicial decree assures reliable evidence of paternity, reducing the possibilities of fraud, error, and delay. Nor is this an unduly burdensome method of establishing paternity.

We therefore ~~believe~~ hold that New York's solution to this problem satisfies the requirements of the Equal Protection Clause, ~~of the Fourteenth Amendment.~~

The Chief Justice and Mr. Justice Stewart have joined ~~me in the plurality~~ my opinion, the latter adding a concurring opinion. Mr. Justice Blackmun, in a separate opinion, and Mr. Justice Rehnquist concur in the judgment. Mr. Justice Brennan, joined by Mr. Justice White, Mr. Justice Marshall, and Mr., Justice Stevens, has written a dissenting opinion.

2 copies to Mr. Putzel 11/30/78

Join LFP 11/30/78	will dissent 11/14/78	Join LFP 11/14/78	await dissent 11/14/78	await dissent 11/14/78	Concur in the judgment 1st draft	10/9/78 1st draft 11/14/78	Concurs in the judgment 11/22/78	await dissent 11/14/78
	1st draft 11/28/78	Concurring opinion 1st draft 12/6/78	Joins WJB 11/28/78	Join WJB 11/29/78	11/30/78	2nd draft 11/30/78 3rd draft 12/6/78		Joins WJB 11/28/78

77-1115 Lalli v. Lalli

December 27, 1978

Cases held for No. 77-1115, Lalli v. Lalli

MEMORANDUM TO THE CONFERENCE

Two cases have been held for Lalli v. Lalli. These are Buck v. Hunter, No. 77-1567, and Robinson v. Kolstad, No. 78-5441.

No. 77-1567 BUCK v. HUNTER (Appeal from N.Y. Ct. Appeals)

Buck comes from New York and involves Estates, Powers, & Trusts Law § 4-1.2, the same statute the Court was faced with in Lalli. The facts are quite different from those in Lalli. In Buck, the intestate decedent himself is the illegitimate, and the contest is between his maternal kindred and his paternal kindred. A part of § 4-1.2 not considered in Lalli provides (1) that the mother and maternal kindred may inherit from an illegitimate; (2) the father may inherit from the illegitimate if the order of filiation described in Lalli has been obtained; and (3) the paternal kindred may in no event inherit from an illegitimate.

There was no filiation order in this case. Thus, the paternal kindred face two obstacles: (1) since the decedent's father did not obtain the requisite order of filiation, and therefore could not himself have inherited from the illegitimate, the paternal kindred are barred for that reason alone from inheriting through the father; (2) even if the father had obtained the filiation order, the statute absolutely bars any inheritance by paternal kindred. The New York Court of Appeals affirmed the judgment against the paternal kindred for both of these reasons.

It is clear that the Court need not consider the second basis for the exclusion of the paternal kindred because the first ground -- the failure of the father to obtain an order of filiation -- is an adequate and independent ground for the result. In light of the holding of Lalli that an illegitimate child himself may be excluded

from inheritance in the absence of an order of filiation, it seems to follow a fortiori that remote paternal kindred also may be excluded for the same reason. I therefore shall vote to dismiss for want of a substantial federal question in Buck.

No. 78-5441 ROBINSON v. KOLSTAD (Appeal from Sup. Ct. of Wisc.)

This case, also on appeal, comes from Wisconsin where the relevant statute provides that an illegitimate child may inherit from his intestate father only if paternity has been established by (1) a judicial determination, (2) an admission by the father in open court, or (3) a writing, signed by the father, acknowledging paternity. The state courts have interpreted the statute as requiring that one of these steps to taken during the lifetime of the father. This, of course, is a more liberal statute than New York's, and on the facts of Lalli, Robinson would be an easy dismissal.

The facts of the case are quite dissimilar, however. Appellant's parents were teenagers who planned to marry. Two days after they learned that the mother was pregnant, the father was killed in an auto accident. The state supreme court held that appellant, born several months later, was not entitled to prosecute a wrongful death action against the other driver involved in the accident.

Two factors complicate the case. First, the illegitimate child seeks not to inherit, but to pursue a wrongful death action. A state statute says that only "lineal descendents" may recover for wrongful death, and the state courts have declared that, for illegitimates, a lineal descendent is one who would be entitled to inherit. Thus, the entitlement to inherit and the right to recover for wrongful death are coextensive. Second, the illegitimate child was not born until after his father's death, making it seem inequitable on these facts to require the establishment of paternity during the father's lifetime.

As a matter of constitutional doctrine, the second problem does not trouble me excessively. It does seem unfair to require that paternity be established even before the child is born, since few parents would be likely to take the necessary steps that early. But as the plurality said in Lalli, the issue is not whether the statute is "fair" in

all cases, but whether it is substantially related to the state interests to be served. See slip op. at 13. In my judgment, the statute is sufficiently related to permissible state purposes. I do not believe the Constitution requires a special rule for posthumously-born children.

The other problem is more difficult. The Court's recent illegitimacy decisions have rather consistently distinguished between inheritance cases and wrongful-death cases. Footnote 6 of the plurality opinion in Lalli states that "[t]he presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which that justification for an illegitimacy-based classification was absent." In Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 170 (1972), the question was whether two illegitimate children, one of whom was born after his father's death, could be categorically denied a share in the death benefits payable under Louisiana's workmen's compensation statute for the death of their father. Weber held that they could not. The opinion distinguished Labine v. Vincent, 401 U.S. 532 (1971), by noting that "the substantial state interest in providing for 'the stability of . . . land titles and in the prompt and definitive determination of the valid ownership of property left by decedents,' . . . is absent in the case at hand." 406 U.S., at 170. Labine itself stressed the magnitude of the state's interest in regulating inheritance, as opposed to wrongful death recoveries. See 401 U.S., at 535-537, 539.

In light of these precedents, I do not believe Lalli provides grounds for dismissing Robinson. Indeed, the proper disposition of this case on the merits appears to be a close question. Weber arguably is distinguishable because it, like Trimble, involved a categorical exclusion based on illegitimacy. The Wisconsin statute, more like Lalli, imposes only an evidentiary burden. Yet, in wrongful-death cases the state cannot justify burdens on illegitimates in terms of its need to assure the expeditious and orderly disposition of an existing estate, an obviously important factor in Lalli.

I recommend that Robinson be held for Parham v. Hughes, No. 78-3, to be argued next month. The question there is whether Georgia may categorically prohibit a father from bringing a wrongful death action to recover for the death of his illegitimate child. If the Court affirms, upholding the Georgia law in that case, then Robinson probably should be dismissed for want of a substantial federal question. Even if the Court reverses in Hughes, the

opinion in that case may provide sufficient enlightment relative to the problem in Robinson that an appropriate summary disposition will appear.

As Robinson is here on appeal and involves an area to which the Court is giving serious attention, I would find it difficult to vote to dismiss in that case if the Conference declines to hold it for Hughes.

L.F.P., Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 27, 1978

Cases held for No. 77-1115, Lalli v. Lalli

MEMORANDUM TO THE CONFERENCE

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There was no filiation order in this case. Thus, the paternal kindred face two obstacles: (1) since the decedent's father did not obtain the requisite order of filiation, and therefore could not himself have inherited from the illegitimate, the paternal kindred are barred for that reason alone from inheriting through the father; (2) even if the father had obtained the filiation order, the statute absolutely bars any inheritance by paternal kindred. The New York Court of Appeals affirmed the judgment against the paternal kindred for both of these reasons.

It is clear that the Court need not consider the second basis for the exclusion of the paternal kindred because the first ground -- the failure of the father to obtain an order of filiation -- is an adequate and independent ground for the result. In light of the holding of Lalli that an illegitimate child himself may be excluded

from inheritance in the absence of an order of filiation, it seems to follow a fortiori that remote paternal kindred also may be excluded for the same reason. I therefore shall vote to dismiss for want of a substantial federal question in Buck.

No. 78-5441 ROBINSON v. KOLSTAD (Appeal from Sup. Ct. of Wisc.)

This case, also on appeal, comes from Wisconsin where the relevant statute provides that an illegitimate child may inherit from his intestate father only if paternity has been established by (1) a judicial determination, (2) an admission by the father in open court, or (3) a writing, signed by the father, acknowledging paternity. The state courts have interpreted the statute as requiring that one of these steps to taken during the lifetime of the father. This, of course, is a more liberal statute than New York's, and on the facts of Lalli, Robinson would be an easy dismissal.

The facts of the case are quite dissimilar, however. Appellant's parents were teenagers who planned to marry. Two days after they learned that the mother was pregnant, the father was killed in an auto accident. The state supreme court held that appellant, born several months later, was not entitled to prosecute a wrongful death action against the other driver involved in the accident.

Two factors complicate the case. First, the illegitimate child seeks not to inherit, but to pursue a wrongful death action. A state statute says that only "lineal descendents" may recover for wrongful death, and the state courts have declared that, for illegitimates, a lineal descendent is one who would be entitled to inherit. Thus, the entitlement to inherit and the right to recover for wrongful death are coextensive. Second, the illegitimate child was not born until after his father's death, making it seem inequitable on these facts to require the establishment of paternity during the father's lifetime.

As a matter of constitutional doctrine, the second problem does not trouble me excessively. It does seem unfair to require that paternity be established even before the child is born, since few parents would be likely to take the necessary steps that early. But as the plurality said in Lalli, the issue is not whether the statute is "fair" in

all cases, but whether it is substantially related to the state interests to be served. See slip op. at 13. In my judgment, the statute is sufficiently related to permissible state purposes. I do not believe the Constitution requires a special rule for posthumously-born children.

The other problem is more difficult. The Court's recent illegitimacy decisions have rather consistently distinguished between inheritance cases and wrongful-death cases. Footnote 6 of the plurality opinion in Lalli states that "[t]he presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which that justification for an illegitimacy-based classification was absent." In Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 170 (1972), the question was whether two illegitimate children, one of whom was born after his father's death, could be categorically denied a share in the death benefits payable under Louisiana's workmen's compensation statute for the death of their father. Weber held that they could not. The opinion distinguished Labine v. Vincent, 401 U.S. 532 (1971), by noting that "the substantial state interest in providing for 'the stability of . . . land titles and in the prompt and definitive determination of the valid ownership of property left by decedents,' . . . is absent in the case at hand." 406 U.S., at 170. Labine itself stressed the magnitude of the state's interest in regulating inheritance, as opposed to wrongful death recoveries. See 401 U.S., at 535-537, 539.

In light of these precedents, I do not believe Lalli provides grounds for dismissing Robinson. Indeed, the proper disposition of this case on the merits appears to be a close question. Weber arguably is distinguishable because it, like Trimble, involved a categorical exclusion based on illegitimacy. The Wisconsin statute, more like Lalli, imposes only an evidentiary burden. Yet, in wrongful-death cases the state cannot justify burdens on illegitimates in terms of its need to assure the expeditious and orderly disposition of an existing estate, an obviously important factor in Lalli.

I recommend that Robinson be held for Parham v. Hughes, No. 78-3, to be argued next month. The question there is whether Georgia may categorically prohibit a father from bringing a wrongful death action to recover for the death of his illegitimate child. If the Court affirms, upholding the Georgia law in that case, then Robinson probably should be dismissed for want of a substantial federal question. Even if the Court reverses in Hughes, the

opinion in that case may provide sufficient enlightment relative to the problem in Robinson that an appropriate summary disposition will appear.

As Robinson is here on appeal and involves an area to which the Court is giving serious attention, I would find it difficult to vote to dismiss in that case if the Conference declines to hold it for Hughes.

L.F.P.

L.F.P., Jr.