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BENCE MEMORANDUM

TO: Mr. Justice Powell
FROM: Eric
DATH: September 29, 1978 fulled
RE: Lalli V. Lalli, No. 77-1115

I. OVERVIEW

This case is a follow-up to <u>Trimble v. Gordon</u>, 430 U.S. 762 (1977). It concerns the validity under the Boual 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 illeditimacy. <u>Craig v. Boren</u>, 429 U.S. 190 (1976); <u>Trimble</u>, <u>supra</u>. 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." <u>Craig</u>, 429 U.S. at 197. As put more pithily in the illecitimacy cases, the scrutiny applied "is not a toothless one." <u>Trimble</u>, 430 U.S. at 767, <u>quoting Matthews</u> v. Lucas, 427 U.S. 495, 510 (1976).

As you observed in your concurrence in <u>Craig</u>, 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 <u>Trimble</u> that the Court is constrained to follow the analysis so recently and carefully set out there. The challenge in <u>Lalli</u>, 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 equa? 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. low, 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 difference 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 Craiq 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 induiry 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 induiry 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:

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

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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 Colli. Robert and Maureen claim to be Mario's children by another woman who had predeceased him. No order of filiation was over 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 Daptism certificate naming Mario as Robert's father; and (3) testimony that Mario had lived together with Robert, Mauroon, and their mother; had referred to Robert and Mauveen as his children; and had regularly supported them with cash payments. Appeellee 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.

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

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illegitimate child and no order of fillation had been entered as prescribed by \$4-1.2, he could not be a distributed entitled to an accounting. Appellant opposed on the ground that \$4-1.2 was invalid under the Houal 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 <u>Trimble</u>. The New York attorney general then intervened on the side of Rosamond Lalli. The Court of <u>Trimble</u> Appeals decided on remand that its statute was valid under <u>Trimble</u> and therefore adhered to its previous decision. Two judges dissented. Appellant again sought held review here, and probable jurisdiction was noted.

III. THE ISSUES

The precise question for decision is whether M_{44} Θ : , the rule that an illegitimate cannot inherit from his 2 Mu father in the absence of an order of filiation entered M_{44} Rule during the father's lifetime is sufficiently related to multiheld a proper state interest to survive an equal protection $\frac{1}{10}$ a challenge. Appellant charges that this rule creates two product impermissible discriminations. It distinguishes between $\frac{1}{10}$

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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 most whether the Court overturns or upholds the requirement that a filiation order be obtained during the father's lifetime. If that requirement is apheld, 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.

Another issue urged upon the Court -- this time **Jak** by the Legal Aid Society of New York City as amicus -- **divise** 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;

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

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 <u>would</u> 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

 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, 430-0.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 "(the more serious [evident]arv) 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 he Trimble 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 D.S. at 771. Since H had overlooked the middle ground that would not make an overbroad disgualification, 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 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: "Iflorms of Trimble 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 c.14 (emphasis added), Appel)ant 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 expressiv approved.

Appellant also adopts the reasoning of the two

dissenters on the New York Court of Appeals, Judges <u>Cook'</u> 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. Statet. 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 on undue, if not unyielding, burden on those concerned" and is therefore invalid under Trimble. Id. at A-7, A-8.

Appellant makes the further argument that \$4 1.2, viewed together with other statutes, impermissibly discriminates between classes of pllegitimate children.

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Domestic Relations Law \$24 provides that any child whose parents intermatry is legitimate, even if the marriage is void, voidable, or anulled. Thus, illegitimatelyborn children whose parents intermatry are not subject to \$4-1.2, while those whose parents do not must obtain the order of filiation before they can inberit 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 if entailed was not rationally related to the statute's purpose of preventing spurious cloims equinst the Social Security Trust Fund by those not related to or dependent upon disabled wage earners. The favored class would certainly include many

i))eqitimate children not actually dependent upon the disabled wage-carner parent, and the disfavored class included many. Like the appellants in <u>Jimemez</u>, whose needs clearly <u>were</u> 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 <u>Jimenez</u>. 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 (ny, stale 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 ソイイ 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 <u>Trimble</u>: "assuming accoracy 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 Lobine v. Vincent, 40) U.S. 532 (1971), that only minimal scrutiny should be applied. That argument, as New York probably realizes, is not worth much after <u>Trimble</u>, 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 <u>Trimble</u>, 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 <u>generalized</u> method of preventing "imprecise and unduly burdensome methods of establishing paternity." <u>Trimble</u>, 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 <u>Trimble</u> requires the states to accept a formal, though nonjudicial, 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 Lalli 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 quaranteeing 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 extaustive 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

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

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There was a study in the U. 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, ro informal method of acknowledgment bas 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 (ather 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 Eather. 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 hear and struck a balance that, while incapable of doing perfect justice an every case, represents a fully defensible means of protecting proper state interests with a minimum of discrimination against illegitnate children. No more being required under the Equal Protection Clause as interpreted in <u>Trimble</u>, the Court is invited to leave well enough alone.³ Had the illegitimate child in <u>Trimble</u> been a New York resident oubject 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 fully answering appellant's argument that \$4-1.2, when viewed together with with Domestic Relations Law \$24, impermissibly discriminates between illegitimates whose discriminates parents intermarry and those whose parents do not. That field point does seem answerable, however.

As I read the opinion, the disapproval in <u>Jimenez</u> 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. Statmat at A-4. If 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, <u>Trimble</u> requires attention only to those state interests that <u>actually</u> 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.

 In <u>Trimble</u> 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 i)]egitimates 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. Purther, the purpose of \$4-1.2 is not related to dependency; rather, it is designed solelyto 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 intermorry. Such morniages 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 ware 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 chld 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 logitimates 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 <u>Trimble</u>, in some respects it is of a different character and more closely attuned to the state's proper purposes.

<u>Trimble</u> 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. <u>Trimble</u> expressly notes that this interest may be served by <u>some</u> 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 fother made it likely that a relatively creat number of nonproblem claims would be barked. The same is not true here. in 2. 4.

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 Leeth you believe the judicial scrutiny in Trimble really bas. 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,

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positively demonstrated the absence of any animus against the status of illegitimacy (at least that's how 1 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-?.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 aboutface from <u>Trimble</u>. 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.

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VJ. 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 <u>Trimble</u>, 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 shem 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 <u>Trimble</u>, still unnecessarily excludes too many illegitimate beirs. Z4.

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. 20 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 <u>Lall</u>i (the one issued before this Court remanded for futher consideration in light of <u>Trimble</u>), 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. <u>Matter of Estate of Lolli</u>, 38 N.Y.2d 77, 340 N.E.2d 721 (1973).

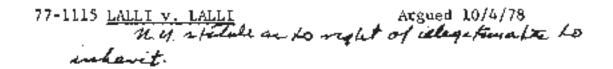
It thus appears both that the NY Court of Appeals has not ruled on the

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

Finally, during argument counsel for appellant said that <u>Ricky M. v. Sharon R.</u>, 49 App. Div. 2d 1035, 374 N.Y.5.2d 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 <u>unwed</u> father may not, under the New York Family Court Act, institute a paternity proceeding. The court did not rach the constitutionality of that restriction. The court also noted that an unwed father <u>was</u> 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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Mr. Justice white Revence On barn of fostnale in Trimble

> Mr. Justice Marshall Revence. The father have had 27 years to file to establish patemety

Mr. Justice Blackmun affin There cano comen closer to Labrie

(a,b)Mr. Justice Powell affer Truble loss int control. Mr. Justice Rohnquist affer Mr. Justice Stevens Revent The issue is whether U. Y. may require this mode of stool alme even where there is made t uncontradicted ev. of paternety.

Eric Arderson (Justice Powell) ex 23073. Chambers Oraft ea 11-7-78

Lalli_v. Lalli, No. 77-1115

In. Justice Poul delivered the pintin of the This case presents a challenge to the Draft Opinion

constitutionality of § 4-1.2 of New York's Estates, Powers, and Trusts Law, 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.S

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

When 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 Jifetime. 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. 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, <u>In re Belton</u>, 70 Misc. 2d 814, 335 N.Y.S.2d 177 (Sur. Ct. 1972); <u>In re Hendrix</u>, 68 Misc. 2d 439, 444, 326 N.Y.S.2d 646, 651-652 (Sur. Ct. 1971); <u>In re Crawford</u>, 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,

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On direct appeal the New York Court of Appeals affirmed. <u>In re Lalli</u>, 38 N.Y.2d 77, 340 N.E.2d 721 (1975). It understood <u>Labine</u> 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." <u>In re Lalli</u>, <u>supra</u>, 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

Trimble. Lalli v. Lalli, 431 U.S. 911 [1976].

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.Zd, 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 $\sqrt{\left(-\text{property passing under intestac} \right)}$ laws," <u>id</u>., at **e** 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. <u>Lalli</u> v. <u>Lalli</u>, 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 <u>Trimble</u> 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 Iilinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in <u>Mathews</u> v. Lucas, 427 U.S. 495, 506 (1976), and reaffirmed in <u>Trimble</u>, <u>Supra</u>, 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 (aw failed that test. 5,

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." <u>Trimble</u>, <u>supra</u>, at 768. We again rejected the argument that "persons will shon illicit realtionships because the offspring may not reap the benefits" that would accrue to them were they legitimate. <u>Weber</u> v. <u>Actna Casualty & Surety Co.</u>, 406 U.S. 164, 173 (1972). The statute therefore was not defensible as an incentive to enter legitimate family relationships.

Illinois' interest in safequarding 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." <u>Trimble</u>, <u>supra</u>, 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 б.

children claiming under their mothers' estates or for legitimate children generally," <u>Id</u>., 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, guoting <u>Mathews</u> v. <u>Eucas</u>, supra, at 513, than was true of the Illinois statute's overbroad disgualification.

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The New York statute, enacted in 1965, ⁵ was intended

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

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At the outset we observe the § 4-1.2 is different in important respects from the statutory provision overturned in <u>Trimble</u>. The Illinois statute required, in addition to the father's acknowledgment of paternity, the intermarriage of <u>Trimble</u> and <u>the intermarriage of the intermation of the intermation 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." <u>Trimble</u>, <u>supra</u>, at 770-771. As illustrated by the facts in <u>Trimble</u>, even a judicial. declaration of paternity was insufficient to permit inheritance.</u>

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 caternity of the estate. See <u>In re Lalli</u>, 43 N.Y.2d, at 60 n. 2, 371 N.E.2d, . at **48**2 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 logitimate 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, 37! 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 ellegitimate children bear an evident and substantial relation to the particular state interests this

statute is decised to serve

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 orea with which the States are justifiably concerned. <u>Trimble</u>, <u>supra</u>, at 771; <u>Weber</u> v. <u>Aetna Casualty &</u> <u>Surety Co.</u>, <u>supra</u>, at 170; <u>Labine</u> v. <u>Vincent</u>, 401 U.S. 532, 538 (1971); see also <u>Lyeth</u> v. <u>Hoey</u>, 305 U.S. 188, 193 (1938); <u>Mager</u> v. <u>Grima</u>, 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 carely difficult to prove." <u>In re</u> Oritz, 60 Misc. 2d 756, 761, 303 N.Y.S.2d 806, 812 (Sur. Ct., 1969). Preof of others is necessarily to prove the presence of the second seco

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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, <u>In</u> re flemm, 85 Misc. 2d 855, 861, 381 N.Y.S.2d 573, 576-577 (Sur. Ct. 1975); <u>In re Hendrix</u>, 68 Misc. 2d, at 443, 326 N.Y.S.2d, at 650; cf. Trimble, supre, 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 Flemm, Supra, at 858, 381 N.Y.S.Zd, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Pourth 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 an K ALL D'HANTSANSHARAT

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#CAn 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 <u>any</u> estate when there always exists the esserbition become perchange a second

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 = to be a set for many -- some members suggested a majority -of estates. Td., at 859, 301 N.Y.S.2d, at 575-576; cf. In re Leventritt, 92 Mise. 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 . A paternity disputes in a judicial forum during the lifetime of the father. As the New York Court of Appeals observed in its Have first opinion in this case, the "availability [of-the law: putative father] should be a substantial factor contributing to the reliability of the fact-finding process." In re Lalli, 38 N.Y.26, 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.

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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 <u>Trimble</u>, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their. intestate fathers' estates. <u>Trimble</u>, <u>supra</u>, at 771. He 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

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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The Illinois statute in <u>Trimble</u> 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. Inberitance is barred only where there has been a fallure 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 Thomas, 87 Misc. 20 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 "tochnical" failures by illegitimate children to comply with the statute in order to prevent unnecessary injustice. E.g., <u>In re Niles</u>, 53 App. Div. 2d 983, 385 N.Y.S.2d 876 (1976), appeal don. sub nom. Niles v. Beninati, 40 N.Y.28 809 392 N.Y.S.28 1027 (1977) (filiation order may be signed <u>nune pro tune</u> to relate back to period 110 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).

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As the history of § 4-1.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates <u>in so</u> <u>far as practicable</u> rights of inheritance on a par with those enjoyed by legitimate children," Commission Report 200

Even if we believed that 5 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. <u>Mathews</u> v. <u>Lucas</u>, 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 11

and Substantia)ity." Id., at 515-516.

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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

FOOTNOTES

1. 1965 N.Y. Laws, c. 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, c. 952. Further nonsubstantive amendments were made the next year. 1967 N.Y. Laws, c. 686, §§ 28,29.

2. Section 4-1.2 in its entircty 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.

> ⁴[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 presence of the pother or within two years

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

44) 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.

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On remand from this Court, the New York Attorney General

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See n. 1, <u>supra</u>.

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 www.weggproceeding 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 v.24 65, 68 n 1 371 N F 24 481, 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. <u>E.g.</u>, <u>Jimenez v. Weinberger</u>, 417 U.S. 682 (1974); <u>Gomez v. Percz</u>, 409 U.S. 535 (1973); <u>Weber v. Aetna Casualty & Surety Co.</u>, 406 U.S. 164, 170 (1972); <u>Levy v. Louisiana</u>, 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, 4,731.

9. Appellant claims that in addition to discriminating

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 (a) support the second seco - · _ - · · _ · · · · · · . their unfortunate counterparts whose parents never matry-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.

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 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. "0555" "064"" 104" MIU & 1% 573 570 Here //+ 10751

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 claborates, 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." 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 FN 6.

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. EN 7.

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CHAMBERS DRAFT SUPREME COURT OF THE UNITED STATES

No. 77-1115

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

[November - , 1978]

Mn. 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? which requires illigitimate children who would inherst from their fathers by intestate succession to provide a particular form of proof of paternity. Legitamete children are not subject to the same requirement.

I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalii who died intestate on Japmary 7, 1973, in the State of New York. Appellant's mother, who don't in 1968, never was married to Mario. After Mario's widow, Rosamoud Lalli, was appointed administrately of her busionsels estate, appellant petitioned the Surrogate's Court for Westcluster County for a compulsory accounting, claining that be and his sister Maureen Lelli were entitled to inherit from Matio as his children. Reasoned Lalli opposed the petition. She argued that even if Robert and Maureen were Maria's

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⁽¹⁹⁹⁶⁾ N. Y. Low, etc. 555, §1. The statute was initially codified as N. Y. Divident Est. Low § SH4. In 1966 it was recodified without waterfolloh medias N. Y. Est. Powers and Trusts Later §4-1.2 (1966 N. Y. Low-, ch. 952. Forther consults during agreedupers, were mode the next year 1967 N. Y. Laws, eb. 686, 55 28, 29.

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children, they were not, lawful distributers of the estate because they had failed to comply with §4,1.24 which provides in part:

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

Appellant conrected that he had not obtained an order of filiation during his potative father's lifetime. He contended, however, that \$4-1.2, by imposing this requirement, distribunated against him in violation of the Equal Protection Clause of the Fourteenth Amendment," Appellant tendered certain

"(2) No displacate child of the legaments child of his latter so that he and his issue inherit from his father of a most of completent juradiction has, during the lifetime of the father, hade on each of Frechoods having jutteriney in a proceeding instanced during the pregnancy of the mother or within two years from the burth of the each.

(14) The existence of an error and oblighting the full sub-support the Regionate child does not quarks such child or his issue to inherit from the fother in the absence of an order of this take mode as prescribed by subparagraph (2).

 $^{\circ}$ MD. A motion for relief from an order of fill-tion may be reade only by the follow, and such matters must be made within one year from the entry of such order.

"Aby II on Pleastments child dost he serviving sprints tione, pather, in termal kindlers and father informations entitled to being out affiniswithing as if the decident were legitimetry provided that the father may julier that obtain such fathers with if an order of fit reaction for boards in accordingly with the provisions of subperagraph (2)."

#Appellunt also claused that §1.1.2 was invalid under N. N. Copra-

^{*}Section (+12 in its entirety provides:

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

The surrogate's court initial 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 illegitinate children, particubuly Labine v. Vancual, 401 U. S. 532 (1971), and three New York decisions affirming the 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 430, 444, 326 N. Y. S. 2d 646, 654-652 (Sur. Ct. 1971) [In re-Crancford, 64 Misc. 2d 758, 763, 315 N. Y. S. 2d 800, 895 (Sur. Ct. 1970), the court roled that appellant was properly excluded as a distribute of Lalli's estate and therefore facked status to petition for a rotapolsory accounting

On direct append the New York Court of Appeals affirmed. In re-Lafü, 38 N. Y. 20177, 340 N. E. 2d 721 (1975). It understood Labian to require the State to show an ensure than that "there is a rational basis for the means chosen by the Legislature for the accomplishment of a percessible state objective." In re-Laft, super, 38 N. Y. 2d, at \$1, 340 N. F. 2d, at 723. After discussing the problems of proof peculiar to establishing pateroity, as upposed to materoity. Che 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 pateroity.

Appellant appraled the Court of Appeals' decision to this

Azt 1. § 15. The New York Court of Appends field of the entropy is (q_1, q_2) or the well for the structure of well-decay (i) consider whether § 4-12 indewfully discrapments on the basis of a vior scheduler the administrativis of Marine's estate to zero real for account for het alloged failure to bring a wrongfulde the structure help of ϕ appendixt.

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

On remand,⁴ the New York Coart of Appeals, with one judge dissenting, adhered to its former disposition. In re-Lalli, 43 N. Y. 28 65, 371 N. E. 2d 481 (1977). It acknowledged that Trindole contemplated a standard of judicial review demanding more than "a more finding of some remote rational relationship between the statute and a legitimate state purpose," *id.*, at 67, 374 N. E. 2d. at 482, though less than strictest scrutiny. Finding § 4-1.2 to be "significantly and determinatively different" from the statute overtarmed in Trimble, the court reled 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 *Tremble*, super, 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.

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

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^{*}On remark from the Court, the New York (Aurrey) General was permitted to interview as a defendant-appellee. The was files a basef on the news's and argued the case in this Court - Appellee Resamond Laffi did not present and argument and less and filed a logar from the memory.

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

We concluded that the Illinois statute discriminated against illegitimate children in a reanner prohibited by the Equal Protection Clause. Although, as decided in Mathems v. Locas, 427 U. S. 495, 506 (1976), and reaffirmed in Transle, supro. at 767, classifications based on illegitimaty are not subject to "strict scratiny," they nevertheless are invalid under the Fourteenth Amendment of they are not substantially related to permissible state interests. Upon examination, we found that the Illinois law failed that test.

Two state juterests were proposed which the statute was sold to fester: 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 attendated relationship to the asserted goal." *Trimble, sapra,* at 768. We again rejected the argument that "persuns will show flicit relationships because the offspring may not reap the benchis" that would accrue to them were they legitimate. If that would accrue to them were they legitimate. If that would accrue to them were they legitimate. If that would accrue to them were they legitimate. If that would accrue to them were they legitimate. If the statute therefore was but defensible as an incentive to enter legitimate family relationships.

Illinois' interest in safeguerding the orderly disposition of property at rieath was more relevant to the statutory classification. We recognized that devising "an appropriate legal featurework" in the furtherance of that interest "is a poster particularly within the competence of the individual States" *Trimble, septer,* 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 illigationate children and the related danger of spurious claims against intestate estates. See *infra*, at —. These difficulties, we sold, "cought justify

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a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their methers' estates or for legitimate children generally, $' = Id_{\rm e}$ at 750.

The Hinrois statute, however, was constitutionally flawed because, by insisting more not only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant entry of illigitimate eliblican of intestate men [whose] inheritance rights can be recognized without juppardizing the orderly softlement of estates or the dependability of titles to properly passing under intestacy laws." *Id.*, at 771. We concluded that the Equal Protection Chause required that exceptional burdens placed in illegitimate children to the furtherance of proper State objectives must be more "carefully tourd to alternative considerations" *id.* at 772, quoting *Mathema v. Lacos, super* 513–513, then was true of the Illinois statute's overbroad disqualification.

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The New York statute enacted in 1965.) was into ded to soften the rights of previous law which permitted illegitimate children to inherit only from their mothers. See *mire*, at ——, By lifting the absolute bar to paternal inheritance, 8.4-1.2funded to achieve its desired effect. As in *Triable*, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be squared with the Equal Protection Clause.

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At the outset we observe $44\sqrt{8}$ 4-1.2 is different in important respects from the statutory provision overturned in *Trindble*. The Illinois statute required, in addition to the father's acknowledgment of paternity, the intermatriage of the parents of the illegitimate cloud as an absolute precordition to inheritance. This combination of requirements

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" See al 1, supra

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

Under -1.2, by contrast, the matital status of the parents is irrelevant. The single requirement at issue here is as evidentiary one- that the paternity of the father be declared in a judicial proceeding sometime before his death.⁶ Had the angellant in *Tribable* been governed by ± 4.12 , she would have been a distributive of her father's estate. See *Larg Lalli*, 43 N, V, 2d, at 68 n, 2, 371 N, E, 2d, at 452 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 burnan confect or to set societal parts." In re-Lalli, supra, et 70, 374 N. D. 2d,

Later from my brief p 4

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Section 4-1? requires not only that the order of filinion by mode. during the lifetime of the Soller, but that the presenting in which it is sought have been continenced "during the toescones of the worther or within two verses from the bests of the child." The New York Court of Appears defined to role on the emototation of the two year license tion in both of its opinious in this case herving appellant correstedly had never commenced a gatering proceeding of all. Thes, if the role flot potentify he publicated during the follows lifetime were upbeld, appelling would ince for failure to entryly with they requirement slore. If any the other hand, hope Budy previded in his organical that has internation would not be conditioned on the existence of an error of file. tion, the transport instation would become preferant space the paternets processing itself would be annous and show to take 11 N/Y/22465. [68] n. J. 351; N. T. 26 487, 482 n. J. (1977); Jury Lett. 38, N. Y. 21 77, \$0 a. 7, \$30 S. E. 20 721, 723 b. 7 (1975). For the same retron, the two-rear langation is not before us and we express the views on its constitutionality.

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at 453. The absence in \$ 4-1.2 of any requirement that the parents intermarry of otherwise legitimate a child been out of westluck and our review of the legislative history of the statute, *infra*, at ----, confirm this view.

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

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The primary state goal underlying the rhallenged 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 171; Weber V. Actua Casualty & Surety Co., supra, at 170; Lubine V. Vincent, 401 U. S. 532–538 (1971); see also Lucth V. Hava, 305 U. S. 188, 103 (1938); Mayer V. Grima, 8 How, 490, 493 (1850).

This interest is directly implicated in paternal inheritance by illegitimate children because of the preufiar problems of proof that are involved. Establishing maternity is soldoun 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 pengins with the mother and for a time is necessarily record by her. That the child is the child of a particular voluan is rarely difficult to prove." In v. Order, 60 Mise, 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

The presence in this case of the State's interest in the orderly disperision of a deceder's property at do the detectual of it from others in Middle that partification for an (Feynburg burg) classification was abreve E(q). *Similarly* Wienburger, 517 U.S. 682 (1975); *Contex v. Proce*, 400 U.S. 535 (1975); *Wenburger*, 517 G.S. 682 (1975); *Contex v. Proce*, 400 U.S. 535 (1975); *Wenburger*, 517 G.S. 682 (1968).

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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. Flemm. S5 Mise. 2d 855, 861, 381 N. Y. S. 2d 573, 576-577 (Sur. Ct. 1975): In re. Hendric, 68 Mise. 2d. at 443, 326 N. Y. S. 2d. at 650; cf. Trimble, supra, at 770, 772.

Thus, a nutcher of problems arise that counsel against treating illegitimate children identically to all other beirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Modemization. Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission," consisted of "experienced Surrogates [and] estate practitioners." In re-Flemm, sapra, at 858, 391 N. Y. S. 2d. at 575. The Commissium issued its report and recommendations to the Legislatore in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates, Lepis. Doc. 1965. No. 19 (hereinafter Commission Report). The statute new codified as § 4-1.2 was included.

Although the overarching purpose of the proposed statute was "to alleviate the plight of the illegitimate child." Comrelation Report 20, the Bennett Commission considered it necessary to impose the strictures of \$ 4 + 2 in order to mitigate serious differitties in the administration of the estates of hode testate and intestate decodents. The Commission's perception of some of these difficulties was described by Surregate Sobel, a member of "the basiest [surrogate's] court in

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^{*}The Benard Council-line was required by the New York Legislature in 1961. If was pretrained to recommend resolut charges in certain array of state "As, including that pertaining to "the descent and distribution of property and the practice and procedure relating thereto" [1961] N. Y. Lawe, ch. 701.

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

⁶An illegitmate, if made an unconditional distributee in intestacy, must be served with process in the estate of his parent or if he is a distributed in the estate of the kindned 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 moures. 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 at any estate when there always exists the possibility however remote of a seriet illegitimate lucking in the barried past of a parent or an aucestor of a class of honeficiaries? Finality in decree is essential in the Surrogate's Courts since title to real property passes under such derree. Our procedural statutes and the Due Process Clause mandate onlice and opportunity to be beaul to all necessary parties. Given the right to industate 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 aboost insuperable burden as regards "unknown" illegitimates. The point made in the [Beauch) commission discussions was that instead of affecting only a few estates, procedural problems would be created for many—some monthers suggested a majority---of estates," Id., at 859–381 N. Y. S. 26, at 575-576; ef. In re-Lementralt, 92 Mise, 2d 598, 601-602, 400 N. Y. S. 298, 303–301 (Sur. Ct. 1977),

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

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

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As the State's inforests 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 cosone the accurate resolution of claims of paternity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing paternity descutes in a judivial forum during the lifetime of the father. As the New York Court of Appeals observed in its first opinioa m this case, the "availability (of the putative father) should be a substantial factor contributing to the reliability of the fact-Fording process " - In re. LaW, 38 N. Y. 2d, no.82, 340 N. E. 26. at 724. In addition, requiring that the order be issued during the father's lifeture permits a man to defined his reputation against "unjust preasations in parentity elaites." 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 cottilement of an illegitimate child to notice and participation is a matter of judicial neoral before the administration commences. Framindent assertions of paternity will be much less filely to succeed, or even, to arise, where the proof is putbefore a root of law at a time where the patative further is available to respond, rather than first brought to light, when the assets of an estate are as the offing.

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

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in Trimble, excludes "significant categories of illegitimate children" who could be allowed to inherit "without icopardizing 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 preof of peternity -cannot rationally be denied inheritance because they pase none of the risks § 4-1.2 was intended to minimize."

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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 impory 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 tendous that it lacks the substantial rationality contemplated by the Fourteenth Amendment.

⁹ Appellant chains that in addition to discriminating between illegitimate and legitimate children §4-12, in conjunction with N=Y. Down Rel, Low §24 (Melkinney 1977), incremes-ibly discrimination between closes of allegitimate children. Scenaer 24 pracides that a chilk conversion out of wedleck is preceded as legitimate if, before or after Lis bittly his parcate matrix, even if the particular is void, illegit or judatally annulled Appellant atgres that by classifying as "legitimate" children been can of wedleck whose parents later matrix. New York less, with respect to these children substituted attornage for § 1-12's requirements of preof of paternally. Thus, these "illegitimate" children escape the aigure of the rule onlike their outfortunate counterparts whose parents in out matry.

Under § 24, one channing to be the hydramite which of a deserved manwould have to prove not only his paterney has able his maternity and the fact of the matriage of his paterney. These addition is evaluations requirements make it reasonable to non-plates exacting proof of paternity and to treat such children as legitimize for inheritance purposes.

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The Illitris statute in *Trimble* was constitutionally macceptable because it effected a total statutory disinferitance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the Statute was for in excess of its justifiable purposes. Section 4–1.2 does not share this defect. Toheritance 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 § 4-12 [loctally and in such a way as to enhance its utility to both father and child without szerificing its strength as a provolucit prophy-Instic. For example, a father of illegithmate children who is willing to acknowledge paternity can write his defenses in a paternity proceeding. c. g., In re Thomas, 87 Mise, 2d 1033, 387 N. Y. S. 2d 216 (Sor. Ct. 1976), or even institute such a proceeding hims/f.20 N. Y. Jud.; Fam. Ct. Act. § 522 (McKinney Supp. 1977); In te Flemm, 85 Mise, 2d. at 863. 381 N. Y. S. 2d, at 578. In addition, the courts have excused "technical" failures by illegitingte children to comply with the statute in order to prevent unnecessary injustice. E, g_{ij} In ve Niles, 53 App. Div. 23 983 385 N. Y. S. 24 876 (1976). appeal den, sub nano, Niles v. Rennati, 40 N. Y. 24 800, 392 N. Y. S. 26 1027 (1977) (filiation order may be signed numpro func to relate back to period prior to father's death when court's factual finding of pateroity had been madel; In re-Kennedy, 80 Mise, 2d 551, 554, 392 N. Y. S. 2d 365, 367 (Sur.) Ct. 1977) (support order)freated as "raulatuount to an order of filiation," even though paternity was not specific (fiberein).

As the history of § 4-1.2 clearly illustrates the New York Legislature desired to "grant to illustriates in so for as proc-

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³⁹ In addition to m king interact succession possible, of course, a fail eris always from to provide fet inst discriminate child by well. See In re-Floring, S5 Mig. 24 853, 894, 381 N. Y. S. 22 575, 578 (Sur Ct. 1975).

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Could sights of inheritance on a par with those enjoyed by legitimete children," Commission Report 200 complexis added), while protecting the important state interests we have described. Section 4-1.2 represents a <u>considered</u> legislative judgment as to how this balance last could be achieved.

Even if we believed that § 4.4.2 could have been written somewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability of any possible alternative[s]" to the statutory scheme foricalated by New York. Mathems v. Lucas, 427 U. S., at 515. "These mathems of practical judgment and empirical rateulation are for [the State]. . . . In the end, the precise accuracy of [the State]; . . . In the end, the precise accuracy of [the State]; empirical so a matter of specialized judicial competence: and we have no basis to question their detail beyond the evident consistency and substantiality." M_0 at 515–516.9

Even if New York were encodingly oblight to score (or adacknowledgements" edges (units) also an unbrief englished in form elever that appell to be this case would be off from such a rule. The work formal in this concest is for measuring score prime with wermessed of "motorized". It has contained a factor regularized procedure approved by a constant species of generalized. In particular, the decition offered by application this case in γ and γ by even the facttion offered by application this case in γ and γ by even the factble of the decision of "formal acknowledgement". The contribute was

¹⁰ App-flow organs that a feature in Trimble 4. Gardan 420 V. S. 762, 772 in 14 (1956) requires New York to be epithe normized domment in which Leff, referred to have as "my sort is evidence of pricently. That from the contains have get in the effect that a "formal acknowledgment of paternity" should be sufficient to satisfy the State's step size. The prime ple that the footnate of domains <u>invariant</u> is that the State's step size. The prime ple that the footnate of domains <u>invariant</u> is that the State's step ince to recognize the problems arising from different forms of preor and to schere these forms there fully their of the elements inspecses and modely burdle some methods of establishing prime to get The New York Legislature, for only the group of the bound of the prior domain establishing evidence of paternity have form 1 that is judge 1 order. From Recent of the Trapport State Counties and the Modern (it is the est of the Trapport y State Counties and the Modern (it is the state of Staplif, at word the Low or Figures, Legis, Dec. 1967, No. 70, et 200

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We conclude that the requirements imposed by § 4-1.2 nn 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.

exected its half for the purpose of giving appells (perturbing to narry, not of proving backgreat potentity. The true import of the words "may sort" is this accelerably analogious, this hadrog the ration hay in New York's decision not to accept such evidence.

/S♥ -CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellact,

Eric Anterson

v. On Appeal from the Coart Regemend Lalli, Administratrix of Appeals of New York, of the Estate of Mario Lalli, I

[November ---, 1978]

MR. JUSTICE POWSEL 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 illegatimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paterniay. Legisimate ciuldren are not subject to the same requirement.

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Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New Yerk. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administrativity of her bushand's estate appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his aster Maurene Lalli were cotifled to inform from Mario as his children. Rosamoral Lalli opposed the petition. She argued that even if Robert and Maurea were Mario's

¹⁴⁹⁶⁵ N, Y. Laws, ch. 958, §). The starter was initially collified as N. Y. Decederri Ref. Let § 83-5. In 1968 a was recadilist without material change as N. Y. Ref. Private and Tracta Law § 4-1.2 – 1966 N. Y. Laws, the 952 – Further material dynamics an endated to meet year = 1947 N. Y. Laws, ch. 686, §§ 38, 29.

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children, they were not lawful distributees of the estatebecause they had failed to comply with $\S 4-1.2\frac{3}{4}$ 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 computerat jurisolication has, during the lafetime of the father, made as order of filiation declaring paternity in a proceeding instituted during of the prognance of the mother or within two years from the birth of the child."

Appellant conrected that he had not obtained an order of filiation during his putative father's lifetime. He contended, however, that $\pm 4+1.2$, by imposing this requirement, discreminated against him in violation of the Equal Protection Classic of the Fourteenth Amendment.² Appellant rendered certain

" (a) Far the purposes of this article:

"(1) An illegitimate sold is the legitim to elob of his parties of that he and his concludent from his method and from his material knot of

1(2) An effection to child a the legitimety shift of its forther to that he and his is an other infrom by father if a court of comparent jurisdiction has during the laterane of the father mode an order of filtwion declaring potentials in a press dargeneric field dense. The programs of the nuclei of without two verses (refine the burth of the child.

(134c) is exact negative space energy obligating the future to support the direction 2e which does not quarty such that or the same to inform from the Quber in the observe 2e in order of function mode as presented by e^{-1} is regraph (2).

2000 A motion for tellef from an autor of fightion new be multi-activity by the father and such motion must be made within one year from the core of such order.

Whit If an oblig traceter child ones, his surviving spower issue, mathem to traced kitabash and father indicational are contrast in actions an adminiistantian as if the decodent work legitimetry provided that the father many athere or obtain such betters only if an order of filastion has been made in providence with the processors of subcomproph 121.2

² Appa² and also channed that § 4-12 was invalid under N. Y. Const.,

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for the back of her illegitimeter birth

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^{5.}Section 4-1.2 on jest collimate provides;

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

The futrogate's fiber 1 noted that s 4-1.2 had previously, and ansaccessfully been attacked under the Equal Protection Those. After reviewing recent decisions of this Court conserving discrimination against illegitimate children, particularly Labore v. Futernal, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute. In re-Bellion, 70 Misso gd \$14, 335 N, Y, S, 2d 177 (Sur, Ct. 1972): In re-Hendric, 68 Misse 2d 430, 444–326 N, Y, S, 2d 646, 651–652 (Sur, Ct. 1971): In re-Crawford, 64 Misse 2d 758, 763, 315 N, Y, S, 2d 800, 895 (Sur, Ct. 1970), the court ruled that appellant was properly excluded as a distribute of Lalb's estate and therefore lacked status to petition for a compulsory accounting

On direct appeal the New York Court of Appeals gffirmed In re Lalli, 38 N, Y, 2d 77, 340 N, $\le 2d$ 721 (1975) – 16 understend Labiae to require the State to show in more than that "there is a rational basis for the means choose by the Legislature for the accorrelisioners 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 conclusion that the State was constructionally entitled to require a judicial decree damag the father's lifetime as the exclusive form of proof of paternity.

Appellant appealed the Court of Appeals' decision to this

Art. 1, § 15. The New York Court of Appeals deilard rule on the issue, nor do well for the same to not well do not **O** constitution before § 4.7.2.1 Judawfor When indicates on the function we also the transmission of Nature sectors is respond to assume for the alloged failure to bring a wrongful double sector on Scholl of Appel ant.

The latter question was not considered by the Court of Appaulo, I and the former now raised Con the first time by a brief Jamicus curine in this Court.

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

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⁴⁴⁰⁰ terrand from this Conf. the New York Attories: Concerd was permitted to interview with defendant-appeller. The law field a brack entile transferrate and ingred the case in the Conf. Appeller Recorded Latidiation present and argument and his not filed s brief on the metics.

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

We concluded that the Illinois statute discriptionated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in Mathews v. Locas, 427 U. S. 495, 506 (1976) and realizined in Trouble, supra, at 767, classifications based on illegitudity are not subject to "strict scrating," they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to period-side state interests. Upon examination, we found that the Illemis law failed that test.

Two state interests were proposed which the statete was said to foster: the encouragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decident'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 assorted goal." *Triable, sopra* at 768. We obtain rejected the assorted goal." *Triable, sopra* at 768. We obtain rejected the assorted goal." *Triable, sopra* at 768. We obtain rejected the assorted goal." *Triable, sopra* at 768. We obtain rejected the assorted goal." *Triable, sopra* at 768. We obtain rejected the assorted goal." *Triable, sopra* at 768. The statement of the offspring may not map the benefits" that would arrive to them were they legitimate. We ber v Action Country & Surety Co., 406 U. S. 164, 173 (1972). The statute therefore was not defensible as an inventive to more legitimate family relationships.

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a more demonding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their motivers' estates or for legitimate children generally.⁹ -Id, at 770.

The Illimits statute however, was constitutionally flawed breause, by insisting upon not only an acknowledgement by the father, but also the manage of the percents, it excluded "at least some significant categories of illepitionate children of intestate men [whose] inheritance rights can be recognized without juquardizing the orderly settlement of estates or the departability of tables to property passing under intestacy laws." *Ed.*, at 771. We concluded that the Equal Protosfrom Clause required that exceptional burdens chaced on illegitionate children in the fortherance of proper State objectives upst be more "carefully tuned to alternative considerations," *id.*, at 772, quotice *Mathemax*, *Lawas, supra*, at 513, than was true of the fullionic statute's overbroad disqualification.]

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The New York statute, enarted in 1965 was intended to suften the rights of previous law which permitted illegitimate children to inherit only from their mothers. See infer. at —... By lifting the absolute bar to paternal inheritance, § 4-1.2 toucled 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.

At the outset we observe/ $4\log 8.4-1.2$ is different in important respects from the statutory provision overturned in *Trouble*. The Ellinois statute required, in addition to the father's acknowledgment of paternity, the intermarrage of the parents of the illegitimate could as an absolute precondition to inheritance. This combination of requirements

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eliminated "the possibility of a reiddle 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 deelaration 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? Had the appellant in *Trimble* here governed by § 4-1.2, she would have been a distributer of her father's estate. See In re Lalli, 43 N. Y. 2d. at 68 a. 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 \S 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 Lafli, supra, at 70, 371 N. E. 2d.

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#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 songlat have been comparated "during the pregunicy of the mother or within two years from the barth of the child?" The New York Coart of Appeals declared to rule on the constitutionality of the two-year limitation is hold of its options in this case because appelled) conveledly had arver commercial a priority proversing at all. Thus, if the rule that paternity be judicially derbred during/the/fothers disting were upheld, appellant would lose for failure to comply with that convicement slone, Up on the other hand, appellant previated in his argument that hisindepicture optic not be conditioned on the existence of an order of filintion, the two-year huritation would become inclusion since the patersity proceeding itself would be numeroscopy. See In to Lubi, 43 N. Y. 24 65. 68 n. 1, 371 N. E. 28 481, 482 n. 1 (1977); In re-Labs, 38 N. Y. 26 77, 80 n *, 340 N. E. 24 721, 723 n. * (1975). Pfothe conversion, the * two-year limitation is not before usy and set reports no views and its ?constitutionality -----

[As the NavYork Court of Appeals has not proved upon The constitutionality of the form-year limitation, that question is not before us. Our decision boday therefore sustains 54...2 under the Equal Protection Clause only with respect to the requirement that a judicial order of filintion be issued during the lifetime of the father of an illegitimate child.

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at 483. The absence is \$4 4.2 of any requirement that the parents intermatry or otherwise legitimate a child born out of wedlock and our review of the legislative history of the statute, infro, at ---, confirm this view.

Our inquiry, therefore, is focused narrowly. We are asked to decide whether the discrete procedural depoteds that \$4-1.2places on illegitimate children hear 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 ξ 4-12 is to provide for the just and orderly disposition of property at death! We long have eccentrical that this is an area with which the States are justifiably concerned. *Tranble, supra, at* 771: Weber V. Actua Casualty & Sucary Co., supra, at 170: Labore V. Vincent, 401 U. S. 532, 538 (1971); see also Lyath V. Hory, 305 U. S. 183, 193 (1938); Mager V. Grima, 8 How, 490, 493 (1850).

This interest is directly implicated in paternal inheritance by illegitimate children because of the positiar problems of proof that are involved. Establishing repternity is seldem difficult. As one New York forrogate's fourt 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 reard by her. That the child is the child of a particular woman is rarely difficult to prove." *In re Oritz*, 60 Mise, 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

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^{6 //} The produce in this case of the State's interest in the orderly disposition of a devolution property at death dist equivies it from others in which that justification for an displace-showed straification may also at - E, g., Jianuary V. Weinburger, 417 U. S. 482 (1974): Gauge V. Peret, 409 U. S. 535 (1973). Weber V. Actas Cosynthy & Savety Co., 406 U. S. 464, 170 (1972); Levy V. Lavihione, 201 U. S. 68 (1968).

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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 pregnoncy," *Thid*, (emphasis in original); second, In re Fhimm, 85 Mise, 2d S55, S64, 384 N. Y. S. 2d 573, 576-577 (Sur. Ct. 1075); In re Hendric, 68 Mise, 2d. at 443, 326 N. Y. S. 2d, at 650; cf. Tranble, 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 Tempurary State Commission on the Modernization, Revision and Simplification of the Law of Estates, This group, known as the Bennett Commission⁴⁷ consisted of "experienced Surrogates [and] estate practitioners⁶⁷ In re-Floren, supra, at 858, 381 N, Y S, 24, 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, Revision of 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 Chereinafter 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 illegiticoate child." Commission Report 20, the Bornett Commission considered it increasary to impose the structures of \$4,1,2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decements. The Commission's perception of some of this obficulties was described by Surrogate Subel, a member of "the busicst (surrogate's) court in

[7] WThe Brought Commission was prested by the New York Legislature in 1961. It was instructed to resourced method shares in contain trees of state low, including that permaneng to Teles descent and distribution of property and the practice and procedure relating therets." 1961 N. Y. Laws, eb. 731.

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the State measured by the number of intestate estates which traffic daily through this court." In re Flemm, supro, at 857, 381 N. Y. S. 2d. at 574 (Soliel S.) [who participated][a semiof the Commission's delaborations:

"An illegitimate if made as unconditional distributes in " intestacy, must be served with process in the estate of his parent or if he is a distributed in the estate of the kindted of a generation. And, in probating the will of his terrent (though not named a beneficiary) or in probating the well of any person who makes a class disposition to "issue" of such parent, the diogitimate must be served gitimate of whose existence neither family and personal representative may be aware? And of greatest concernhow address finality of degree in only estate when there always exists the possibility however remote of a screet Registrance backing in the buried past of a parent or an queestor of a class of beneficiaries? Finality in discuss is essectial in the Sarrogate's Courts since fitte to real propetty passes under such decree. Our procedural statutes and the Due Precess Clause mandate notice and opportunity to be loard to ail necessary parties. Given the right to intestate succession, all illegatinentes must be served with process. This would be no real problem with respect to those few estates where there are "known?" illegitionates. But it presents an almost jusquerable hurden as regards "arknown" illegitimates. The point made in the [Bennert] concrtission discussions was that instead of affecting only a few estates, prescional problems would be created for many-some members suggested a majority= of estates." Id., at \$59, 381 N/Y, S, 2d. at 575-576; ef. In re-Leventrill, 92 Mise, 2d 598, 601-602, 400 N. Y. S. 298, 300–301, (Sur. Ct. 1977).

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

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faring an estate are likely to persist. Because of the particular problems of proof, spuricus claims may be difficult to expose. The Bonnett Contraission therefore sought to protect "innormated bits and those rightfully interested in their estates from fraudolect classes of heirship and barassing litigation instituted by those seeking to establish thereselves as illegitimate heirs." Commission Report 199.

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As the State's interests are substantial, we now consider the means adopted by New York to further these juterists. In order to avoid the problems described above, the Commission recommended a conditionation of regumentants designed to ensure the accurate resolution of claims of paternity and to minimize the potential for discuption of estate administration. Accuracy is enhanced by placing paterolty dispectes in a judicial forms during the lifetime of the father. As the New York Court of Appeals observed in its first opinion in thes case, the "availability (of the putative father) should be a substantial factor costributing to the reliability of the factf.idnoz process." In re-Laffi, 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 chaos," 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 constrainty minimized, where the entitlement of an illegitimate child to notice and participation is a conter of indicial record before the administration commences. Frombule a assertions of patericity 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 parateve father is available to respond, rather than first brought to light when the assets of an estate/ary/in the office.

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

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in Trimble, excludes "significant categories of illegitimate childrea" who could be allowed to inherit "without juppardizing the orderly settlement" of their intestate fathers' estates. Trimble, supra, at 771. The orges that these in his position is "known" illegitimate children who, despite the absence of an order of filiation obtain/during their fathers' filetimes, can present convincing proof of paternity—connot rationally be denot inheritance/becausy they pose none of the risks § 4-1.2 was intended to minimize?

We do not question that there will be some illepitimate 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 ordairly. But few statutory clossifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquiry under the logical Protection Clouse does not focus on the abstract "fairmess" of a state law, but on whether the statute's relation to the state interests it is intended to promote is so tennous that "Ourles the emission rationality contemplated by the Four-

teenth Ameridaneat,

Appelant chains that is addition to distributing between iPec time to had legitimate children § 4-12, as comparedien with N=Y. Dem. Ref. laws § 20 (McKnewy 1977), happended) day don't us betweet closes of degram to children. Service 94 provides that a child conceived we of wellock is towerful less legitimate if, before or after his birth his percuted and the metric of the metric of the distribution of the birth his percuted and the less legitimate if, before or after his birth his percuted and the metric of the metric of the distribution of the birth his percuted or after his birth by observing as flegitimated, which has perturbed appellant argues that by observing as flegitimated, with respect to these dublic a substituted memory. New York has, with respect to these dublic a substituted memory for § 4-12 for percentation of proof of paternary. Thus, these following we children using the rights of the rule unlike their substitute to contemparts along parents never matry.

Under § 24, and channing to be the legitimate defident a descared manwould have to prove not only his paternity but also his maternity and the fact of the manuage of his parents. These addressial evaluationy requirements in decide as somable to an epitebox exacting part of paternity and to treat such differentias legitimate for inheritance purposes.

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The IPinois statute in Trimble was constitutionally unacreptable because it effected a total statutory disinheritance of children born out of wellock 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 lefeture in the manner prescribed by the State. This is not a requirement that mevitably disqualifies Marge number of deserving individuals.

The New York courts have interpreted § 4-1.2 liberally and in such a way as to collapse its utility to both father and child without specificing its strength as a procedural prophylactic. For example, a father of illegitimate children who is willing to acknowledge paternity can write his defenses in a paternity proceeding, e. g., In re Thomas, 87 Mise, 2d 1033, [387] N. Y. S. 2d 216 (Sur. Ct. 1976), or even institute soch a preceding bimself/f N, Y Jad.; Fam, Ct. Act § 522 (McKinney Supp. 4977); In re Florins, 85 Mise, 2d. at 863. 381 N. Y. S. 2d. at 578. In addition, the courts have excused "technical" failures by illegitingate children to comply with the statute in order to prevent unnecessary injustice. E, g_{ij} In re Nills, 53 App. Div. 24 983, 385 N. Y. S. 24 876 (1976), appeal den. sub nom. Niles v. Bonimiti, 40 N. Y. 20 800, 392 N. Y. S. 24 1027 (1977) (filiation order may be signed store pro-lase to relate back to period prior to father's death when court's factual finding of paternity had been made); In $\overline{\tau c}$ <u>Kennedy</u>, 80 Misc. 2d 551 (554, 392 N. Y. S. 2d 365, 367 (Sur. Ct. 1977) (support order treated as "tanhabrount 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 pror-

(9) Define of the case to making intestate scenession pressble, of course, a father is always free to provide for his discriminate third by will. See Direc-Element, 85 Mex. 20 855, 861, 381 N, Y. S. 2d 573, 578 (Sur. Co. 1975)

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tirable rights of inhoritance on a part with those enjoyed by legitineate children." Commission Report 200 (complexis 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.

[carefully]

Even if we henced that \$4-1.2 could have been written somewhat more equivably, it is not the function of a court "to hypothesize independently on the desirability of any possible alternative[s]" to the statutory scheme furpendated by New York. Mathems v. Lucas, 427 U. S., at 515. "These matters of practical judgment and empirical calculation are for [the State]: . . . In the read the precise accurary of [the State's] calculations is not a matter of specialized judicial receptence; and we have no basis to question their detail beyond the evident consistency and substantiality." *Id.*, at 515-516!/f

[4] Appellant argues that a factorie in Trimble v. Combine 430 U. S. 762, 772 in 14 (1474), response New York to a rept the retornesh domment in which Eafly relevant to have a "any seriff as evolution of paternetic. That formate lengings to the effect that a "formal relevanded ment of paternety" should be othered to satisfy the State histories. The principle that the formatic charge to the effect that a "formal relevanded ment of paternety" should be othered to satisfy the State histories. The principle that the formatic charge to $\frac{1}{\sqrt{2}\pi ment}$ is the States are less to recognize the problems are resulted and different forms of prior and its $\frac{1}{\sqrt{2}\pi ment}$ is carefully tailored to charge impressive and moduly histories there forms the agency of the States" Rod. The New York Fegil three three is carefully tailored to be problems to correspond to the $\frac{1}{\sqrt{2}\pi ment}$ through the agency of the States" Rod. The New York Fegil three, through the agency of the States" Correspondent when your prior existence of gates in a patient of the States of the problems of part and the particular other is consolited and rejected the particular of an prior existence of gates of the formal there a patient order. Fourth Report of the Temporaty State Comparison on the Modern Fourth Report of Surgerment of the law of Fouries Legis They (165, No. 19, at 200

Even if New York were constructionally obliged to assopt "formal additional-deficients" of potential order that justical enders, it is for from electration appellant in this case would be tell from such a rate. The word "formal" in this concern is not associatly synonymeats with "trinmated" or "materized in from the concern in more regularized provisions approved by a court or agency of government. The any event, the shortment effected by appellant in the electrony tot satisfy even the shortment effected by appellant in the electrony tot satisfy even the shortment effected by appellant in the electrony tot satisfy even the shortliberal definition of the source would ment. The certificate was

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IV

We conclude that the requirements imposed by \$4-1.2 on illegitimate children who would inherit from their fathers are substancially 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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executed by Lo2i for the purpose of giving appell to permission to energy. not of priving biological paterony. The true import of the conds (ing son" is the bound antiquest, ill strating the returnality in New York's dettick not to accept such evidence

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant.

2. [On Appeal from the Court Resamond Lalli, Administratrix] of Appeals of New York, of the Estate of Mario Lalli,

[November -, 1978]

MR, JUSTICE POWERL delivered the opinion of the Court.

This case presents a challenge to the onestitutionality of ± 4.12 of New York's Estates. Powers, and Trusts Law,³ which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of pateranty. Legitimate children are not subinct to the same requirement.

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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 Lalb, 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 Mauroen Lalli were entitled to inherit from Mario as his children. Resammed Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's

¹ 1965 N. Y. Lans, eds. 958, §). The statute was initially coalified as N. Y. Devolutit For, 1_2 w § 80-5. In 2006 it was recoeffied without traterial charge as N. Y. Let , Powers and Trasts Law § 4-4.2 – 1966 N. Y. Lews, ch. 252. For thermion substitutive substitution were made the next year, 1967 N. Y. Lews, ch. 686, §§ 28, 29.

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children, they were not lawful distributees of the estate because they had failed to comply with \$ 4-1.2.4 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 coart of competent jurisdiction has during the lifetime of the father, made as order of filmtion declaring paternety 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 Silation during his putative father's lifetime. The contended, however, that $\S = 1.2$, by imposing this requirement, discriminated against him on the basis of his illegitimate furth in vinlation of the Equal Protection Clause of the Fourteenth

263) The existence of an external toble slide the fither to succert the illegithmate shift does not of difference child on the new to indexit from the father in the above of an order of the two anytes as provided by subpresentable (2).

(34) A motion for relief arom on order of filling only be made only by the father, and such mation must be made within one year from the entry of such order.

¹ Hei H van illegitiante clubb dos, La surviving sponse, issue, motter, insterent Violosé and fatter indenit and are concletent to betters of administration as if the decedent were legitimete, provided that the father may inherit or obtain such letters only in an order of Elation has used made its according with the provisions of subparagraphs (2).²

^{2.86} tion 4-12 in its entirety provides:

[&]quot; fait For the purposes of this pricelet."

⁽¹⁾ An illoginimate shall is the legitly, by shill af his matter so that he and his issue inderit from its matter and from his maternal karled.

⁽²⁾ An allogation to child us the logatized child of his father so that he and his issue inherit from his father of a cours of enception jurisities an los, during the fiftung of the (other, mode on order of planton deslaring paternary in a proceeding in-trated dering the pregnoney of the factor or within two years from the birth of the child.

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Amendments? Appellant tendered certain evidence of hisrelationship with Mario Lalli, including a notarized documentin which Lalli, in consenting to appediant's interinge, referredto him as "my son," and several affidavats by persons who stated that Lalli had acknowledged openly and often that Robert and Manreen were his children.

The Surrogate's Court noted that $\pm 4-462$ had previously, and misuccessfully, been attacked nuclei the Equal Protection Churse. After reviewing recent decisions of this Court concerving discrimination against illegiturate cheldren, particularly Labiae v. Viaceot, 404 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute. In re-Belton, 70 Misc. 2d 814, 335 N. Y. S. 2d 177 (Sur. Ct. 1972); In re-Hendrir, 68 Misc. 2d 439, 444–326 N. Y. S. 2d 646, 651-652 (Sur. Ct. 1971); In re-Crawford, 64 Mise, 2d 758, 763, 315 N. Y. S. 2d 890, 805 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distribute of Lalli's estate and therefore lacked status to petition for a compulsory accounting.

On direct appead the New York Court of Appeals affirmed, lore Laffi, 38 N, Y, 2d 57, 340 N, E, 2d 521 (1975). It understood Labiae 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-Laffi, supra, 38 N, Y, 2d, at 81, 340 N, E, 2d, at 723. After discussing the problems of poord peruliar to establishing paternity, as opposed to maternity, the tourt concluded that the State was constitutionally entitled to require a judi1.1

Appellant also claimed that $\xi \neq 2$ was inviable under N. Y. Cansta-Art, 1, ξ H. The New York Court of Appeals dei not rate on the issue run do over We also sin not consider whether ξ 4-1.2 unconstitutionally distributes on the basis of oce or whether the administrative of Morielestate is weppined to account for her alleged faders to triag a wrongfol death action on definit of appeals, and the former was runsed for the fastsidered by the Court of Appeals, and the former was runsed for the fasttions by a brief many seconds form.

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cial decree during the father's lifetune 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 Tribable v. Gordon, 430 U. S. 762 (4976). Because the issues in these two cases were similar in some respects, we vacated and rebounded to permit further consideration in light of Tribable, Laffi v. Laffi, 431 U. S. 911 (1976).

On remain!" the New York Court of Appeals, with one judge dissenting, adhered to its former dispection. In re-Lalli, 43 N. Y. 2d 65, 371 N. E. 2d 481 (1977). A 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 rourt 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*, supro, at 771, to meet the requirements of equal protection.

Appellant again singlet review here, and we noted probable jurisdiction. Lattler, Lattle, 435 U. S. 921 (1978). We now address.

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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 remark from this Court, the New York Asterney General was periodited to intervene as a defendant appelley. The fast likes a brief of the maximum and argued the cose in the Court. Appeller Restricted Lock def not present and argument and has not filed a brief on the merits."

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born out of wedlock whose father had mither 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 dial intestate, the child was excluded as a distributed 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 *Mathemas* v. *Lucus*, 427 U. S. 495, 506 (1976), and realErmed in *Trouble*, *supra*, at 767, classifications based on illegitimacy are not subject to "strict scritting," they nevertheless are invalid under the Fourteenth Amandment of 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 coronragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decedent's property. Gracting that the State was appropriately conversed 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 show illicit relationships because the offspring may not reap the benefits" that would arerue to them were they legiturate. We have a *Casualty & Sarety Ga.*, 406 U. S. 164, 173 (1972). The statute therefore was not defensible as an incentive to enter legitimate family relationships

Illimis' interest is 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 comprehence of the individual States." *Trimble, supro* at 774. An important aspect of that framework is a response to the often difficult problem of proving the

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paternity of illegitimate chibited and the related datger of spurious claims against interstate estates. See *lafter*, at ——. These difficulties, we said, "might justify a bone demanding standard for illegitimate chibited chibited data note their fathers' estates than that required entire for illegitimate chibited chiming under their mothers' estates or for legitimate chibited generally." $-Id_{cc}$ at 770.

The Illumis statute, however, was constitutionally flavoid because, by insisting upon not only an acknowledgment by the father, but also the marriage of the parents, it evcluded "at least some significant categories of illegitimate children of intestate ones (whose) inheritance rights can be recognized without inconting the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." Id_{c} at 771. We concluded that the Equal Proteetion Clause required that a statute placing exceptional bardens on illegitimate children in the furtherance of proper state objectives must be some "carefully timed to alternative considerations," *id.* at 772, quoting *Mathems* v, *Lanus*, supraat 513, there was true of the brouch disqualification in the Ubnois law,

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The New York statute, enacted in 1965, was intended to soften the rights of previous law which permitted illegitimate children to inherit only from their mothers. See infra, at ——. By fifting the absolute bar to paternal inheritance $\pm 4-1.2$, tended to achieve its desired effect. As in *Tranble*, however, the question before as is whether the remaining statutory mastacles to inheritance by illegitimate children can be suppred with the Equal Protection Clause.

Λ.

At the outset we observe that 4-1.2 is different in important respects from the standary provision overtained in *Trimble*. The Illinois statute required, in addition to the

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father's arknowledgment of paternity, the intermarriage of the parents of the idlegitizate 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." *Trandle, supra,* at 770–771. As (Sustrated by the facts in *Trindle, even a* judicial declaration of paternity was insufficient to parently inheritance.

Finder § 4-1.2, by contents 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. Had the appellant in *Trimble* been governed by § 4-1.2, she would have here a distributes of her father's estate. See *Dire Lulli*, 43 N, Y, 2d, at 68 n, 2, 373 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 Illewis how was defended in part, as a means of encouraging fegiti-

[&]quot;Section 4-12 requires action violate the order of Wildion be made during the lifetime of the fadior, but that the precision prior which it is sought have been commenced training the pregnates of the mother or within two years from the bath of the child? The New York Corp. of Appends the figural tracted outs the source periodial to of the two-year high is tion in both of a superious in the case because, grading or exhally had sever commenced a gateroity granning of all, "Hack it the rule that parately is folically declared doming up tather's institut were apled. spectral association after to compare this requirement along It on the other hand, appelling procaded in my argument of a his information could not be conditioned another existence of an order of the s tion. If a two-year lighted we would be care intervant since the parentity proceeding itself would be unnecessary a set to a Lab. 43 N/Y/24 65. [68] n. I. 471 N. E. 21 481 [182] n. I. (1977); *Inest. Latt.*, 38 N. Y. 24 77. 80 nr. 7, 410 N. 45, 24 724, 723 nr. 2, c19734 ... As the New York Quart of Appends it is net presed upon the constitutionality of the woowcar landation. If it quotion is not before the Our decision raday therefore site tairs § H1.2 under the Dynal Protection Chaise only with respect to its requirement 45.2 is judic 1 order of dilation be issued during the lifetimes or the 1 ther as an iller to one cand

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mate family relationships. No such justification has been offered in support of § 4-1.2. The Court of Appeals dischained that the purpose of the statute, "even in small part, was to discourage illegitimacy to could human conduct or to set societal norms." In re-Lalli, super, at 70, 371 N, E, 2d, at 483. The absence in § 4–1.2 of any requirement that the parents intermetry or otherwise legitamate a child born out of wellock 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 doolde whether the discrete procedural denomis that \$4-1.2 places on illegitimate children bear an evideou and substantial relation to the particular state interests this statute is designed to serve,

B.

The primary state goal underlying the challenged aspects of \$4.4.2 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. Actual Casualty & Surety Cosupra at 170; Labine v. Vincent, 401 U. S. 532, 538 (1971); see also Lyetle v. Hocy, 365 U. S. 188, 493 (1938); Mayer v. Grima, S. 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 uniternity is soldom 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 pressure of others. In must case, the child

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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." To re Oritz, 60 Mise, 2d 556, 561, 303 N. Y. S. 2d 806, 812 (Sur. Ct. 1960). Proof of paternity, by contrast, frequently is difficult when the father is not part of a formal family unit. "The potative father often goes his way unconscious of the birth of a child. Even if consciutes, he is very often totally unconcerned because of the absence of any ties to the acother. Induced the mother may not know who is responsible for her pregnancy." Hold, (emphasis in original): accord. To re F(roton, 85 Mise, 2d 855, 861, 381 N, Y. S. 2d 573, 576-577 (Sur. Ct. 1075)) To re Hendric, 68 Mise, 2d, at 443, 325 N, Y. S. 2d, at 650) cf. Trimble, supront 770, 772.

Thus, a number of problems arise that isomed against treating illegitimate children identically to all other beins of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Moderinzation Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission? consisted of "experimened Surrogates [and] estate practitioners." In re-Fleman 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, Dor. 1965, No. 19 (Incrimafter Contraission Report). The statute new codified as $\S 4-1.2$ was included.

Altisongle the overarching purpose of the proposed statute was "to allociate the plight of the flegitimate child," Com-

⁷ The Bound Commission was created by the New York Logi-Detection 1961. In was instructed to recommunifused of charges in certain areas of state law, including their peri imag to "the detection and distribution of property scale the practice and procedury relating thereta." 1961. N. Y. Low, ed. 750.

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mission Report 20, the Betnett Commission considered it necessary to impose the strictures of \pm 4–1.2 in order to actigate serious difficulties in the administration of the estates of both testate and intestate decedents. The Commission's purception of some of these difficulties was described by Surrogate Solel, 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 its Planne, super, at 857, 381 N. Y. S. 2d. at 574 (Sobel, S.), and a participant in some of the Commission's defiberations:

"An illegitionate, if made an unconditional distributed in intesting, must be served with process in the estate of his propert or if he is a distributes in the estate of the keeded of a pureid, And, in probating the will of his present (though not named a beneficiary) or in probating the will of any person who makes a class disposition to "issue" of such parent, the illegituristic must be served with process, i.e., How does one cite and serve an iffegitioate of whose existence neither family nor personal representative may be aware? And of greatest concernhow achieve finality of decree in any estate when there always exists the possibility however remote of a secret illegitheate lacking in the baried past of a parent or an ancestor of a close of hemeficiaries? Finality in degree 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 terressary parties. Given the right to intestate succession, all illegitimates must be served with process. This would be up real problem with respect to those for estates where there are "known" illegitimates. But it presents an almost insuperable burden as regards "inclusion" illegitingutes. The point made in the [Report] commission discussions was that instead of affecting only a few estates, procedural problems would

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be created for many—some members suggested a majority—of estates." *Id.*, at \$59, 381 N, Y, S, 2d, at 575–576; cf. *In r. Leneutritt*, 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 binnedf known, the difficulties facing up estate are likely to persist. Because of the particular problems of proof, sparious claims may be difficult to expose. The Brunett Commission therefore sought to protect "immeent adults and these rightfully interested in their estates from fraudulent claims of beirship and horassing litigating instituted by these seeking to establish themselves as illegitimate heirs." Comparison Report 199.

С.

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 patertity and to minimize the potential for disruption of estate administration. Accuracy is enhanced by placing pateroity 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 for the putative father) should be a substantial factor contributing to the reliability of the factfinding process," Jure 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 must to defend his reputation against "unjust accusations in paterticly claims," which was a secondary purpose of §4–1.2. Composision Report 200.

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

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rommences. Fractitient assertions of paternity will be muchless likely to succeed, or even to arise, where the proof is putbefore a court of law at a time when the putative father is available to respond, rather then 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 Triable, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. Triable, supra, at 771. The urges that those in his position— "known" illegitimate children who, despite the absence of an order of filiation obtained during their fathers' lifetimes care present convincing proof of poternity' cannot rationally be denied inheritance as they pose more of the risks § 4-1.2 was intended to minimize."

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

Unter § 29, one channing to be the legitation chald of a document manwould have in proce not only the parentially but decides his renterary and the fact of the marriage of its parents. These additional evidentiary requirement's nucleu interactive to except less exacting proof of potentiary and to treat such chaldren as legitimate for inheritance purguents.

⁵ Appellant children et a addition to discriminating between ellegionate and legitimate children $\S + 12$, in conjugation with N, Y. Dora Rel-Law $\S 24$ (McKatory 1977), importantially discriminates herween efficient of wellock is invertible. Soften 25 provides that a children of secol file timete children. Soften 25 provides that a children his parents marry, even of the marriage is void, illegal of judwinth manufed. Appellant argues that by classifying as degitimate, while a born out of wellock where parents have marry. New York has with respect to down children, substituted marriage for $\S 4-12$'s responsibility of proof of subtruty. Thus, there "filegitimate" children escape the rights of the intermedy. Thus, there "filegitimate" children escape the rights of the intermediate file intermediate contemports whose parents marry.

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times produce inequatable results. Our impairy 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 protente is so teremus that it lacks the rationality contemplated by the Fourteenth Amendment.

The Illinois statute in *Primble* was constitutionally macceptable because it effected a total statutory disinferitance of children horn out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the stature was far in excess of its institiable purposes. Section 4–1.2 does not share this defect. Toheritance is barried only where there has been a failure to secure evidence of patertity 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 prophyfactic. 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 Thomass, 87 Mise, 2d 1033. 387 N. Y. S. 2d 216 (Sur. Ct. 1976), or even institute such a proceeding himself," N. Y. Judi; Fam. Ct. Act. §522 (McKinney Supp. 1977); In re Flourn, 85 Mise, 2d, at 863. 381 N. Y. S. 20, at 578. In addition, the courts have excused "technical" feilures by illegitimate children to comply with the statute in order to prevent unoncessary injustice. E, g_{ij} In re. Niles, 53 App. Div. 2d 983, 385 N. Y. S. 2d 876 (1976). appeal data, sub-noise, Niles v. Residuati, 40 N. Y. 2d 809, 302 [N. Y. S. 2d 1027 (1977) (Eligition order may be signed unor pro-time to relate back to period prior to father's death when

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² In additional to marking industrate succession possible of contrasts fasher is bioays free to provide for its diaginizate child by will. See Dime Flower, 85 Miss, 26 835, 864, 085 N. Y. S. 2d 57.3, 578 (Sur. C), 2075).

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court's factual finding of paternity had been made); to re-Kennedy, 80 Mise, 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 spreifically declared therein).

As the history of ξ 4-4.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates in so far as procticable rights of inheritance on a par with those enjoyed by legitimate children." Commission Report 200 (coephasis added), while protecting the important state interests we have described. Section 4-1.2 represents a carefully considered legislative judgment as in how this balance best could be adheved.

Even if we believed that \$ 4-12 could have been written somewhat more equitably, it is not the function of a court. "to hypothesize independently on the desirability of any possible alternative s]" to the statutory scheme foratulated by New York. Mathems v. Lams, 427 U. S., at 515, "These matters of practical indgment and empirical calculation are for [the State]. . . In the cult the precise accuracy of [the State]; could the not a matter of specialized judicial competence: and we have no basis to question their detail beyond the evident consistency and substantiality," Id_{could} at 515-516."

¹⁶ Appellant argues that a matricule in *Trimble* v. *Gordina*, 430 U. S. 702, 772 or 14 (1970) requires New York to accept the totagget domiment in which hall, referred to bin as "tay son" as systeme of paternity. That further contains language to the effect dost in formula acknowledge areas of paternity' should be sufficient to satisfy the State's interests. The principle that the frontinue elaborates is that the State's interests. The reference for problems arising from different forms of prior for the reference for problems arising from different forms of prior contradictly when forms "modeling from different forms of prior contradictly the second the problems arising from different forms of prior contradictly when forms "modeling paterning" *(bid.)* The New York Legislature, through the against of the Bennet Commission exercised this judgment when it considered and rejected the possibility of screpting uvidence at paternity less formed there a judiced order. Formula Report of

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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.

the Temporary State Controls-ion or the Maderalization. Revision and Simplification of the Low of h-tates, Legis Data 1965, No. 19, at 200

Even if New York were constitutionally adding to accept formal inducewicklyments? of paterning other than judicial orders, it is far from start that appellant in this case would bench from each a rule. This would "formal" in this connect is not necessarily synatype as with with necess? or "notatized," It may control a more regularized procedure approach by a court of agency of generalized in any event, the domment offsteel by a point or agency of generalized in any event, the domment offsteel by a point in this case case and to active even the most formal domains of "notatized," It may event the domain method offsteel by a point in this case case not satisfy even the most formal domains of "normal and acknowledgment." The considerate as a symmetry by hall for the purpose of groung appell at permission to agency, not ne proving ballogical patterning the regionality of New York's decision not to accept such evidence.

Supreme Court of the Muiled States Mashington, D. C. 20343

CHANBERS 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,

· · · - - -

Mr. Justice Powell Copies to the Conference Supreme Court of the United States Mashington, D. C. 20543

COMMERTER OF

November 14, 1978

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

Dear Lewis,

. . . .

I shall await the dissent in

this case.

Sincerely yours,

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Mr. Justice Powell

Copies to the Conference

Supreme Court of the Naited States Mashington, D. C. 20343

CHANGERS OF USTICE WE U BRONNAN JA

November 14, 1978

RE: No. 77-1115 Lalli v. Lalli

Dear Lewis:

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

sincerely, Sul

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Mr. Justice Powell cc: The Conference



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

COMMERSION

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November 14, 1978

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

Dear Lewis:

I await the dissent.

Sincerely,

Jan. т.м.

Mr. Justice Powell

cc: The Conference

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



November 14, 1978

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

Dear Lewis,

I am glad to join your opinion for the Court.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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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? which requires illegitunate 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.

T.

Appellant Robert Laffi claims to be the illegitimate gon of Mario Laffi who died intestate on Jaouary 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 Laffi, was appointed administratrix of her husband's estate, appellant peritioned the Surrogate's Court for Westchester County for a computiony accounting, claiming that he and his sister Maureea Laffi were entitled to inherit from Mario as his children. Rosamond Laffi opposed the petition. She argued that even if Robert and Maureen were Mario's

¹ 1995; N. Y. Luws, ed. 958, § 1. The statute raw (pin, fly coefficient as N, Y. Decentral 15). Low § 84 5. (p. 1966) in was provided without material charge as N, Y, Eq., Provers and Trasts Lyw § \pm 1.2. (1966) N, Y. Lews, ed. 950; where material action index to the proversion of the anticologient state trade the next part of 1967; N. Y. Laws, ed. 686, §§ 48, 29

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children, they were not lawful distributees of the estatebreause they backfailed to comply with \$ 4-1,2/ which provides in part:

"An illegitimate child is the tegatimute child of his induce 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 lafetune. He contended, however, that \$ 4-1.2, by imposing this requirement, discriminated against kinn on the basis of bis illegitimate birth in violation of the Equal Protection Chause of the Emriteenth

2630 The existence of an ognerator oblighting the hollon to support the illightmate clubb dues not qualify such child or his issue to inherit from the futher in the absence of an order of fiberator state is prescribed by subprospriph (2).

2440. A module for reliable from an eroby of filledom may be made only by the father, and such that an index be made within one year from the entry of each order.

The If an illegiturate child diss, his categories proceed is not her, in terms builted and faster advant and esternished to letters of administration as if the decident wave logitariate, provided that the table π are printeral arrests is such betters only it so order of the tables been more a contribute with the providers of adopting type (2).²

Section +12 mills endiners provides).

first For the purposes of this argula-

⁽¹¹⁾ An allegation could be the legitimate child of his mother so that to and the issue interfaction his mother and from his mattern 1 knowed.

²⁽²⁾ An disgitizate child is the leadinate child of his father so that he atal his loss inherit from his father if a court of compatent paradiction (respirating the lifetime of the cutter in decay under of literiou decising patiently in a proceeding instituted during the pregnancy of the mother or within two years from the high of the cold.

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Amountment ' Appellant tendered cortain evidence of hisrelationship with Mario Lalli, including a notarized documentin which Lalli, is consenting to appellant's searriage, referredto him as 'my son," and several affidavits by persons who stated that Lalli had acknowledged openly and often that Robert and Mauroen 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 Coart concerning discrimingtion against illegitimate children, particutarly Labine v. Unicent, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute, In re-Beitan, 70 Mise 2d 814–335 N, Y, S. 2d 177 (Sor. Ct. 1972); In re-Hendric, 68 Mise 2d 439, 444, 326 N, Y, S. 2d 646, 652 (Sur. Ct. 1974); In c. Crawford, 64 Mise, 2d 758, 762–763, 315 N, Y, S. 2d 800, 895 (Sur. Ct. 1970), the court ruled that appellant was properly excluded as a distribute 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-Laff, 38 N, Y, 2d 77, 340 N, E, 2d 721 (1975). It understood Labiae 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-Laffi, 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 insternity, the court concluded that the State was constitutionally entitled to require a judi-

⁸ Appellant also domined that $\xi | 4| 1| 2|$ was invalid under N. Y. Const. Art. I, $\xi | 11$. The New York Court of Appeals did nor role on this issue, nor do we. We also do not mension whether $\xi + 1| 2|$ through in bandly discruminates on the basis of sector whether the administrative of Mario's state is required to account for her alleged follow to bring a wrongful doubt action on behalf or appellant. The latter question was rare consubject by the Court of Appends, and the future was rar-ed for the first time by a funct galaxies rarise in this Court.

77-1115 OPINION

LATER STATES

dat deeree 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 peorling 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 remainled to permit further consideration in light of *Trimble* – Laffi v. Laffi, 431 U. S. 911 (1977).

On renhand, the New York Court of Appeals, with one judge dissenting, adhered to its former disposition. In re-Lalli, 43 N. Y. 2d 65, 374 N. E. 2d 481 (1977). It acknowledged that Trimble contemplated a standard of judicial review detraoiding more than "a there 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 sentiny. Finding § 4–1.2 to be "significantly and determinatively different," from the statute overturned in Trimble, the rourt 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 intesticy 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 (1958). We now affirm.

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We begin our analysis with Trinble. 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

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[&]quot;On remain from this Crutt, the New York Attantes General was permuted to intervate as a defendant specifies. He has first a brief on the merits and arguest the eigenmuth's Court. Appellee Brissmoral Luffi shift not present oral argument and has not filed where first the merits,

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the child had been legitimated by the intermarriage of the parents. The appellant in *Trimble* washorn out of wellock 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 distributed 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 *Mathems v. Lucas.* 427 U. S. 495, 506 (1976), and reathinned 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 attennated relationship to the asserted goal." *Trimble, supra*, at 763. We again rejected the argument that "persons will show illicit relationships because the offspring may not one day map the benefits" that would accrue to them were they beginnate. Weber v. Actua Cassalty & 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 classifiration. 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." Frimble, supra, at 771. An important aspect of that framela child !

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

The Illinois statute, however, was constitutionally flaved because, by insisting upon nor only an acknowledgment by the father, but also the marriage of the parents, it excluded "at least some significant rategories of illegitimate children of intestate mea [whose] inheritance rights can be recognized without jupperdixing the orderly settlement of estates or the dependability of titles to property passing under intestacy have," Id_{ij} at 771. We concluded that the Equal Protoction Chause required that a statute placing exceptional fourdens on illegitimate children in the furtherance of proper State objectives must be more "catefully tuned to alternative considerations," id_{ij} at 772, quoting Motheras v, Lucas, super, at 513, than was true of the broad disqualification in the Illinois law,

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The New York statute, enacted in 1965, was intended to soften the rigors of previous how which permetted illegitualate children to inherit only from their mothers. See *lafra*, at ... By lifting the absolute bar to paternal inheritance § 4-1.2 tended to achieve its desired effect. As in *Tranble*, 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 impor-, tant respects from the statutory provision overtained in

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Triable. The Illinois statute required, in addition to the father's acknowledgement of paternity, the legituration of the child through the intermatriage of the patents 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." *Triable, sama, at 770–771, As* illustrated by the facts in *Triable, sama, at 770–771, As* illustrated by the facts in *Triable, sema*, at a 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 herderhard 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 *Tranble* been governed by § 4–1.2, she would have been a distribute of her father's estate. See be re-Laffi, 43 N. Y. 2d. at 68 n. 2, 374 N. F. 2d. at 482 n. 2.

^{2.}Section 4-it2 requires not only that the order of the rise he mode. doring the lafetime of the follow but that the proceeding in which it is sought have been commenced. (during the programmy of the mothes or within two years from the brith of the eldal," The New York Court of Appeals declined to mus on the constitutionality of the two-sets limits. terr in both of its opinions at this even because appelling more fivily had never component's promoting at all. Thus, if the rule that potentity by judicable declared during his father's lifetime were uplead, appellant would lose for testory to except, with that requirement dope, It on the other hand, appellant previded to his argument that his information could not be conditioned on the existence of an order of filmtion, the two year lanitation would become irrelevant since the parorable proceeding chall would be transcissary. See In to Eadly 43 N/Y/42-65, [68] G. L. 371, N. P. 20, 481, 482 [n] J. (1977); *Inter Table*, 58 [NeV. 24, 27]. 50 G. *, 340 N. E. 24 721, 724 G. * (1975) As the New York Constant Appeals has not passed upon the constructionality of the two-year biologtion, that specifion is not before us. Our decision radia: therefore sptaits §4-12 under the Equal Protection Chanse main with respect to by toprimment that a pulicial order of flighton be readed during the Siering (b) tarbox at an illegitanese shild.

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A related difference between the two provisions pertains to the state interests sold to be served by them. The IIlmois 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 \$4.4.2 of any requirement that the parents intermary or otherwise legitimate a child bern 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 domaids that § 4–1.2 places or illegitimate children bear an evident and substantial relation to the particular state interests this statute is designed to serve,

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The primary state goal underlying the challenged aspects of § 4–4.2 is to provide for the just and orderly disposition of property at death.⁴ We four have recognized that this is an area with which the States are justifiably concerned. Trimble, super, at 771: Weber v. Acton Casualty & Surety Co., super, at 170: Labins v. Vincent, 401 D. S., at 538 (1971); see also Lyeth v. Harry, 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 populiar problems of proof that are involved. Establishing maternity is solution

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^{*} The presence in this case of the State's interest in the orderly distant diamodes decodent's property of death distinguishes it from others in which the Upset free due for an illegatime voluced elevidentian was absent. E(q), dimension, Words oper 417 (1, 8, 628 (2011)), because v. Perez 460 (0, 8), 5(5+1975); Weinberger, 417 (1, 8, 628 (2011)), because v. Perez 460 (0, 8), 5(5+1975); Weinberger, 417 (1, 8, 628 (2011)), because v. Perez 460 (1, 8), 5(5+1975); Weinberger, 417 (1, 8), 628 (1008),

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difficult. As one New York Surrogate's Court has observed, "the birth of the child is a recorded or registered every usually taking place in the presence of others. In most cases the child repeates with the mother and for a time is necessarily reaved by her. That the child is the child of a particular woman is rarely difficult to prove," Jo re Oritz, 60 Mise, 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 unconcorned because of the absence of any ties to the mother. Indeed the mother may not know who is responsible for her prognancy." Hild, (emphasis in original): accord, In re Flemm, 85 Mise, 2d 855, 861, 381 N. Y. S. 2d 573, 576-577 (Sur. Ct. 1975); In re-Hendrig, 68 Mise, 2d. at 443, 326 N. Y. S. 2d. at 650; cf. Trimble, stepan. at 770, 772.

Thus, a number of problems arise that counsel against treating dilegitimate children identically to all other beins of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Moderaization. Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission? consisted of "experienced Surrogates fand] 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 Cummission Report). The statute now codified as \$4-1.2 was included.

⁷ The Brancti Countrission was created for the New York LegisLence in Pail. If was instituted 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 relation therein " 1964 N Y, Lews, ed. 731, § 1.

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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 busicst [surrogate's] court in the State measured by the number of intestate estates which truffic daily through this court." In re Plenne, supre, at 857, β SUN, V. S. 20, at 574 (sobel, S.), and a participant in some of the Commission's deliberations:

"An illegitionite, if made an unconditional distributes in intestary, must be served with process in the estate of his parent or if he is a distributee in the estate of the kindled 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 day estate when there always exists the possibility however remote of a secret illegitimate lurking in the burned 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 dieree. Our procedural statutes and the Due Process Clause manifer partice and puppertunity 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 barden as regards "unknown" illegitimates. The point made

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in the [Bernett] 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 \$59, 381 N. Y. S. 2d at 575-576; ef. *In re Leventrite*, 92 Mise, 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 binnedf 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 protert "innorent adults and those rightfully interested in their estates from fraudulent claims of beirship and horassing litigation instituted by those seeking to establish themselves as illegitimate heirs." Commission Report 265.

С.

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 paternety and to nummaze the potential for disreption 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 (ather) should be a substantial factor contributing to the reliability of the fact-finding process," In re-Leffi, 38 N. Y. 24, at 32, 340 N. E. 23, at 724. In addition, requiring that the order he issued during the father's lifetime permits a map to defend his reputation against "unjust accusations in paternity clauss," which was a secondary purpose of § 4 1.2. Conduission Report 266.

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

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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 putbefore 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.

Appellart 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 sertlement" of their intestate fathers' estates. *Trimble*, supra, at 771. He arges that those in his position— "known" illegitimate chaldren who, despite the absence of an order of fluction obtained during their fathers' lifetimes, can present convincing proof of paternity--rannot rationally be decided 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 decreased fathers without serious disruption of the administration of estates and that, as applied to such individuals,

Earler § 24, one chining to be the terition or child of a decay-sel man workf days to prove you only bis perturby ion also his materially and the fact of the matrices of his perturb. These addressed evidentiary requirements make it to soluble to scept has exacting proof of petrurby and to treat such children as legitimate for inherit new purpose.

⁵ Appellant china that in addition to discriminating between disgitures and fogstimate children, § 4.1.2, in conjunction with N=Y. Den, Bet-Law § 24.1 McKinney 1957), map massibly discriminates between classes of disgiturate children. So that 20 provides that a shell conceived our ai wedlock is new refueless legitimate if, before or ofter his birth, his parsites many, even if the quartage is void diagol or publicable annuales. Appellant argues that by classifying as for gatemate "classes" born out of wedlock whose gatefors have mary. New York has with respect to the children, substituted to orage for § 4.1.25, requirement of proof of paternity. They, these following the array of the value of the rights of the rule unlike data caloritemete as metperts whose parents have in try.

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§ 4-1.2 appears to operate unfairly. But few statutory elassifications 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 remains that it lacks the rationality contemplated by the Fourteenth Amendment,

The Illignois statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disministrance of children been out of wortlock 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 daring the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies as unnecessarily large number of children but out of worllock.

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 ver Thomas, S7–Mise, 24–1033, 387–N, Y. S. 2d–216 (Sur, Ct. 1976), or even institute such a proceeding bimself.¹ – N. Y. Jult.; Fam. Ct. Act. § 522 (McKinney Supp. 1977); In ver Fletnin, S5–Mise, 2d–a) 863– 384–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 nunceessary injustice. *E. g., In ver 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–876 (1977).

¹ In addition to making intertube succession possible, in contrast, a fitture is always free to provide for his filingituate vidal by will. See In ter-Florence Si Mise, 2d 835, 866, 681 N. Y. S. 21 873, 579 (Sur. C), 1975).

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(filiation order may be signed more pro-time to relate back to period prior to father's death when coart's factual finding of paternity had been made(); In the Kennedy, 89 Mise, 2d 551, 554–382 N, Y, S, 2d 365–307 (Sur. Ct. 1977) (judicial support order (related as "contamount 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 temphases 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 behaved that \$4.4.2 rouid have been written sumewhat more equitably, it is not the function of a court "to hypothesize independently on the desirability of any possible alternative[s]" to the statutory scheme formulated by New York. Mathems v. Lucas 427 U, S [31,515]. "These matters of practical judgment and empirical calculation are for [the State].... In the end, the precise accutacy 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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¹⁶ Approximations that a formula in *Trimble v. Gradow*, 400 U. S. 202, 772 at 14 (2077), requires New York to accept the notation domiment in which his hierderted to have as into some evolution of potential. That formation complex angains the effect that a formal acknowledge ment of potential" should be efficient to satisfy the States interests. The principle that the footpate definition is that the States interests. The principle that the footpate definition is that the States interime to acceptible that the footpate definition is that the States are free to acceptible the problems drive different forms of providing to sched three forms therefully tolered to chain the improvise star undiffebet the total to establishing paternate in *Thicl.* The New York legislituate the three definition of the Brancet Commission exercised the gradement when at considered and rejocal the possibility of accepting

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We conclude that the requirement imposed by 3.4.4.2 or 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 indigment of the New York Court of Appeals, accordingly, is

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evaluate of potentity to soformal than a judgent order. Forma Report of the Tenanerary State Communities on the Modernization, Benision and Simplification of the flaw or Ferates, Logis, Doc. 1965, No. 19, at 266-267.

Even if New York were constitutingally obliged to accept "formal asknowledgecens" of paternity order than judical orders it is for from clear that appellant in this case would hencin three such a mice. The worl "formal" in this correct is not necessarily symmetry with "offnessed" or "notationd". In many connects a more regularized procedure approved by a court of agency of generations. In any event, the does active off-and by signification this case that not satisfy even the does active off-any by signification of generations. The estimate was exampled definition of "formal acknowledgement". The estimate was eventually by here the perpose of groing appell of permission to marity, not of proving backgrave process of groing appell of permission to marity, not of proving backgrave does not the true import of the words "my son" is thus embryones, directating the retornality in New York's decision used to accept such evolution.

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To: The Chief Justice Mr. Justice Bronnan Mr. Justice Steart Mr. Justice White Mr. Justice White Mr. Justice Significan Mr. Justice Significan Mr. Justice Stevens

Log: Kr. Justice Powell

Circulated: ____

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SUPREME COURT OF THE UNITED STATES

No. 77, 1115

Robert M. Lalli, Appellant, *v.* Rusamond Lalli, Administratrix of Appeal from the Court, of the Estate of Mario Lalli,

[November ---, 1978]

Mn. JUSTICE POWELA 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,⁴ 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.

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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, Rocamond 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 Mauroen 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

⁴ 9665 N. Y. Lowe, eb. 958, § 9. The statute was initially eachied as N. Y. Doewdent E.-s. Low § 53-5. In 1007 if was reconcised without uniterial change as N. Y. E.-t., Provers and Trusts Low § 4.4.2. (1966 N. Y. Lows, eds. 952). Further non-obstative anomalities were mode the next year. (1967 N. Y. Lowe, eb. 686, §§ 28, 29.

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children, they were not lawful distributees of the estate because they had failed to comply with &4/4.2.^{*} 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 deriving paternity in a proceeding instituted during of the pregnancy of the mother or within two years from the birth of the child."

Appellast conceded that he had not obtained an order of filiation during his putative father's lifetime. The 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 Gause of the Fourteenth

*(3) The existence of an agreement obligating the lather to support the inegitameter child does not qualify such child or his assoc to inform from the different the obsence of an order of information mode as presented by subperspeript (2).

2.94) A restored 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.

"(d)) If an illegatimate child dies, he surviving spoose, issue, mathem instance, kindred and father inherit, and are catathel to fetters of adminstration as if the decedent were legatimate, provided that the tarker may intern or obtain such letters only it are order at fillation his bren madein paradones with the provisions of subparagraph 121."

Section 4-1.2 in its control y provides.

^{&#}x27;(a) For the purposes of this article.

[&]quot;(1) An illegatorate child is the legamente child as his contact so that he still be issue inherit from his mother and from his patternal kindred."

[&]quot;121 An Elegitizate child is the logitizate child of his father as that be and his as a mineral from his 50 her if a court of compotent population (as, during the u55 million for father, radie at, order of filation declaring gaterioty in a processing instituted during the pregnately of the metherfor within two years from the bitth of the child.

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Amendment.' Appellant tembered certain evidence of his relationship with Mario Falli, including a notarized document in which Lalli, in consenting to appellant's norriage, 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 inited that §4-1.2 had previously, and unsuccessfully, been attacked under the Equal Protection Clause. After reviewing recent decisions of this Court conrerning discrimination against illegitimate children, particutarly Labore v. Vincent, 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute. In re-Belton, 70 Misc. 2d 814, 335 N, Y, S. 2d 177 (Sur. Ct. 1972); In re-Hendriz, 68 Misc, 2d 439, 444, 326 N, Y, S. 2d 640, 652 (Sur. Ct. 1971); In re-Concepted, 64 Mise, 2d 758, 762–763, 315 N, Y, S. 2d 890, 895 (Sur. Ct. 1970); the roughruled that appellant was properly excluded as a distribute of Laffi's estate and therefore lacked status to petition for a compulsory accounting.

On direct appeal the New York Court of Appeals affirmed, large Lalli, 38 N, Y, 2d 77–340 N, E, 2d 721 (1975). It understood Labiae 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-

⁴ Appellant also claimed that § 4-1.2 area invalid under N. Y. Carst, Art. 1, § 11. The New York Court of Appeals did not mix on this issue, that do we. We also do that consider whether § 1-1.2 unconstructionally discriminates on the basis of sex or whether the administration of Mario's state is required to account for her alloged future as large a wrong't doubt action on twhalf of appellent. The latter operation was not considered by the Court of Appeals, and the former was a issue for the first time by a brief and on carbon in this theory.

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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. White that ease was pending here, we decided *Tranble* v. Gordoo, 430 U. S. 762 (1977). Because the issues in these two cases were similar in some respects, we vacated and remarded to permit further consideration in light of *Tranble*. Ladli v. Ladli, 431 U. S. 911 (1977).

On renand,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 there finding of some remote rational relationship between the statute and a legitimite State purpose," *id.*, at 67, 371 N. E. 20, at 482, though less than structestscrutiny. 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*, supro, at 771, to next 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 *Triable*. At issue in that case was the constitutionality of an Illinois statute providing that a child been out of wedlock could inherit from his intestate father only if the father had "acknowledged" the child and

¹On remaind from the Court, the New York Attorney General was permitted to intervence as a defendant-appelies. He has filed a brief on the merity and argued the case in al.; Court: Appeller Resamonal Laffidid not present oral argument and has not filed a brief on the merity.

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the child had been legitimated by the intermarriage of the parents. The appellant in *Trimble* washborn out of wellock 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 coordialed that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in Mathems v. Lucas, 427 U. S. 495, 506 (1976), and reaffirmed in Trimble, supro, 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 show illicit relationships because the offspring may not one day reap the benefits" that would accrue to them were they legitimate. Weber v. Actua Cascally & 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," Frimble, supra, at 771. An important aspect of that frame-

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LALLI S. LALLE

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 infre, 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 Illimits statute, however, was constitutionally flawed because, by insisting mon-not only an acknowledgment by the father, but also the matriage 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 Chause required that a statute placing exceptional bardens on illegitimate children in the furtherance of proper State objectives must be more "carefully runed to alternative considerations." *id.*, at 772, quoting *Mathemes v. Lucas, supra*, at 513, than was true of the broad disqualification in the Illinois law.

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The New York statute, enarted in 1965, was intended to soften the rights of previous law which permitted illegitimate children to inherit only from their mothers. See infra, at --. By lifting the absolute bar to paternal inheritance, $\pm 4-1.2$ tended to achieve its desired effect. As in *Trindle*, however, the question before us is whether the remaining statutory obstacles to inheritance by illegitimate children can be separed 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

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LALL & LALL

Trimble. The Illinois statute required, in addition to the father's acknowledgment of paternity, the legitomation of the child through the intermarriage of the parents as an absolute precondition to inheritance. This combination of requirements climinated "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, oven a judicial declaration of paternity was insufficient to permit subscriptions.

Under § 4-1.2, by contrast, the marital status of the parents is irrelevant. The single requirement at issue here is an evideptiary one—that the paternity of the *lather* he declared in a judicial proceeding sometime before his death.) The child need aut have been legitimated in order to inherit from his father. Had the appellant in *Trindule* been governed by § 4-1.2, she would have been a distributor of her father's estate. See In re Lalli, 43 N. Y. 2d. at 68 n. 2, 374 N. E. 2d. at 482 n. 2,

"Section 4-1.2 requires not only that the order of filtration be made county the Effective of the fother, but this the proceeding in which is is sought have been examinated "during the programmy of the quarter or within two years from the bath of the child." The New York Court of Appeals declared to rale on the manifertionality of the two-very limitsthat it both of its opinious in this case because appellant regreskely, had never commonsed a parentity proceeding at all. Thus, if the role that paternity be judicially distored during his father's during were upload, appedant would leve for failure to complet with that requirement stone. If, on the other brind appeilant prevailed in his arguingent their Liinterituped could not be conditioned on the existence of an order of filintion, the mospoor limitation would become inselected since the potentity proceeding Partit would be numeroscary. See In n. Latte, 43 N. Y. 2d 45, 68 to [1, 374] N. E. 2d 481, 482 to 1 (1977); *In to Italia* 36 N. Y. 24 57, 50 n. *, 340 N. E. 23 724, 723 n. * (1975). As the New York Court of Appeals has not proceed upon the constitutionality of the mon-year builtytion, that question is not before us. Our decision today cherefore equtions 5+1.2 under the Equal Protection Chaise only with respect to its requirement that a pulicial order of fillation be assed during the lifetimeof the tother of an illegation to child,

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LALLI & LALLI

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 \$4.12. The Court of Appeals disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimosy, to mold homon combiner or to set societal norms," In re-Leffl, supra, at 70, 371 N. E. 24, 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 hear an evident and substantial relation to the particular state interests this statute is designed to serve.

В

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.⁴ We long have recognized that this is an area with which the States are justifiably concerned. Trimble, supro, at 774; Weber V. Actua Casually & Surety Co., reprint at 170; Labine V. Vincent, 404 U. S. at 538 (1971); see also Lyrth V. Hocy. 305 U. S. 188, 193 (1938); Mager V. Grinn, S How, 490, 493 (1850)

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

^{*} The presence in this case of the States interest in the orderly disputtion of a decodent's property of both distinguishes at from others in which the partification for an illustriance-brack classification was absorb. E=0. *Ensure*, v. Weinburger, 417 U. S. (28) (1974), *Chance* v. Prove, 469 U. S. A35 (1973); Weber v. *Actual Casualto & Surety*, Co. 466 U. S. 164, 170 (1972); Leep v. Lanakard, 30 U. S. 68 (1958).

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LALLS & LALLI

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 varely difficult to prove." In re-Oritz, 60 Mise, 24 756, 761. 303 N. Y. S. 23 806, 842 (Sur. Ct. 1969). Proof of paternity. by contrast, iroquently is difficult when the father is not part. of a formal fateily 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." Huld, (emphasis in original); accord, In re Floram, 85 Mise, 2d 855, 861, 381 N. Y. S. 2d 573, 576–577 (Sur. Ct. 1975); In re-Hendrix, 68 Mise, 2d. at 443, 326 N. Y. S. 2d, at 659; ef. Trimble, supra. at 770, 772,

Thus, a number of problems arise that coursel against freating illegithnate 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-Flemm, supra, at S58, 384 N. Y. S. 24, at 575. The Commission issued its report and recommendations to the Legislature in 1965. See Fourth Report of the Temporary State Comreission on the Modernization. Revision and Simplification of the Law of Estates, Legis, Dec. 1965, No. 19 (hereinafter Commission: Report). The statute now codified as § 4-1.2 was included.

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The Bennett Commission was encoded by the New York Legislature in 2052. It was extracted to recommend possibil charges or certain areas of state law, including that performing to take descent and distribution of grouperty and the practice and procedure relating therein.⁶ (1961) N. Y. Jaws, ch. 731, § 1.

22 [102-s015]MION.

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Although the overarching purpose of the proposed statute was "to alleviate the phylot 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 antestate decedents. The Commission's perception of some of these difficulties was described by Surrogate Sobel, a member of "the lossiest [surrogate's] court in the State measured by the number of intestate estates which traffic daily through this court," In re Flemm, mpro, at 857, 381 N. Y. S. 2d. at 574 (Sobel, S.), and a participant in some of the Commission's debierations:

"An illegitingte, if made an uncombining distributes in intestory, must be served with process in the estate of his parent or if he is a distributed in the estate of the kindled 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 illigitimate of whose existence neither family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in may estate when there always exists the possibility however remote of a secret illegitionate lurking in the buried past of a parent or an ancestor of a class of benchiciaries? 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 untice and opportanity 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" idegitimates. The point made

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LALLI F. LALLI

in the [Bennett] commission discussions was that instead of afferting 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; ef. In re Lecentritt, 92 Misc, 2d 598, 601–602, 400 N, Y, 8, 298, 300-301 (Sur. Ct. 1977).

Even where an individual clainting to be the illegitimate rhild of a deceased man makes hunself 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 cought to protect "innocent adults and those rightfully interested in their restates from fraudulent claims of heirship and barassing litigation instituted by those seeking to establish themselves as illegitimate heirs." Commission Report 265.

С

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 casure 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-Lulli, 38 N. Y. 24, at 82, 340 N. F. 2d. at 724. In addition. requiring that the order be issued during the father's lifetime permits a man to defend his reputation against funjust accusations in paternity chines," 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 Ę

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LADIE C. LALLE

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 starute at issue in *Triable*, excludes "significant categories of illegitimate childron" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates. *Triable*, supra, at 771. He urges that thuse 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 pateroity---cannot rationally be denied inheritance as they pose time of the risks § 4-1.2 was intended to minimize."

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

Under § 24, one claiming to be the logitherne child of a decoard manwould have to prove not only the parentity last also his protectivy and the fact of the us triage of his parents. These additional evident ary requirements make in reasonable to a capt loss exactly proof of potentity and to treat such shildren as legitimate for juberstance parameter.

⁵ Appellant chains that in addition to discriminating between illegitimate and legitimate children, $\frac{3}{2} \pm 1.2$, no conjunction with N Y. Den, Rob-Low $\frac{3}{2} \pm 1.2$ (McKinney 1977), mp massibly discriminates between closes of illegitimate children. Soliton 24 provides that a child concribed out of weigek is nevertheless legitimate if, before an after ins birth, his curents avery, even if the contribute if, before an after ins birth, his curents avery, even if the contribute is verificated or judicially conclude. Appellant argues that by classifying as "legitimate" children born out of weights k whose parente later marry. New York has, with respect to these children, substituted mattings for $\frac{3}{2} \pm 1.2$, requirement of prior of parents of the contributed contribute? children escape the rights of for the guide their parente counterparts whose parents never matry.

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LALL C. LALL

§ 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 Blimis statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disinheritance of children bern out of wellock who were not legitimited by the subsequent marriage of their parents. The reach of the statinte 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 mamor prescribed by the State. This is not a requirement that inevitably disqualities an americassarily large number of children bern out of wellock,

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 prophyfactic. For example a father of illegitimate children who is willing to acknowledge paternity can wrive his defenses in a paternity proceeding, e. g., In re Thomas, 87 Mise 2d 4633, 387 N. Y. S. 2d 216 (Sur. Ci. 1976), or even institute such a proceeding himself." N. Y. Jud.: Fam. Co. Act. § 522 (McKinney Sapp. 1977): In re Floren, 85 Mise, 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.*, *Dr re Niles*, 53 App. Div. 2d 983, 385 N. Y. S. 2d 876 (1976), append den., 40 N. Y. 2d 869, 392 N. Y. S. 2d 1027 (1977).

² In addition to making intestate succession possible, of course, a father is always true to provole for his dilegatimate child by will. As *In re-*²*bases*, 85 Mays, 26 855, 864, 381 N. Y. S. 24 573, 579 (Sur. C), 1975).

77-1115-OPINION

LALL & LALL

(filiation order may be signed *nume* pro tune to relate back to period prior to father's death when court's factual finding of paternity had been made () for re Kennedg, 80 Mise, 2d 55), 554, 392 N, Y, S, 2d 365, 367 (Sur. Ct. 1977) (judicial support order treated as "tandatocast to at order of filiation," even though paternety was not specifically declared therein).

As the history of $\pm 4.1.2$ clearly illustrates, the New York-Legislature desired to "gract 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 § 4–1.3 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. Mathems 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_{c} at 515–516."

¹² Appellated argues that a controle in *Trivable 5. Gordon*, E0 U, S. 162, 172 in 14 (1967), requires New York to accept the net arged domtract in which Iath referred to him as "my soil" as synonecricit paternaly. This fuotrate contains language to the effect that a "formal orkerwheilgteent of prestraty" should be sufficient to satisfy the State's interests. The principle that the factories challenge is that the State's interests. The principle that the factories challenge is all of the State's interests. The principle that the problems arising from different forms of proof and to severate the problems arising from different forms of proof and to severate three forms (cap fully tailored to eliminate improcess and moduly burdensing methods of establishing paternity." *Hel.* The New York Legisbourd when it considered and repeated the possibility of accepting

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LALLI & LALLI

IV

We conclude that the sequirement imposed by § 4-1.2 on illegitimate children who would (ober) 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

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evidence of paternity tess formal thois a patient order. Fourth Report of the Temporary State Commission on the Modernization, Revision and Subplification of the Law of Est res, Legis UNE 1965, No. 19, at 201-207,

Even if New York were constitutionally obliged to accept thrmal acknowledgments" of paternity other that paterial orders. Us for from elem that spectrum in this case would benefit from such a role. The word "formal" in this cases would benefit from such a role three approved by a cent or agoney of government. In any event, the data result offered by a period or descent of government. In any event, the data mean offered by appellant in this case may not satisfy even the most blerif definition of "formal offered officients". The certificate was evented by faile for the parameter of giving appellant permission to easily out of proving biological peternity. The true import of the work "my satisfy the three analytices, justification is not or the parameters in a new York's do ison and to an explore a mean of the work "my satisfy the true import of the work "my satisfy to an equilation, justification of the work "my satisfy to are perfected."

Supreme Court of the Minited States Mashington, R. C. 20303 November 20, 1970 Re: <u>No. 77-1115 Lalli v. Lalli</u> Dear Lewis: Mould you add at the end of your opinion in this case the following: "For the reasons stated in his dissent in <u>Trimble</u> v. <u>Gordon</u>, 430 U.S. 762, 777 (1977), Mr. Justice Rehnquist concurs in the judgment of affirmance."

Sincerely,

Mr. Justice Powell

Copies to the Conference

To: The flight for the Mr. Alson diewart Mr. Justice White Mr. Justice Birshall Mr. Justice Blacktum Mr. Justice Brackin Mr. Justice Brangelst Mr. Justice Stavens

From: Mr. Justice Sronnan

Circulated: 28 NOV 1978

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Recirculated: .

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant, o. Rosamond Lalli, Administratury of Appeals of New York.

of the Estate of Mario Laffi.

[December +, 1978].

MR JUSTICE BRENNAN, dissenting,

Triable v. Gordon, 430 U. S. 762 (1977), declares that the state interest in the accurate and efficient determination of paternity can be adoptately served by requiring the illegitimate child to offer into evolution a "formal acknowledgment of paternity." Id_{cl} at 772 in 14. The New York statute is inconsistent with this command. Under the New York scheme, an illegitimate child near inhered interstate only if there has been a judicial finding of paternity during the lifetime of the father.

The present case flustrates the injustice of the departure from *Trouble* worked by today's decision solutions the New York rule. All interested parties concrede that Robert Lalli is the son of Mario Lalli. Mario Lalli supported Robert during has such youth. Mario Lalli <u>formally acknowledged</u> Robert Lalli as his suc. See Matter of Lalli, 38 N. Y. 20 77, 79 (2975). Vet, for want of a judicial order of fibration entered during Mario's lifetime. Robert Lalli is depied his intestate share of his father's estate.

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

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77-1115 DISSUNT:

LALLI & LALLI

drue. Similarly children who are acknowledged and supported by their father are unlokely to bring paternity proceedings against hum. First, they are <u>includely to so-the</u> area for such adversary proceedings. Second, even if aware of the rule requiring judicial filtation orders, they are ilkely to fear provoking disharmony by song they father. For the same troscens mothers of such diegetimates are unlikely to bring proceedings against the father. Finally, fathers who do not even bother to reake out wills cand thus the intestate) are unlikely to take the time to bring formal filtation proceedings. This is a practical matter, by requiring judicial filtation arders extered during the lifetime of the father, the New York statute unlikes it virtually impossible for acknowledged and irrely supported dirighterate caldner to achieve to be bring

Two interests are said to justify this discrimination against illegitimates. First, it is argued, reliance upon more formal 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 the father has formally acknowledged his child.... (neve is no possible difficulty of proof and no upportunity for fraud or error. This parported interest fin avoiding fraud) can offer no justification for distinguishing between a formally acknowledged illegitimate child and a legitimate one." Labine v. Uncend. 401 U. S. 532, 552 (1971) (Buox SAN, J. d)(sending).

But even if my co-fidence is the accuracy of formal public acknowledgements of paternity were unfounded. New York has available loss densitie initially of screening out fraudulent claims of paternety. In addition to requiring formal acknowledgments of paternety, New York might require illegitimates to prove paternety by an elevated standard of proof, e. q., elear and convecting evidence, or even beyond a reasonable doubt. Containly here, where there is no factors) dispute as to the relationship between Robert and Marin Lalli, there is no justification for denying Report Lalli his intestate share.

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77-1115 DESSENT

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LALL & LALL

Second it is argued, the New York statute protects estates from behaved claims by unknown illegitimates. I find this justification even more termons that the first. Publication indice and a short fimitations 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 dotting off the rights of known illegitimates such as Robert Lulli. I are still of the view that the state interest in the speedy and efficient determination of paternity "is completely served by public acknowindgment of (interating and samply dues not apply to the case of acknowledged illegitimate children," Labine v. Vincent, 401 U. S. 532–558 o. 30 (1971) (Bates SAN, J. disserting).

I see to reason to retreat from our decision in Triable v. Gordon. The New York statute on review here, like the Illinois statute in Triable, excludes "forms of proof which do not compromise the State's interests." Triable 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. A would invalidate the statute. Supreme Court of the Anited States Washington, B. C. 20943

THE HERITER LUCTIC LIFETH R. WHITE

November 28, 1978

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

Dear Bill,

Please join me.

Sincerely yours,

Ague

Mr. Justice Brennan Copies to the Conference Supreme Court of the United States Washington, D. G. 20343

C-MHORE OF JUSTICE THURGOOD MARSHALL

November 29, 1978

- - -

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

Dear Bill:

Please join me.

Sincerely,

.. ..

Jus . т.м.

Mr. Justice Brennan cc: The Conference



Supreme Court of the Parited States Washington, B. C. 20543

CHANBERS OF

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,

Mr. Justice Powell co: The Conference

SUPREME COURT OF THE UNITED STATES

ISE DRAFT

No. 77-1115

Robert M. Laff, Appellant, P. On Appeal from the Court Resamond Laffi, Administratrix, of Appeals of New York, of the Estate of Mario Laffi,

[Execution --, 1978]

MR JUSTICE BLACKMUN, concurring.

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Lagree with the result the Court has reached and concus in its judgeneral. If also agree with much that has been said in the plurality opionon. My point of departure, of course, is at the plurality's valuet struggle to distinguish, rather than overrule, *Tribuble x. Goubon*, 430 U. S. 762 (1977), decided just last Term and involving a small probate estate care autonublic worth approximately 82,5000 and a sail and appealing fact situation. Four Members of the Court, like the Supresse Court of Illinois, found the case "constitutionally indistinguishable from *Labore x. Uncent*, 401 U. S. 532 (1971)." and write it assent. 430 U. S., at 776, 777.

It seems to me that the Coast today gratifyingly reverts to the principles set forth in Laboue v. Unicod. What Mr. Jasstice Black sold for the Coart in Laboue applies with equalforce to the present case and, as four of its thought, to the Ulipois situation, with which Trouble was encertand.

I would overrule *Trouble*, but the Court referins from doing so on the theory that the result in *Trouble* is justified because of the peculiarities of the Dimeis Prolate Act there under consideration. This, of course, is an explanation, left, for me, it is an unconvincing one. I diverfore must regard *Trioble* as a negative regularizable only because of the overtures of its appealing facts, and othering little precedent for constitutional malyzis of State monstare succession laws. If

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17-1115 -CONCUL

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

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

 The dissent of Mr. Justice Brennan reduces the opinion in Trimble y. 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 (notnote. 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:

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"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 [or inheritance purposes, the meaning of the words "my son" is ambiguous.

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

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

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lfp/ss 11/29/78 [alli (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 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", ante, at ____, as well as that of the New York State legislature.

lfp/ss 11/29/78

8 – Lalli (Revised fn 10)

10. The discent 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 2. Al Stark taken from a single-sentence-in a lootnote. Id., at الله (¹) 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, malso-ignored-by-the-dissent; is that the glates 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". 101 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

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2. 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 The New York -----Sor consenting-to the marriage of a minor. It consists of une sentence: which is to cartily that I, who have bereto subscribed my name,do. هر hereby consent that Robert Lalli who is my son and who is under the age of 21754 shall be united in marriage to Jamice Bivens by any minister of the gospel or other person authorized by law to solemnize marriages." App, A-16. (<u>اسمین معلم)</u> Mario Lalli's signature to this was acknowledged before a notary public, but the acknowledgment contains no The colory was one ! oath or affirmation as to the truth of the "certificate more firm confirm of consent" > Apact from serving a purpose i receievant interests we seconded for the purpose For Learthy of ra Cêr of giving cannot to many, not of proving conjugated paternity to establishing-paternity-for-inheritance-purposes, the meaning of the words "my son" is ambiguous. \oslash The important state interests of safequarding the accurate and orderly disposition of property at

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be accepted as adequate proof of paternity regardless

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of the context in which the statement was made.

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lfp/ss 11/29/78 Lalli (fm)

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 $\frac{P_{a,s}}{Ante}$, at ___. The opinion then speculates scheme". 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 expecience 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", <u>supre</u> ante, at ___, as well as that of the New York State legislature.

PP 1, 5, 8, 9, 12, 14, 15, 16

Ronight dosme 12/11/78

To: The Chief destice Mr. Justice Scinsan Mr. Justice Stovart Mr. Justice Unite Mr. Justice Unroball Mr. Justice Blackzon Mr. Justice Reloquist Mr. Justice Stovens

From: Mr. Justice Poyoll

Circulated: _____

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Recipculated: _ OIC 378.

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant, U. Roeamond Lalli, Administratrix of the Estate of Mario Lalli.

[November ---, 1978]

MR. JUSTICE POWELL announced the judgment of the Court in an opinion, in which TAE CHEEP 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 Low,³ 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.

Ι

Appellant Robert Laßi 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, Rusamond 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

¹⁹⁶⁵ N. Y. LAWS, cb. 954, § 1. The statute was initially codified as N. Y. Decedent Est. Law § 43-1. In 1956 it was reconflied without material change as N. Y. Est., Powers and Trusts Law § 4-1.2. 1966 N. Y. Laws, ch. 952 – Further consultationize which draws were made the next year. 1967 N. Y. Laws, ch. 956, §§ 23, 23.

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Mario as his children. Resamond Lafli opposed the petition, She argued that even if Robert and Maurova were Mario's children, they were not lawful distributions of the estate because they had failed to comply with $\pm 4-1.2.4$ 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 pregmancy of the mother or within two years from the birth of the child."

Appellant concoded that he had not obtained an order of filiation during his patative father's lifetime. He contended, however, that \$ 4-1.2 by imposing this requirement, discrimicated against him on the basis of his illegitimate birth in vio-

 $\pi(3)$. The existence of an average for obligating the father to support the iffection to shell does not qualify such child at his issue to inherit from the father to the observe of an order of hild tors made as presented by subpersymptotic.

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

"(In the analysis in the field disc, her curviving spinse disort, matter, material kindset and father inherit, all are enrolled in herers of calabient teams of the decodent were legitimate, provided that the father may inherit or obtain such letters only if an order of thermal has been modeted enrollment with the provisions of subperagraph (2)."

Section 4-12 mails entriety provides:

[&]quot;Num For the purposes of this actuded

[&]quot;Oth An ellegrimate child is the legitimate of do of his mother as that he and his issues inherit fram his mother and much is movemal kindexl.

T(2) An all guarance which is the legenerate child of its follow so that the and his issue other it from his issue other it from his induct if a coupled comparent period original h_{co} during the later mean the priod of each rule of electric potentially as a presenting instant of during the programmy of the rooth prior within two years, investigation in the high of the during.

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lation of the Equal Protection Clause of the Fourteenth Amendment,¹ Appeliant tendered certain evidence of his relationship with Mario faill, including a notorized document in which failli, in consenting to appellant's matriage, referred to him as "my son," and several adiidavits by persons who stated that hall had acknowledged openly and often that Robert and Manusch were his ënjideen.

The Surrogate's Court noted that \$4-1.2 had previously, and unsarcessfully, been attacked under the Equal Protection Churse. After reviewing recent decisions of this Court concerving discrimination against illegitimate children, particus, larly Lablac v. Vioceot; 401 U. S. 532 (1971), and three New York decisions affirming the constitutionality of the statute, In re-Belton, 70 Mise, 2d 814, 335 N, Y, S, 2d 177 (Sur, Ct, 1972); In re-Hendrix 68 Mise, 2d 439, 444, 326 N, Y, S, 2d 646, 652 (Sur, Ct, 1971); In re-Crandord, 64 Mise, 2d 758, 762-763, 315 N, Y, S, 20 S90, 895 (Sur, Ct, 1970), the court ruled that appellant was properly excluded as a distribute of Laffi's estate and therefore lacked status to petition for a compulsery accounting.

On direct appeal the New York Court of Appeals affirmed. In re-Laffi, 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-Laffi, 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 corcluded

⁽Appellate also chimed that \S 4-12 was involid under N, Y (Can-ta-Art, 1, \S 1). The New York Court of Appelle did not rate on this issue that the wey. We also do not yousder, whether \$ 4-12 constitutionally discriminates on the brok of set or whether \$ 4-12 constitutionally discriminates on the brok of set or whether the administrative of Mathematical to account for her alloged rubble to brong a wrot \$ for the detail of appellant. The latter is brong a wrot \$ for the detail of appellant. The latter is association was not considered by the Court of Appeals, and the former was most for the first time by a brief moone curies in the Court of the Court

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

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. Lolli, 431 U. S. 911 (4977).

On remard," the New York Court of Appeals, with one Judge dissenting, adhered to its former disposition. In re-Lalli, 43 N. V. 2d 65, 371 N. E. 2d 481 (1977). It acknowlerlged that Triviale contemplated a standard of judicial review demanding more than "a mere fielding of some remote rational relationship between the statute and a legitimate State porpose," *id.*, at 67, 371 N. E. 2d, at 452, the igh less than strictest scrutiny. Finding § 4-1.2 to be "significantly and determinatively different" from the statute overtained in Trivible, 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 *iaws*," *id.*, at 67, 69–70, 371 N. E. 2d, at 482, 483, quoting *Trivible, sapra*, at 771, to meet the requirements of equal protection.

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

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

[&]quot;On remark from this Court, the New York Attorney Groups, was prepared to intervene as a defend (stoppedies. The has filed a brief on the tactive and argue) the case in this Court. Appeller Rosen and fadithe not present with argument and has not filed a brief on the ments.

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the child had been legitimated by the intermatriage of the purents. The appellant in *Trimble* was a child hore out of wedlock whose father had neither acknowledged her our acarried her turnber. He had, however, here 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 distribute because the statutory requirements for inheritance had not been net.

We concluded that the Illinois statute discriminated against illegitimate children in a manner prohibited by the Equal Protection Clause. Although, as decided in *Mathems* v. *Laws*, 427 U. S. 495, 506 (1976), and reaffirmed in *Triable*, *supra*, at 767, classifications based on illegitimacy are not subject to "strict seruticy," they nevertheless are invalid under the Fourievito Amendment of they are not substantially related to permissible state interests. Figure examination, we found that the Elinois jaw facled 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 injectate 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." *Tribuble, supra*, at 768. We again rejected the argument that "persons will shun illicit relationships because the offspring may not one day teap the benefits" that would accure to them were they legitimate. We let v. Actear Cosmitty & Surety Co., 406 U, 8, 164, 173 (1972). The statute therefore was not defensible as an incentive to enter legitimate family relationships.

Eliools' 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 marter particularly within the competence of the individual States." Trindle, supra. a), 771. An important aspect of that frame-

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work is a response to the citra difficult problem of proving the patericity of illegizionate children and the related danger of sporious claims against intestate estates. See *infra*, at . . These difficulties, we sold, "might justify a more demanding standard for illegizionate children claiming under their fathers" estates than that required either for illegizionate children claiming under their nothers' estates or for legizimate children generally." $-M_0$ at 770.

The Illinois statute, however, was constitutionally flowed because, by insisting upon not only an acknowledgment by the father, but also the marriage of the process, it excluded "at least some significant categories of illegitimate children of innestate new (whose) inheritance rights can be recognized without juopardizing the orderly settlement of estates or the dependability of titles to property passing under intestary have," M_{\odot} at 771. We conclusied that the Equal Protection Clause required that a statute placing exceptional hurdens on illegitimate children in the furtherance of proper State objectives must be more "carefully funed to alternative eronsiderations," id_{\odot} at 772, quoting Mathems V. Lucas, supraat 513, than was true of the broad disqualification in the Illinois law.

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The New York statute, enacted in 1965, was intended to soften the ragors 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 as is whether the remaining statutory obstacles to inheritance by allegitimate children, can be squared with the Equal Protection Clause.

Α.

At the outset we observe that $\$ 4 \cdot 1.2$ is different in important respects from the statutory provision overlarity in

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Triable. The fibrois 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." *Triable, super, at* 770–771. As illustrated by the facts in *Triable, super, at* 770–771. As illustrated by the facts in *Triable, even* a judicial declaration of paternity was insufficient to permit inheritance.

Under § 4-1.2, by contrast, the marital status of the patents is inclevant. The single requirement at issue here is an evidentiary one—ahat the paternity of the father be declared in a judicial proceeding sometime before his death.¹ The child used not have been legitimated in order to inherit from his father. Had the appellant to *Trivide* been governed by § 4–1.2, she would have been a distributed of her father's estate. See to re LaWi, 43 N, Y, 2d, at 68 n, 2, 374 N, E, 2d, at 482 n, 2,

[&]quot;Section 4-12 responses not easy that the order of filiation by made during the filtrane of the father, but they the proceeding in which it is saught have been commenced beinging the programs of the protiet of within two years iron the birth of the child ". The New York Control Appends disclared to role on the constitutionality of the two-very libritistion in tarth of its equilate in the case because appellight convolutional mener communicated a pateroity proceeding at all . Thus, if the rule that potentity is pulledly declared during his father's frequer were subside leggethant which have for for one to comply with it is requirement above If, on the other hand, appellant prevaied in his argument that his inflegitance could not be conditioned on the existence of an order of filtation, the two year indiction would be ease it sets not since the potentity proceeding boold provide by names only . See In an Indal. (3 N. Y. 2005) 68 n. 1, 371 N. E. 2d 481, 482 n. J. (1977) *Jurie Law Sci.* Y. 21 77. SU 6, *, 340 N. 1 (21) 721, 723 n. * (1975). As the New York Court of Appeals has not passed upon the constitution fits of the Wesseler fitting tion, that question is not before us. Our decision tisks, therefore sustains § 4-1.2 maker the Equal Protection Cionse out with respect to its representation a judicial order of filiation be issued during the inferior of the dather of an identification data.

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A related difference between the two provisions pertains to the state interests sold to be served by them. The Illutois have was defended, in part, as a means of encouraging legitimate family relationships. No such justification has been affered in support of § 4–1.2. The Court of Apprais disclaimed that the purpose of the statute, "even in small part, was to discourage illegitimacy, to model 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 internary or otherwise legitimate a child born out of wellne's and our review of the legislative history of the statute, infer. at —, emfired this view.

Our inquiry, therefore, is incused narrowly. We are asked to decide whether the discrete procedural demands that 34-3.2places on illegitimate children beat an evident and substantial relation to the particular state interests this statute is designed to serve.

The primary state goal underlying the challenged aspects of § 4–4.2 is to provide for the just and orderly disposition of property at death.¹ We long have recognized that this is an area with which the States have an interest of considerable congnitude. Triamble, supra at 171: Bieber V. Actual Casnully & Surety Co., supra, at 170: Labine V. Forend, 401 U. S., at 538 (1971); see also Lorth V. Huey, 305 U. S. 188, 103 (1938); Mager V. Grimm, 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 user of the Statel interaction the orderly dispertion of a decodern's property to death distinguishes a fram others in which what furnituation for an all gaterney based dessification was observe. K, g_{ab} dimension, Henderoper 117–11, S 628 (1964): Generally, Perez 400–11, S, 545 (1973); Webber v. Actual Convolty de Surrey Co., 406–11, S, 1964, 170 (1972); Jong v. Landsiana, 591–10, S, 68 (1968).

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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-Oritz, 60 Mise, 2d 756, 761. 303 N. V. S. 24 806, S12 (Sur. Ct. 1969). Proof of paleroity. 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 but know who is responsible for her pregnancy," Hild, (coupliasis in originally accord, In the Physica, 85 Misr. 24 855, 861, 381 [N. N. S. 24 573 576-577 (Sor. Ct. 1975); In re-Hondriz, 68 Mise, 2d. at 443, 326 N, Y, S. 2d. at 650; ef. Trimble, supra. at 770, 772.

Thus, a number of problems arise that counsel against treating illegitunate children identically to all other hoirs of an intestate father. These were the subject of a comprehensive study by the Temporary State Commission on the Moderalization, Revision and Simplification of the Law of Estates. This group, known as the Bennett Commission, received of individuals experienced in the practical problems of estate gehninistration. To be Fleatur, super, at 858–381 N, Y, S, 24, at 575. The Commission issued its report and recommendutions to the Legislature in 1965. See Fourth Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Letates, Legis, Doc. 1965, No. 19 thereingiter Commission Report). The statute row conjibutes § 4, 02 was included.

The Benn D Connectssion was even to be the Neu York begistature in 2004. It was instructed to recombined breaked changes in equilar sizes of state law including that perturbing to the descent and distribution of property and the provides and proceders relating the teta." 2004 N, Y Laws, ch. 751, § 1.

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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 testare and intestate decodents. The Commission's perception of some of these difficulties was described by Surrogate Sobel, a member of "the busiest (surrogate)s) comt in the State measured by the comber of jetestate estates which traffic daily through this court," In the Planne, super, at S57, 381 N. Y. S. 2d. at 574 (Sobel, S.), and a participant is some of the Commission's deliberations:

"An illegitimate, if made an unconditional distributos in intestacy, must be served with process in the estate of his parent or if he is a distributed in the estate of the kindled of a parent, . . . And, in probating the wall of his parent (though out named a beneficiary) or in probating the will of any person who makes a class disposition to "fissue" of such parent, the illegitimate must be served with process, . . . How does one rite and serve an illegithnate of whose existence writher family nor personal representative may be aware? And of greatest concern, how achieve finality of decree in may estate when there always exists the possibility however remote of a seriet illegiturate lurking in the buried past of a parent or an accestor of a close of beneficiaries? Finality in decree is essential in the Surrogate's Courts since title to real property passes under such decree. Om procedural statutes and the Due Process Clause mandate notice and opportunity to be heard to all necessary parties. Given the right to intestate succession, off illegitimates must be served with process. This would be no real problem with respect to those few estates where these are "known" illegitimates. But it presents an about insuperable barden as regards "unknown" illegitimates. The point made

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in the [Bernett] commission discussions was that instead of affecting only a few estates, procedural problems would be created for many some hermbers suggested a majority—of estates [1] $Id_{c,0}$ (359, 381 N, Y, S, 20, at 575-576); ef. In a. f.equatrit, 92 Mise, 2d 598, 604, 602, 400 N, Y, S, 298, 300–301 (Sur. Ct. 1977).

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

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As the State's inferests 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 patential for disruption of estate administration. Arcutacy is enhanced by placing paternity disputes is a judicial formularing the lifetime of the father. As the New York Coart of Appeals observed in its first opinion is this case, the "availability for the putative father) should be a substantial factor contributing to the reliability of the fact-finding process." In re-Laffi, 38 N. Y. 2d. at 82, 340 N. E. 2d. at 724. In addition. requiring that the order he issued during the father's lifetime permits a much to delend his reputation against flucjust accusations in paternity charms," which was a secondary purpose of § 4, 1.2. Commission Report 206.

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

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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 putbefore 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 ofling."

Appellant contends that \$ 4-1.2, like the statute at issue in *Tribable*, excludes "significant categories of illegitimate children" who could be allowed to inherit "without jeopardizing the orderly settlement" of their intestate fathers' estates, *Tribable*, 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 desired inheritance as they pose some of the risks \$ 4-1.2 was independent to minimize."

Appeller characteristic introduction is described origination of the prime interval legitimate children $\S + 1$, to conjunction with N N. Door [16]. Let $\S 24$ (McKaney 1977), importable is discriminates between classes of illegitimate children. Section 24 provides that a child setucised of an ability of the interval of the first a children is being in the interval of the interval of the interval of the interval of the provides that a children by annotation is velocity of existing the interval of the int

Fader § 24, and civing to be the texture to do both of a domestic merwould have to prove not only his protectly initials. In materialy and the fact of the matriage of his persuits. These additional evaluations

The off many the judgment below we do not to rester, in strict - Statish to obtain to noticine proof of parentity by means other than a path of direct. There is the max parameter by forward path of of press exterior (the similar to that provide by $\xi \in 1, \xi$ or some other regulation) prove duty 0 is would assume the pathematic to of the acknowleighted by we noted in *Frenchis*, 400 Fig. 8, -0.772 in (4) such a proceeding result be sufficient to solution of a functions of the proceeding result be sufficient to solution of a function of the proceeding result be sufficient to solution of a function of the proceeding result be sufficient to solution of a function of the proceeding result be suffi-

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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 clussifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquity under the Equal Protection Churse 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 teneous that it lacks the rationality contemplated by the Fourteenth Absentionet.

The Hänois statute in *Trivable* was constitutionally macreptable breatise it effected a total statutory disinferitance of children born out of wellock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far mexcess of its instifiable purposes. Section 4-1.2 does not share this defect. Inheritance is barred only where there has been a failure to scenre evidence of paternity during the father's infetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies an memorysarily large comber of children here out of wellock.

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 prophyfactic. For example, a father of illegitimute children who is willing to acknowledge paternity can waive his defenses in a paternity proceeding, c. g., In re Thomas, 87 Mise, 2d 1033, 387 N, Y, S, 2d 216 (Sur. Cl. 1976), or even institute such a proceeding himself.¹⁰ N, Y, Jud.; Fam. Cl. Act. ≤ 522

p split tends make it trasonable to a copy loss exacting proof of poterally, and to treat and whilden as Digitituate for itslandater potposes.

¹⁹ In definition to ambianz non-state succession possible of carst-relativity is always free to provide for his filegrigate which by with See In 20 Flower, 85 Mar. 24 855, 894, 381 N. Y. S. 24 973, 579 (Sec. Ct. 1975).

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(McKinney Supp. 1977): In re-Flourn, S5 Mise, 2d. at 863, 381 N. Y. S. 2d. at 578. To addition, the coarts have excused "technical" failures by illegitungte 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) (filiation order may be signed more pro-func to relate back to period prior to furber's death when coart's factual finding of paternety had been madel): In re-Kennedy, 80 Mise, 2d 551, 554, 392 N. Y. S. 2d 365, 367 (Sur. Ut. 1977) (judicial support order treated as "tractonomic to us order of filiation," even though paternity was (or specifically declared therein).

As the history of § 4-1.2 clearly illustrates, the New York Legislature desired to "grant to illegitimates *m* so far as *practicable* rights of inderitance in a pix 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 last reald be achieved.

Even if, as MR, JUSTICI BRENNAN believes, §4–1.2 could have been written somewhat more equitably, n is not the function of a court "to hypothesize independently on the desirability of feasibility of any possible abstractive [s]" to the statutory scheme formulated by New York. Mathews v, Lucus, 427–U. S., at 515. "These matters of practical judguent and empirical calculation are for 1 the State]. . . . In the end, the procise accuracy of 1 the State[s] calculations is not a matter of specialized judge[all competence]; and we have no basis to question their detail beyond the evident consistency and substantiality." DL, at 515–516."

¹¹ When besend of Multiples and Backwards, would reduce the opticial hyperble y *Granom*, 600–60–8, 762 (1967)) to recomplising high rise from information requires a float y in a research float kind, to recognize as suffitions any floatness colorization parentity in This reading of *Treable*.

77-1115-OFINION

LALLI V. LALLI

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 phone bired from a faormore. Id., at 772 n. 14. It ignores both the broad notatable of the Court's opacion and the context me which the rate and the phone telied upon appear. The principle that the faoimore elaborates is that the States are free in recognize the problem arising from different turns of proof and to select those forms, carefully tailored to eliminate imprecise and andoly burdenssage methods of relabhabing paternaly. That, The New York Legislature, with the benefit of the Bennett Commission's study, everypting evidence of paternaty less formal that a policial order. Fourth Report of the Temporary State Commission on the Modelination Revision and Simplification of the Law of Estates, Legis, Day 1965, No. 19, at 265-267

The "forcal acknowledgment" contemplated by Triable is such as would minimize post-doub bragation, *i.e.*, a signilarly pre-crited, legally recognized method of acknowledging patentity. See a. S. aspen. It is thus plain that footnote 14 or *Tranble* does not sostain the descenting opinion. Indeed, the document relations upon by the do-sent is not an acknowledgement of patentity at all. It is a simple "Certificate of Consent" that apparently was required at the time by New York for the matriage of a minut. It consists of one sentence:

"This is to certify that I, who have bereto subscribed my name, do hereby consent that Holert L. II who is not and who is content the age of 21 years, shall be under an increase to donne lowers by an number of the gauged or other person outborged by law to sub-innize macroges." App. A-16.

Mario Lulli's signature to this document was acknowledged by a potary public, but the confidente contains no outh or affirmation as to the trachof its contents. The notary did be more these confirm the identity of Lelli. Because the certificate was exercised for the purpose of giving consent to marry, but of proving biological paternity, the meaning of the words "my con" is unformers. One can readily margine that had Robert Lelli's half-brother, who was not Marco's sim but who most the sufficient Lelli's half-brother, who was not Marco's sim but who most the sufficient Lelli's multived as a member of the howehold, cought permission to marry. Mario might also have referred to but as "my soil" on a concent restificate

The unpertant state process of subgrounding the accurate and anterly disposition of property at death, emphasized in *Twindle* and restorated a our opinion today, could be (methods) and a filtere were a constitutemati-

77-1113-OPINION

LALLI C. LALLI

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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. Gordan*, 430 U. S. 762, 777 (1977). Mo. JUSTICE REASQUIST concurs in the judgment of affirmance.

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rule that any matazized has to score statement identifying an individual of a "child" must be accepted as adequate proof of paternity regardless of the context in which the statement was made.

fo: The Chief Justice
Mr. Justics Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice dischain
Mr. Justic Provide M
Mr. Justici - Anglast
Mr. Justice Silvens
Eros: Mr. Justius Stecart 6 Mai 1978 Circulated:
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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant, v. Rosymond Lulli, Administratrix of the Estate of Mario Lulli, Con Appeal from the Court of Appeal of New York,

[December -, 1978]

MR. JUSTICE STEWART, concurring,

It seems to me that Mit JUSTICE POWELL's option convincingly demonstrates the significant differences between the New York law at issue here and the Illinois law at issue in *Trimble v. Gordon*, 430 (1) 8, 762. Therefore, I cannot agree with the view expressed in the concurring optimin, that *Trimble v. Gordon* is new "a deceller," or with the implication that in deciding the two rases the way it has this Court has failed to give authoritative gaidance 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, unider,

A New York statute allows illegitimate children in inherit from their intestate fathers only if they have obtained a judicial order dealaring 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 they defended unless substantially related to permissible 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 the patternety

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 peternity, recorded during the father's lifetime. It was thought that a cimple 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 bolieve New York's solution to this problem satisfies the requirements of the Equal Protection Clause, of the Potrteenth Amendmont.

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

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December 27, 1978

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

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MEMORANDUM TO THE CONFERENCE

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Two cases have been held for <u>Lalli</u> v. <u>Lalli</u>. These are Buck v. <u>Hunter</u>, No. 77-1567, and <u>Robinson</u> v. <u>Kolstad</u>, 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 <u>Lalli</u>. The facts are quite different from those in <u>Lalli</u>. In <u>Buck</u>, 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 <u>Lalli</u> 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 <u>Lalli</u> 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 bolding of Lalli that an illegitimate child himself may be excluded F 1 + 1

from inheritance in the absence of an order of filiation, it seems to follow a <u>fortiori</u> 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 <u>Buck</u>.

No. 78-544) <u>ROBINSON</u> v. <u>KOLSTAD</u> (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 accord problem does not trouble me excessively. It does seem unfair to require that naternity 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. Actna 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 workwen's compensation statute for the death of their father. Weber held that they could not. The opinion distinguished Labine v. Vincent, 401 D.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 <u>balli</u> provides grounds for dismissing <u>Robinson</u>. Indeed, the proper disposition of this case on the merits appears to be a close question. Weber arguably is distinguishable because it, like <u>Trimble</u>, involved a categorical exclusion based on illegitimacy. The Wisconsin statute, more like <u>Lalli</u>, 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. <u>Bughes</u>, 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, upbolding the Georgia law in that case, then <u>Robinson</u> probably should be dismissed for want of a substantial federal question. Even if the Court reverses in Aughes, the opinion in that case may provide sufficient enlightment relative to the problem in <u>Robinson</u> that an appropriate summary disposition will appear.

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As <u>Robinson</u> is here on appeal and involves an area to which the <u>Court</u> 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.

Bepreute Court of the United States Washington, D. C. 20549

UNISTICE LEWIS + POWELL, PR.

December 27, 1978

Cages held for No. 77-1115, Eal)i v. Lalli

MEMORANDUM TO THE CONFERENCE

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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.

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