

1-15-1978

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Recommended Citation

John A. Boyd *Trimble v. Gordon: An Unstated Reversal of Labine v. Vincent?*, 5 Pepp. L. Rev. Iss. 2 (1978)
Available at: <https://digitalcommons.pepperdine.edu/plr/vol5/iss2/13>

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Trimble v. Gordon: An Unstated Reversal of Labine v. Vincent?

On March 15, 1962, Rita Vincent was born in a small parish in Louisiana. The child was a product of a relationship outside the bonds of matrimony between Lou Bertha Patterson and Ezra Vincent. Less than two months after her birth Rita's father and mother appeared before a notary and executed a form authorized by the Louisiana State Board of Health that publicly acknowledged that Rita's father was Ezra Vincent.¹

Before the child was six years of age, her father died intestate. Ezra Vincent had lived with Rita's mother until his death in 1968.

Sherman Gordon died intestate six years after Ezra Vincent in Illinois. Gordon, like Vincent, had lived with a woman without the benefit of a civil ceremony and from this relationship, Deta Mona Trimble was born. Just after the first of the year in 1973, in conformity with the state laws of Illinois, judgment was entered by the Circuit Court of Cook County, Illinois, establishing that Sherman Gordon was the father of Deta Mona Trimble.² Along with the judgment was an order for Gordon to pay fifteen dollars a week for the support of his daughter.

Ezra Vincent and Sherman Gordon were both legally and morally obligated to support their respective daughters. Both publicly acknowledged their daughters and resided with the daughters' mothers until their deaths. However, when Ezra Vincent died, his daughter was unable to claim under him as an heir to the property he left. After almost five years together as father-daughter, Rita Vincent received nothing from her father's estate.³ Deta Mona Trimble was much more fortunate.

1. LA. CIV. CODE art. 203 (West 1967). "The acknowledgment of an illegitimate child shall be made by a public declaration executed before a notary public, in presence of two witnesses, by the father and mother or either of them, whenever it shall not have been made in the registering of the birth of baptism of such child."

2. ILL. REV. STAT. ch. 106 § 56 (West 1976).

3. LA. CIV. CODE art. 919 (West 1967). ". . . [I]n all other cases, they can only bring an action against their natural father or his heirs for alimony . . ." The courts in *Labine* determined Rita Vincent had sufficient funds from Social

After the wheels of justice had ground to a halt, Deta Trimble had an opportunity to claim as an heir from her father's estate.

Two intestate deaths six years apart and two major United States Supreme Court decisions also six years apart, involving two illegitimate daughters and their qualification to claim interests in their father's estates, produced two contrasting results.

Labine v. Vincent arose out of a contest between Rita and her father's brothers and sisters as to who was entitled to the estate of Ezra Vincent. At the trial level the action was dismissed and the brothers and sisters were declared Vincent's only heirs at law. The case was appealed to the Louisiana Intermediate Appellate Court on the grounds that unequal treatment of a publicly acknowledged illegitimate child which differs from the treatment of a legitimate child in a state's intestate succession statute violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. The appellate court, in upholding the state's statutory scheme, rejected the constitutional challenge although it did acknowledge that it was unfair to punish innocent children for the faults of their parents.⁴ The Supreme Court of Louisiana denied review. The case was then appealed to the United States Supreme Court which noted jurisdiction because of the constitutional questions.⁵

Deta Mona Trimble's case took a somewhat similar course through the courts. At the trial court level on the issue of heirs at law of Sherman Gordon, judgment was entered for Gordon's father and mother, one brother, two sisters and a half-brother as Gordon's heirs. The case by-passed the appeals court on a direct appeal order issued by the highest Illinois court. At that level the action was joined with two other pending appeals that presented similar constitutional questions.⁶ The Illinois Supreme Court affirmed the circuit court's decision in *In re Estate of Karas*.⁷ The Illinois court relied explicitly on the authority of *Labine v. Vincent*⁸ which is based on the state's interest in encouraging family relationships and the establishment of ac-

Security and Veterans Administration payments for her support. It's interesting to note how willing the Court is to shift the support of the child to governmental agencies when the estate of the father was more than ample to provide for her. I wonder about such a decision if the members of the Court were elected by the taxpayers.

4. Succession of Ezra Vincent, 229 So. 2d 449, 452 (La. 1969).

5. 400 U.S. 817 (1970).

6. *In re Estate of Karas*, 61 Ill. 2d 40, 329 N.E.2d 234 (1975). *In re Estate of Robert Woods* was added also.

7. *Id.*

8. 401 U.S. 532 (1971).

curate and efficient methods of disposing of property at death.⁹ The court followed the same reasoning expressed in *Labine*, that no "insurmountable barrier"¹⁰ had been erected to prevent Gordon from leaving his illegitimate daughter a share of his estate.¹¹

At first glance it would seem that the different results reached in the two cases might reflect the difference in the two statutory schemes of Louisiana and Illinois. The relevant Louisiana statutes that deal with the problem of illegitimacy and intestate succession are much more complex than their counterparts in the Illinois statutes. Section 12 in Chapter 3 of the Illinois Statutes Annotated merely states that an illegitimate child is an heir only of his mother or any person from whom his mother would inherit.¹² Louisiana article 206 under the general area of Family Relationships states that illegitimate children, though duly acknowledged, (does not make a distinction between mother's or father's acknowledgment, just acknowledgment by either) cannot claim the rights of legitimate children.¹³ Articles 918 and 919 of the Louisiana Statutes under chapter of irregular successions, regulate the intestate succession of property to illegitimate children.¹⁴ The illegitimate children of the mother, when

9. *Supra* note 6.

10. *Levy v. Louisiana*, 391 U.S. 68 (1968). This case created the "insurmountable barrier" test. Laws classifying illegitimacy could not establish an insurmountable barrier against illegitimate children. Under a Louisiana statute, illegitimate children could not sue for the wrongful death of their mother. The Court stated that this created an insurmountable barrier.

11. *Supra* note 6. The court in the *Labine* case stated that the father could have left a will, acknowledged his daughter or married her mother as alternative ways of providing for the child at his death. The Illinois Supreme Court only discussed the alternative of leaving a will when it relied on the authority of *Labine*.

12. ILL. ANN. STAT. ch. 3 § 12 (West 1961). "An illegitimate child is heir of its mother and of any maternal ancestor, and of any person whom its mother might have inherited, if living . . ."

13. LA. CIV. CODE art. 206 (West 1967). "Illegitimate children, though duly acknowledged, cannot claim the rights of legitimate children." The rights of natural children are regulated under the title: "Of Successions." The term natural children means just the biological parent.

14. LA. CIV. CODE arts. 918 and 919 (West 1967). Art. 918: "Natural children are called to the legal succession of their natural mother, when they have been duly acknowledged by her, if she has left no lawful children or descendants, to the exclusion of her father and mother and other ascendants or collaterals of lawful kindred. . . ." Art. 919: "Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the state."

duly acknowledged,¹⁵ inherit by succession when there are no other legitimate children or descendants and to the exclusion of the mother's parents and any other ascendants or collaterals.¹⁶ The father's illegitimate, but duly acknowledged children,¹⁷ inherit only to the exclusion of the state.¹⁸ The total and complete effect of the Louisiana scheme is well-conceived: to encourage traditional family relationships, adhere to stringent social and moral restrictions.¹⁹

The Illinois statutory scheme, even though not as complex as Louisiana's, is still concerned with the family relationship.²⁰ The two major differences between Illinois and Louisiana intestate succession statutes regarding illegitimacy are: (1) the illegitimate child can inherit in Louisiana from his father through intestate succession but only to the exclusion of the state and (2) the overall emphasis of the Louisiana statutes is to regulate all areas of family relationships.

It is also noteworthy that both cases were decided with the same split of the Court, five to four.²¹ Of the four justices who dissented in the earlier *Labine* case, three were still sitting and joined the majority for the *Trimble* decision. Conversely, three justices who supported the majority in *Labine* sat for the dissent in *Trimble*.

PRIOR LAW

It is generally agreed that at common law the status of an illegitimate child was *nullius filius* for the purpose of inheritance.²² This meant that illegitimate children were considered

15. *Supra* note 1.

16. *Supra* note 14, Art. 918.

17. *Supra* note 1.

18. *Supra* note 14, Art. 919.

19. LA. CIV. CODE arts. 86-89, 119-35, 178-238 (West 1967). The wording and organization of these statutes is in such detail concerning all rights and duties of each member of the family that it can only give the impression of having been deeply rooted in the traditional family unit. For an excellent discussion of the history and formation of the present Louisiana statutory scheme, see Pascal, *Louisiana Succession and Related Laws and the Illegitimate: Thoughts Prompted by Labine v. Vincent*, 46 TUL. L. REV. 167 (1972).

20. ILL. REV. STAT. ch. 68 (West 1961). These statutes are not as detailed and specific as the above Louisiana statutes.

21. The majority in the *Labine* case were: Justices Black, Harlan, Burger, Blackmun, Douglas, White, and Marshall. Six years later in *Trimble*, Justices Powell, Stevens, Brennan, Marshall and White constituted the majority while Justices Rehnquist, Burger, Stewart and Blackmun dissented.

22. *Pfeiffer v. Wright*, 41 F.2d 464 (10th Cir. 1930). In re Garr, 31 Utah 57, 86 P. 757 (1906); BLACK'S LAW DICTIONARY 1217 (4th Ed. 1968): *nullius filius*: "the son of nobody; a bastard. A bastard is considered nullius filius as far as regards his rights to inherit."

to be nobody's child, without kindred and name, being able to inherit only from their lineal descendants. However, this rule was eroded in time and most jurisdictions liberalized their views of illegitimate children by providing limited inheritance rights through the maternal ancestry.²³

The last direct case to face the Supreme Court before *Labine* was *Levy v. Louisiana*²⁴ which established the "insurmountable barrier"²⁵ test used to review of laws classifying on the basis of illegitimacy. That case dealt with the denial of standing of illegitimates to sue in a wrongful death action of their deceased mother. The Court decided that this amounted to a social barrier that could not be removed by alternative means. This reasoning and test seemed to be reflected in the *Labine* decision when the Court relied on the alternatives available to Ezra Vincent to provide for the inheritance of his illegitimate daughter. It seems that *Labine's* first impact on the state of the law regulating illegitimacy and inheritance through intestate succession was one of affirmance of the insurmountable barrier and the reasonable alternatives tests.²⁶

The first case to follow *Labine* where the Supreme Court decided an issue dealing with illegitimacy was *Weber v. Aetna Casualty and Surety Co.*²⁷ The case ruled unconstitutional a Louisiana workmen's compensation law that allowed unacknowledged illegitimate children to claim as "other dependents"²⁸ only when the maximum amount of recovery had not been exhausted by awards to legitimate and acknowledged illegitimate children as primary dependents. The Court in an eight to one decision held that *Levy* applied because the issue was the status of dependency on the disabled, or in this case, the decedent, and not whether the child had been acknowledged. The Court distinguished *Labine* in that the state's goal of promotion of family relationship was not accomplished by the dis-

23. *Id.*

24. *Supra* note 10.

25. *Id.*

26. 401 U.S. 532, 539.

27. 406 U.S. 164 (1972).

28. The "other dependents" classification of the law placed illegitimates in the class with the second priority as to benefits from the workmen's compensation law. The first priority was given to legitimate children as dependents. The second class could only receive benefits if the first class had not exhausted the maximum limit allowed by the law.

crimination between acknowledged and unacknowledged illegitimate children.²⁹ The Court reasoned that because the intent of the law was to support and help families, the issue should be one of determining the degree of dependency of the child instead of the relationship of the child to the father. It seems that this case does not lessen the impact of *Labine* in that the decedent cannot exercise any other reasonable means or alternatives except by acknowledgement which was prohibited by law,³⁰ that would have provided for support through workmen's compensation.

A Texas statutory scheme that did not place an obligation on the father for support of illegitimate children³¹ was the issue in *Gomez v. Perez*.³² The Supreme Court ruled that discrimination between illegitimate and legitimate children violated the equal protection clause of the Fourteenth Amendment. At the trial court judgement was entered that the defendant was the natural father from whom the plaintiff was seeking support for her child.

In *New Jersey Welfare Rights Organization v. Cahill*,³³ the court ruled that allocation of local benefits which were indispensable to the health and well-being of illegitimate children could not be made in a manner which discriminates between legitimate and illegitimate children.³⁴

A Social Security Act classification³⁵ providing for the eligibility of illegitimate children to obtain social security benefits through their father was held unconstitutional as a violation of

29. The state objective in *Weber* was not met by the discrimination between acknowledged and unacknowledged illegitimate children when the Court found the issue to be one of dependency on the decedent and not the question of acknowledgment.

30. LA. CIV. CODE Art. 204 (West 1967) (Referring to Art. 203 (*supra* note 1)): "Such acknowledgment shall not be made in favor of children whose parents were incapable of contracting marriage at the time of conception; however, such acknowledgment may be made if the parents should contract a legal marriage with each other." The father's wife was in a mental health institution at the time of the birth of the illegitimate child, therefore, the father was unable, because of his present marriage, to contract for marriage at the time of conception of the illegitimate child and was probably prohibited by law from executing a valid acknowledgment.

31. 409 U.S. 535 (1973).

32. TEX. REV. CIV. STAT. Art. 4614 repealed by Acts 1969, 61st Leg., p. 2707 ch. 888 § 6, eff. Jan. 1, 1970.

33. 411 U.S. 619 (1973).

34. The statute did not specifically discriminate against illegitimate children, but was worded to preclude illegitimate children from receiving benefits.

35. 42 U.S.C. §§ 402(d)(3)(A), 416(h)(2)(B). The statutes regulate the ways in which an illegitimate can qualify himself to receive benefits under the Social Security Act.

the Equal Protection Clause of the Fourteenth Amendment in *Jiminez v. Weinberger*.³⁶ The Court utilized a more "intensified"³⁷ scrutiny test in passing on the constitutionality of law classifying illegitimate children. The case was remanded to allow appellants to prove they were eligible "children"³⁸ under the Social Security Act.

A similar Social Security Act provision regulating survivorship benefits to illegitimate children was held not unconstitutional under the equal protection clause in *Mathews v. Lucas*.³⁹ The Court ruled that a presumption of dependency for legitimate children did not impermissibly discriminate against illegitimates for purposes of the equal protection clause.⁴⁰

Finally, the issue raised in *Trimble* challenged the Illinois intestate succession statute on the grounds of violation of the equal protection clause, as had the previous constitutional attacks on laws classifying by legitimacy. The appellants argued that the statute demanded the strict scrutiny test and offered three arguments in favor of the stricter test. First, illegitimacy is a suspect classification that demands more than a mere rational basis to be constitutional. Second, the Illinois statute discriminates on the basis of sex.⁴¹ Third, even if the court rejected the first two arguments the Court should apply a farther reaching test than the minimum rational basis required between the classification and the purpose of the law.

The Court disposed of the case by resolving two of the three issues raised. The Court reaffirmed the view of *Lucas*⁴² that illegitimacy alone is not a suspect classification. The Court held that there was not a rational basis between the discrimination

36. 417 U.S. 628 (1974).

37. After a discussion by the Court of the rational basis test in its traditional sense of giving deference to the legislature, the Court could find no basis at all for the law.

38. The quirk in the law was that illegitimate children born after the disability to the social security recipient had a difficult, if not impossible, task of qualifying under the ways mentioned, *supra* note 35.

39. 427 U.S. 495 (1976).

40. Like *Jiminez*, the Court did not strike down the statutory qualification requirements for illegitimates.

41. The sexual discrimination argument was made because of the discrimination against mother's (female) children versus father's children.

42. *Supra* note 39.

based on illegitimacy and the recognized state objectives, thus the sex discrimination issue was never addressed.⁴³

ANALYSIS OF *TRIMBLE*

A major question arising from *Trimble* is what type of rational basis test did the court use in reaching its decision. It is well recognized that the traditional rational basis test involves the court giving great latitude to the state's legislature in requiring only a rational basis for the statute. It is almost equally as well recognized that a line of cases has evolved in which the court has demanded more than a mere rational basis but less than a compelling state interest as required in the strict scrutiny test.⁴⁴ These latter cases have involved illegitimacy,⁴⁵ sex,⁴⁶ and classifications that are based on "personal characteristics that approach sensitive and fundamental rights."⁴⁷ In answering the question of what type of test the *Trimble* court applied, it should be also asked whether with the court's affirmance of the *Labine* case, was the rational basis test used in *Labine* the same used by the Court in *Trimble*? Could the apparent difference be an indication of a new trend evidenced by the different decisions away from the rational basis test completely, or if not, a qualification and restriction on the application of that test? To even begin to answer these questions, the Court's reasoning in *Labine* must be examined.

It was suggested in *Labine* that the Louisiana statute did not create an insurmountable barrier to an illegitimate child taking property from her natural father at his death. The Court stated that the father could have left a will, legitimated the child in his acknowledgment of paternity or married the child's mother. If the father had done so, the illegitimate child would have been provided for. This same line of hypothetical reasoning was not adopted by the Court six years later in *Trimble*. In that opinion the Court rejected the hypothetical argument in which the father could have provided for his daughter as losing sight of

43. 97 S. Ct. 1459 at 1466. The Court concluded that the statute extended well beyond its asserted purposes and was not carefully tuned to alternative considerations.

44. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Levy v. Louisiana*, 391 U.S. 68 (1968); *Reed v. Reed*, 404 U.S. 71 (1971); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Weinburger v. Weisenfeld*, 420 U.S. 636 (1975).

45. *Levy v. Louisiana*, 391 U.S. 68 (1968); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Jiminez*, 417 U.S. 628 (1974).

46. *Reed v. Reed*, 404 U.S. 71 (1971); *Frontiero v. Richardson*, 411 U.S. 677 (1973). See also Lombard, *Sex: A Classification in Search of Strict Scrutiny*, 21 WAYNE L. REV. 1355 (1973).

47. 97 S. Ct. 1459 at 1463.

the essential question of the constitutionality of the discrimination against illegitimate children in a state intestate succession. Furthermore, the state's recognized objectives (accurate and efficient disposition of the property at death and the promotion of family relationships) were insufficient to support the discrimination. Thus, the *Trimble* Court held that the discrimination was not justified by the state's objectives. The efficient and accurate disposition of property could be obtained by adequately worded legislation stating the rights of illegitimate children whose paternity was properly established through advance adjudication.⁴⁸ The Court even suggests that if the state were worried about spurious claims from supposed illegitimate children on the father's estate, it could set a higher standard of proof for paternity in cases of illegitimates claiming under their fathers.⁴⁹

The second recognized state objective was the promotion of the family unit. Here the Court in *Trimble* states that not only was the Court's constitutional analysis incomplete at the Supreme Court level in Illinois but that their own analysis in *Labine* (upon which the Illinois court relied) was also incomplete.⁵⁰

The Supreme Court stated in *Labine*:

There is no biological difference between a wife and a concubine
The social difference between a wife and a concubine is analogous to the difference between a legitimate and an illegitimate child. One set of relationships is socially sanctioned, legally recognized, and gives rise to various rights and duties. The other set of relationships is illegal and beyond recognition of the law.⁵¹

Granting that there is no biological difference between a wife and a concubine and that the social relationship is analogous to that of a legitimate child and illegitimate child, there is however one great distinction. The situation in which the concubine finds herself in is partly the result of her own actions, but the situation in which the illegitimate finds himself is a result of the chance of birth. The underlying theme of the Court's reasoning appears to be that because of his mother's actions the illegitimate child is no more worthy of recognition and respect than she is. This seems to be an anachronism from the dark ages,

48. *Id.* at 1466.

49. *Id.*

50. *Id.* at 1464.

51. 401 U.S. at 538.

shades of aristocratic monarchy in which a person was judged more by his family tree than his own personal merits. This rationale is reflected in Louisiana's statute and legislative history and even to some extent in the Illinois statute.⁵²

Fortunately, the Court in *Trimble* recognized the weakness of such reasoning. The Court, without citing cases that had considered and rejected the argument that a state may attempt to influence its men and women by imposing sanctions on the children born of their illegitimate relationships again rejected the same argument. The Court was clearly referring to its statement in *Weber*:

... Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burden should bear some relationship to responsibility or wrong-doing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is ineffectual as well as an unjust way of deterring the parent.⁵³

The quotation from *Weber* seemed more logical to the court in *Trimble* than Justice Black's from *Labine*.

It has been established that the constitutional analysis of the court in *Labine* and that of the Illinois Supreme Court in *Trimble* were incomplete on the state's recognized purpose of promoting family relationships as the justification for the discrimination in the statute. The traditional rational basis test did not attempt to look at alternative considerations available to those drafting statutes for the end purpose of the recognized state objectives. However, as the Court stated in *Trimble*, the statutes must conform to the standard established in *Lucas*, and the "statute does not broadly discriminate between legitimates and illegitimates without more, but is carefully tuned to alternate considerations."⁵⁴ The Court in *Trimble* held that section 12 of the Illinois intestate succession statutes did not meet the standards requiring careful tuning to alternative considerations. *Trimble* concluded that the statute extended well beyond the asserted purposes by total statutory disinheritance. The Court seemed to equate any adjudication as to paternity that enters judgement for support of the child against the father as being equally sufficient to establish the illegitimate child's right to claim a child's share of the father's estate. Therefore, the Court in *Trimble* applied the new rational basis test rather than the traditional test relied on in *Labine*.

The Court's statement that the constitutional analysis was in-

52. *Supra* notes 19 & 20.

53. 406 U.S. at 175.

54. 427 U.S. at 513.

complete on earlier review must mean that when scrutinizing statutes based on illegitimate classifications the statute must be attuned to alternative considerations. Without such action by the court of review, the constitutional analysis is incomplete and the new rational basis test not used.

It would seem that this new type of test emphasizing finely tuned alternative considerations in the drafting of a statute is the same type of reasoning rejected by the Court in *Labine*. The court in *Labine* stated:

It may be possible that some of these choices are more rational than the choices inherent in Louisiana's categories of illegitimates. But the power to make rules to establish, protect, and strengthen family life as well as to regulate the disposition of property left in Louisiana by a man dying there is committed by the Constitution of the United States and the people of Louisiana to the legislature of that state. Absent a specific constitutional guarantee, it is for the legislature, not the life-tenured judges of this Court, to select among possible laws.⁵⁵

The court seems to rationalize the different results in *Labine* by stating that *Labine* is an exceptional holding with a limited precedent.⁵⁶ This would indicate that even though the present court feels *Labine's* constitutional analysis was incomplete, the case still holds some value as a precedent. Therefore, the Court had indicated that it would be open to arguments that can be associated with those given in *Labine*. The *Trimble* court rejected the argument that the intent of the legislature drafting the Illinois statute was only to promote the efficient disposition of property and strong family relationships. However, the Court did notice that the Illinois statute was drafted differently from the Louisiana statute which they upheld. This indicated that the Court will consider statutes drafted like Louisiana's. The legislative intent argument cannot be completely ruled out as an additional argument that could sustain a similar statute. The

55. 401 U.S. at 538.

56. 97 S. Ct. 1464 n. 12. For a discussion of one possible way of distinguishing the type of discrimination involved with illegitimacy by a state court after *Labine*, but before *Trimble*, see *Green v. Woodard*, 40 Ohio App. 2d 101 (Cuyahoga County 1974), commented on in Janis, *Constitutional Law—Equal Protection—Descent and Distribution—Illegitimate Statute that Prohibits Inheritance by Illegitimate Father Denies Equal Protection—Green v. Woodard*, 44 U. CINN. L. REV. 415 (1975), distinguished from *Labine* on the basis of different classes of illegitimacy. See also Petrillo, *Labine v. Vincent: Illegitimates, Inheritance and the Fourteenth Amendment*, 75 DICK. L. REV. 377 (1975) (suggesting that *Labine* would not stop a local inheritance statute from being interpreted favorably for the illegitimate).

Court stated that the Illinois Supreme Court did not pass on the issue of legislative intent and concluded this to be significant.⁵⁷ The Illinois Supreme Court presumably felt the issue was not open to consideration because of the explicit authority of *Labine*. It would be interesting to see how the Court would treat a similar statute on appeal directly from the state's highest court with the court upholding the statute as a means of accomplishing the legislative intent that family relationships be promoted and that the disposition of property be efficient. The Court would then have to face the issue of legislative intent squarely in overruling such a statute.

A further issue which might arise from *Trimble* concerns statutes requiring children to support their parents. Before *Trimble*, it probably could have been stated generally that when the laws classifying on the basis of illegitimacy are closely related with the support of the child the Court was most likely to review the statute with the new rational basis test and a more "intensified" scrutiny of the statute.⁵⁸ The decision of *Trimble* would seem to deviate from this general statement. The trend could possibly be to give the more intensified test to all laws classifying illegitimacy. If this is true how will the Court react to support statutes with an obligation for children to support their parents?

The answer to the questions of illegitimacy as classifications probably lies in determining what type of social condition is being regulated by the statute and the relationship it has to the illegitimate child. Is it one of support,⁵⁹ government benefits,⁶⁰ the seeking of civil action,⁶¹ or the right to inherit⁶²—how does the action relate to the illegitimate? The *Trimble* case could then be argued to be a decision that has expanded the type of regulation (inheritance rights) which the Court will heavily scrutinize in order to protect the illegitimate child.

The dissent's opinion continues the cry of some of the members of the Court for consistency in the application of the equal protection clause of the Fourteenth Amendment. Justice Rehnquist expressed feelings that the framers of the Constitution and the 14th Amendment could not have meant to give the

57. 97 S. Ct. at 1468.

58. *Weber* involved workmen's compensation benefits; *Cahill* dealt with denial of benefits "indispensable" to health and well-being of the child; *Jiminez* and *Lucas* with social security benefits.

59. *Id.*

60. *Id.*

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

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

power to the Supreme Court to strike down laws such as the Illinois statute.

The dissenting opinion further stated that certain conduct requires a lessor or greater degree of protection. The conduct felt to require a greater degree of protection was free speech, unreasonable search and seizure and the right to a fair trial. Furthermore the Equal Protection Clause of the Fourteenth Amendment should test whether persons similarly situated should be treated similarly with the crux of the test being whether persons are similarly situated for the purpose of the state action at issue. The types of classifications that demand strict scrutiny are race or national origin and alienage. Illegitimacy was held not to deserve the strict scrutiny test or any special preference at all. Justice Rehnquist shows preference for a test that should be similar to the one voiced in *Arlington Heights v. Metropolitan Housing Corp.*⁶³ In *Arlington*, the Court stated that because of the variety of legislative purposes the courts should refrain from reviewing the competing merits of the intent of legislature in passing the law.⁶⁴ This seems to be the traditional rational basis test.

The position taken by the dissent is not without merit even though it would severely limit the type of review the court should give. The cry for consistency still seems to be valid. Some consistent level of review should be established with which the legal community and the legislature can work with confidence. It should not be a hunt and peck display by the nation's highest court. Examine the result in *Trimble*: the Illinois Supreme Court relied on the *Labine* case, which was factually on all fours with *Trimble* and, yet nevertheless was reversed.

SUMMARY

The stability of a country is represented by the stability of its society, and the stability of its society is dependent upon the stability of the laws regulating its society. Approximately twenty states have similar statutes that become vulnerable to constitutional attack because of the decision in *Trimble*.⁶⁵ This

63. 97 S. Ct. 555 (1977).

64. *Id.* at 563.

65. ALA. CODE tit. 26; ARK. STAT. ANN. tit. 61 § 141; D.C. CODE § 19-316; GA. CODE ANN. § 113-904; HAW. REV. STAT. §§ 532-37, 577-14; KY. REV. STAT. ANN. § 391.090 (Baldwin 1975); MASS. GEN. LAWS ANN. Ch. 190 § 5 (West 1959); MISS.

country now has a court that is divided on what exactly the Fourteenth Amendment means and has probably reached the point of no return in respect to the formation of a new rational basis test.

JOHN A. BOYD

CODE ANN. § 91-1-15; MO. ANN. STAT. §§ 447.060, 474.070 (Vernon 1971); N.H. REV. STAT. ANN. § 561:4; N.J. STAT. ANN. tit. 3A: § 4-7 (West 1967); OKLA. STAT. ANN. tit. 84 § 215 (West 1972); PA. CONS. STAT. tit. 20 § 2017; R.I. GEN. LAWS § 33-1-8; S.C. CODE § 21-3-30; TEX. STATS. PROB. § 42 (Vernon 1965); VA. CODE §§ 64.1-6; W. VA. CODE §§ 42-1-5, 42-1-6; WYO. STAT. § 2-44; Connecticut case law limits illegitimate children to inheritance from just their mothers.