

rule, characterizing it as "a legal anachronism, riddled with exceptions . . . lacking the support of authority and reason."<sup>58</sup> The court in *Fugate* should have followed *Gibson*. The parent-child relationship does not require the parental immunity rule, but traditional views of negligence applied to parent-child actions might interfere with parental control and discipline.<sup>59</sup> The California court adopted a "reasonably prudent parent test."<sup>60</sup> Adapted from common tort notions, the test compares the defendant's actions to those of a reasonable and prudent parent in similar circumstances.<sup>61</sup> Scholars have recently praised the substitution of this test for the parental immunity rule.<sup>62</sup>

By clinging to the modified parental immunity rule of *Brennecke* and *Bahr*, the Supreme Court of Missouri in *Fugate* failed to define adequately the scope of the remaining immunity. The court offered little guidance in allowing the rule to apply "under appropriate circumstances." The future of the parental immunity rule in Missouri is uncertain, and Missouri courts should join other states in the movement away from the parental immunity doctrine.

CONSTITUTIONAL LAW—ILLEGITIMACY—OHIO INTTESTATE SUCCESSION LAW DOES NOT VIOLATE EQUAL PROTECTION CLAUSE. *White v. Randolph*, 59 Ohio St. 2d 6, 391 N.E.2d 333 (1979) (per curiam). Decedent's will devised all of decedent's property to his wife, but failed to provide for its disposition in the event that she did not survive him. When the will failed, decedent's administrator brought an action to determine decedent's heirs-at-law, joining appellant, who claimed to be decedent's illegitimate daughter, as one of the defendants. The probate judge held, as a matter of law, that appellant could not inherit from decedent's estate because of her status as an illegitimate child.<sup>1</sup> The

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58. *Id.* at 916, 479 P.2d at 648, 92 Cal. Rptr. at 288.

59. *Id.* at 921, 479 P.2d at 652, 92 Cal. Rptr. at 292.

60. *Id.*, 479 P.2d at 653, 92 Cal. Rptr. at 293.

61. *Id.*

62. See, Note, *Intrafamilial Tort Immunity in New Jersey: Dismantling the Barrier to Personal Injury Litigation*, 10 RUT.-CAM. L.J. 661 (1979); Note, *The "Reasonable Parent" Standard: An Alternative to Parent-Child Tort Immunity*, 47 U. COLO. L. REV. 795 (1976); 12 TULSA L.J. 545 (1977).

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1. *White v. Randolph*, 59 Ohio St. 2d 6, —, 391 N.E.2d 333, 333-34 (1979) (per curiam).

court of appeals certified the case to the Ohio Supreme Court,<sup>2</sup> which affirmed the judgment and *held*: Ohio's intestacy statutes,<sup>3</sup> which deny an illegitimate child the right to inherit from the natural father unless the father married the child's mother, formally acknowledged the child, designated the child as an heir-at-law, adopted the child, or provided for the child in his will, do not violate the equal protection guarantees of either the United States<sup>4</sup> or Ohio<sup>5</sup> constitutions.<sup>6</sup>

At Ohio common law an illegitimate child was a "child of no one" for purposes of inheritance.<sup>7</sup> The Ohio legislature abrogated this doctrine in 1831,<sup>8</sup> but the intestacy statutes since enacted by the legislature continue to discriminate against illegitimate children. An illegitimate child may inherit from and through the mother as if legitimate,<sup>9</sup> but the child may inherit from or through the natural father only if the father legitimizes the child<sup>10</sup> through intermarriage, formal acknowledgment,<sup>11</sup> or adoption,<sup>12</sup> designates the child as an heir-at-law,<sup>13</sup> or pro-

2. The cause was certified to the Ohio Supreme Court, pursuant to the state constitution, OHIO CONST. art. IV, § 3(b)(4), for resolution of the conflict between the judgment of the Court of Appeals for Franklin County in the cause *sub judice* and the judgment of the Court of Appeals for Cuyahoga County in *Green v. Woodard*, 40 Ohio App. 2d 101, 318 N.E.2d 397 (1974).

3. OHIO REV. CODE ANN. ch. 2105 (Page 1976).

4. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

5. "All political power is inherent in the people. Government is instituted for their equal protection and benefit . . ." OHIO CONST. art. I, § 2.

6. 59 Ohio St. 2d 6, 391 N.E.2d 333 (1979) (per curiam).

7. See *Blackwell v. Bowman*, 150 Ohio St. 34, 80 N.E.2d 493 (1948); *Lewis v. Eutsler*, 4 Ohio St. 354 (1854). See generally Krause, *Equal Protection for the Illegitimate*, 65 MICH. L. REV. 477 (1967); Stenger, *The Supreme Court and Illegitimacy: 1968-1977*, 11 FAM. L.Q. 365 (1978).

8. 1831 Ohio Laws, vol. XXIX, § 12, at 254 (current version at OHIO REV. CODE ANN. § 2105.17 (Page 1976)).

9. "Children born out of wedlock shall be capable of inheriting or transmitting inheritance from and to their mother, and from and to those from whom she may inherit, or to whom she may transmit inheritance, as if born in lawful wedlock." OHIO REV. CODE ANN. § 2105.17 (Page 1976).

10. Ohio's intestate descent and distribution statute does not expressly distinguish between legitimate and illegitimate offspring, but simply refers to "children." See *id.* § 2105.06. Ohio, however, historically interpreted the words "child" or "children" as legitimate children only. See *Green v. Woodard*, 40 Ohio App. 2d 101, 104, 318 N.E.2d 397, 400-01 (1974), and cases cited therein. The enactment of § 2105.17, see note 9 *supra*, extended the scope of § 2105.06 to include an illegitimate child inheriting from and through the mother, but did not change the child's status to legitimate. 40 Ohio App. 2d at 106, 318 N.E.2d at 401. An illegitimate child, therefore, may inherit from or through the father under § 2105.06 only if the child is legitimated.

11. "When a man has a child by a woman and before or after the birth intermarries with her, the child is legitimate. The issue of parents whose marriage is null in law are nevertheless legitimate." OHIO REV. CODE ANN. § 2105.18 (Page Supp. 1978).

vides for the child in his will.<sup>14</sup> The Ohio statutory scheme also distinguishes among illegitimate children. Illegitimate children whose fathers have complied with one of the above procedures may inherit from both parents, but those whose fathers have not so complied may inherit only from their mothers.<sup>15</sup> Ohio thus occupies a "middle ground" on intestate inheritance by illegitimate children.<sup>16</sup>

Each type of discrimination is conceptually open to challenge, but some Ohio courts refused to recognize the distinction between inter- and intra-class discrimination among illegitimates.<sup>17</sup> The result was a conflict among the Ohio courts on even the nature of the discrimination involved.<sup>18</sup>

12. The natural father of a child may file an application in the probate court . . . , and upon consent of the mother, . . . the probate court, if satisfied that the applicant is the natural father, and that establishment of the relationship is for the best interest of the child, shall enter the finding of fact upon its journal, and thereafter the child is the child of the applicant, as though born to him in lawful wedlock.

*Id.*

13. A final decree of adoption and an interlocutory order of adoption that has become final . . . create the relationship of parent and child between petitioner and the adopted person, as if the adopted person were a legitimate blood descendent of the petitioner, for all purposes including inheritance and applicability of statutes . . . .

*Id.* § 3107.15.

14. A person of sound mind and memory may appear before a probate judge and file a written declaration designating another person as an heir-at-law. "Thenceforward the person designated will stand in the same relation, for all purposes, to such declarant as he could if a child born in lawful wedlock. The rules of inheritance will be the same between him and the relations by blood of the declarant, as if so born." *Id.* § 2105.15.

15. See text accompanying notes 9-14 *supra*.

16. State intestacy laws vary widely on the right of illegitimate children to inherit. In a range from intermarriage as the only basis for inheritance to the Uniform Parentage Act's much broader bases upon which illegitimates may inherit (*e.g.*, attempted marriage, support adjudication, or acceptance of a child into one's home as one's own), Ohio's intestacy statutes stand midway, recognizing several alternatives by which an illegitimate child may inherit. For categorizations of state laws governing intestate succession by illegitimates, see Stenger *supra* note 7, at 395 n.144; Note, *Illegitimates and Equal Protection*, 10 J.L. REF. 543, 550-51 nn.50-54 (1977).

17. Compare *Green v. Woodard*, 40 Ohio App. 2d 101, 113, 318 N.E.2d 397, 406 (1974) (Ohio intestacy statutes discriminate within class of illegitimates), with *Moore v. Dague*, 46 Ohio App. 2d 75, 80, 345 N.E.2d 449, 452 (1975) (Ohio intestacy statutes do not discriminate within class of illegitimates).

18. See, *e.g.*, *In re Minor of Martin*, 51 Ohio App. 2d 21, 365 N.E.2d 892 (1977) (equal protection mandates that § 2105.18 allow every illegitimate child the opportunity to be legitimated by filing application and proving identity of father); *Moore v. Dague*, 46 Ohio App. 2d 75, 345 N.E.2d 449 (1975) (equal protection not violated by Ohio's restrictions on inheritance by illegitimates from intestate fathers); *Green v. Woodard*, 40 Ohio App. 2d 101, 318 N.E.2d 397 (1974) (equal protection mandates that "children" in § 2105.06 include all illegitimates); *Jack v. Byers*, 73 Ohio Op. 2d 500 (C.P. 1975) (§ 2105.17 unconstitutional).

In *Green v. Woodard*<sup>19</sup> an Ohio appellate court accepted the distinction and declared that the discrimination among illegitimates violated the equal protection guarantee of the fourteenth amendment.<sup>20</sup> The court distinguished *Labine v. Vincent*,<sup>21</sup> in which the United States Supreme Court upheld, as a reasonable classification, a Louisiana intestacy statute<sup>22</sup> that conditioned inheritance by illegitimates on legitimation.<sup>23</sup> The *Green* court reasoned that if the statute permitted some illegitimates to inherit on the same basis as legitimates, then the equal protection clause mandates that all illegitimates receive similar treatment<sup>24</sup> in the absence of a rational basis for differential treatment.<sup>25</sup>

In *Moore v. Dague*,<sup>26</sup> however, another Ohio appellate court rejected *Green's* approach and upheld Ohio's restrictions on intestate inheritance by illegitimate children.<sup>27</sup> The *Moore* court balked at *Green's* implicit conclusion that allowing illegitimates any inheritance rights short of full rights constitutes invidious discrimination.<sup>28</sup> The court

19. 40 Ohio App. 2d 101, 318 N.E.2d 397 (1974).

20. *Id.* at 113-17, 318 N.E.2d at 405-08.

21. 401 U.S. 532 (1971).

22. "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." LA. CIV. CODE ANN. art. 919 (West 1952).

23. Ohio App. 2d at 111-13, 318 N.E.2d at 404-05. The Louisiana statute upheld in *Labine* severely limited the inheritance rights of acknowledged, but not legitimated, children of intestate fathers. The *Green* court distinguished *Labine* on the basis that the Louisiana statute discriminated only against the class of illegitimates, not within the class itself. *Id.* at 112-13, 318 N.E.2d at 405. For a discussion of the *Labine* decision, see Stenger, *supra* note 7, at 372-74; Note, *Paternity Statutes: Thwarting Equal Protection for Illegitimates*, 32 U. MIAMI L. REV. 339, 352-55 (1977).

24. 40 Ohio App. 2d at 115, 318 N.E.2d at 407.

25. *Id.* at 116-17, 318 N.E.2d at 407-08. *In re Minor of Martin*, 51 Ohio App. 2d 21, 365 N.E.2d 892 (1977), drew the same conclusion regarding § 2105.18, which allows the father to legitimate his illegitimate child through formal acknowledgment of his paternity. See note 11 *supra*. In *Martin* the court held that restriction of legitimation to those illegitimate children whose fathers choose to initiate acknowledgment proceedings invidiously discriminates against those illegitimates whose fathers choose not to initiate such proceedings. Thus, the court construed § 2105.18 to allow the child to apply independently for legitimation on the basis of clear and convincing proof of the father's identity. 51 Ohio App. 2d at 28-29, 365 N.E.2d at 896-97.

26. 46 Ohio App. 2d 75, 345 N.E.2d 449 (1975).

27. *Id.* at 83, 345 N.E.2d at 454.

28. There are two distinct classes of illegitimate children created by R.C. 2105.17. All illegitimate children are given the right to inherit from and through their mothers as if they were legitimate. Under existing common law and R.C. 2105.06, all illegitimate children are denied the right to inherit from their natural fathers by intestate succession in the absence of some action by such natural father. R.C. 2105.17 does not create two classes of illegitimate children but, rather, treats all illegitimate children the same.

*Id.* at 80, 345 N.E.2d at 452 (emphasis in original).

The *Moore* court, however, in finding Ohio's intestacy law similar to the Louisiana law upheld

could find no discrimination "in the state's giving each illegitimate child 'half a loaf' rather than none,"<sup>29</sup> and it interpreted *Labine* to sanction both inter- and intra-class discrimination against illegitimate children.<sup>30</sup>

The United States Supreme Court again reviewed an intestacy statute in *Trimble v. Gordon*.<sup>31</sup> The Court held that an Illinois law<sup>32</sup> violated equal protection by allowing an illegitimate child to inherit from the mother but not from the father, unless the father had legitimated the child through intermarriage and acknowledgment.<sup>33</sup> The Court recognized two distinct types of discrimination<sup>34</sup> and found that Illinois' exclusion of some illegitimates from intestate inheritance from and through their fathers was overinclusive in light of an alternative "middle ground."<sup>35</sup> The Court distinguished *Labine* on the basis of the

by the United States Supreme Court in *Labine*, wrote: "The two classes of illegitimate children created are: (1) those for whom the natural father has taken the necessary steps to entitle them to inherit from him, and (2) those for whom the natural father has taken no such steps." *Id.* at 81, 345 N.E.2d at 452. Ultimately, the court conceded that Ohio's law "'discriminates' between illegitimate children as to [the] right of inheritance from their natural fathers," but found no invidious discrimination in the classification. *Id.* at 84, 345 N.E.2d at 454.

29. *Id.* at 81, 345 N.E.2d at 453.

30. *Id.* at 80-81, 345 N.E.2d at 452-53.

31. 430 U.S. 762 (1977). Since 1968 the Supreme Court has frequently reviewed legislation affecting illegitimate children. For a comprehensive discussion of these cases, see Fine & Dickson, *Family Law*, 1977 ANN. SURVEY AM. L. 239; Stenger, *supra* note 7; Note, *supra* note 16; Note, *supra* note 23.

32. ILL. ANN. STAT. ch. 3, § 2-2 (Smith-Hurd 1973), provided in relevant part:

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

33. 430 U.S. at 776. Both *Labine* and *Trimble* were five-to-four decisions. Justice Black wrote the *Labine* opinion of the "transition" Court, upholding the Louisiana statute, in which Chief Justice Burger, and Justices Harlan, Stewart, and Blackmun joined; Justices Brennan, White, Douglas, and Marshall dissented. Justice Powell wrote the opinion of the *Trimble* Court, invalidating the Illinois statute, in which Justices Brennan, White, Marshall, and Stevens joined; Chief Justice Burger and Justices Stewart, Blackman, and Rehnquist dissented. In the recent case of *Lalli v. Lalli*, 439 U.S. 259 (1978) (plurality opinion), Justice Powell voted with the *Trimble* dissenters to uphold, in yet another five-to-four decision, New York's intestacy law. See note 41 *infra*.

34. The Court observed that the Illinois intestate succession law "treats illegitimate children differently from legitimate children," 430 U.S. at 733, but also emphasized "the asymmetrical statutory discrimination against the illegitimate children of intestate men." *Id.* at 730.

35. Although the Court recognized that the "more serious 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

statutes at issue in the two cases,<sup>36</sup> but showed discomfort with the *Labine* holding.<sup>37</sup> When the Court next ruled on the subject in *Lalli v. Lalli*,<sup>38</sup> the Court displayed no such discomfort in upholding a New York statute<sup>39</sup> that barred intestate inheritance from the father by an illegitimate unless the child produced an order of filiation obtained during the father's lifetime.<sup>40</sup> A plurality of the Court distinguished *Trimble* and found that the New York law was substantially related to important state interests and that it occupied the permissible "middle ground."<sup>41</sup> Although its reasoning focused on interclass discrimina-

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for legitimate children generally," *id.*, it concluded: "For at least some significant categories of illegitimate children of intestate men, inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws. Because it excludes those categories of illegitimate children unnecessarily, § 12 is constitutionally flawed." *Id.* at 771.

36. Compare LA. CIV. CODE ANN. art. 919, *supra* note 22, with ILL. ANN. STAT. ch. 3, § 2-2, *supra* note 32. The Court wrote of the Illinois law:

The difference in the rights of illegitimate children in the estates of their mothers and their fathers appears to be unrelated to the purpose of promoting family relationships. In this respect the Louisiana laws at issue in *Labine* were quite different. Those laws differentiated on the basis of the character of the child's illegitimacy. "Bastard children" were given no inheritance rights. "Natural children," who could be and were acknowledged under state law, were given limited inheritance rights, but still less than those of legitimate children. The Louisiana categories are consistent with a theory of social opprobrium regarding the parents' relationships and with a measured, if misguided, attempt to deter illegitimate relationships.

430 U.S. at 768-69 n.13 (citation omitted).

37. 430 U.S. at 776 n.17. "[I]t is apparent that we have examined the Illinois statute more critically than the Court examined the Louisiana statute in *Labine*. To the extent that our analysis in this case differs from that in *Labine* the more recent analysis controls." *Id.*

38. 439 U.S. 259 (1978) (plurality opinion).

39. N.Y. EST., POWERS & TRUSTS LAW § 4-1.2 (McKinney 1967) provides in relevant part:

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

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

40. 439 U.S. at 275-76.

41. *Id.* at 266-76. The Court remarked that the New York statute, unlike its Illinois counterpart struck down in *Trimble*, bars inheritance "only where there has been a failure to secure evidence of paternity during the father's lifetime in the manner prescribed by the State. This is not a requirement that inevitably disqualifies an unnecessarily large number of children born out of wedlock." *Id.* at 273.

The plurality in *Lalli* further distinguished *Trimble* on the basis of the state interests served by each statute. The Illinois law, wrote Justice Powell, claimed to foster both "the encouragement of legitimate family relationships and the maintenance of an accurate and efficient method of disposing of an intestate decedent's property," but the *Trimble* Court found the statute's relationship to the first interest "most attenuated" and the statute's classification overinclusive of the second inter-

tion, Justice Powell's opinion also addressed impermissible intraclass discrimination, stating that classifications among illegitimates may have a rational basis and therefore be valid.<sup>42</sup>

In light of *Trimble* and *Lalli* the Ohio Supreme Court in *White v. Randolph*<sup>43</sup> reconsidered the constitutionality of Ohio's descent and distribution laws as they apply to illegitimate children.<sup>44</sup> Appellant conceded that she could not meet the statutory requirements for inheritance by an illegitimate child from an intestate father, but argued that the equal protection clause afforded her a right to inherit if she could show "with sufficient competent evidence" that decedent was actually her father.<sup>45</sup> The Ohio court clearly regarded the issue as intraclass, not interclass, discrimination.<sup>46</sup> The court examined the rationality of

est. *Id.* at 265. Justice Powell noted the absence in *Lalli* of any offer to justify the New York statute in terms of encouraging legitimate family relationships, *id.* 266-68, and found that the statute adopted by New York to provide for the just and orderly disposition of property at death did not extend beyond its justifiable purposes, *id.* at 272-76.

Chief Justice Burger and Justice Stewart joined Justice Powell in the opinion for the *Lalli* Court. Justice Blackmun concurred in the judgment, but would have overruled rather than distinguished *Trimble*, which he viewed as a "derelict." *Id.* at 276-77. Justice Rehnquist concurred in the judgment "[f]or the reasons stated in his dissent in *Trimble*." *Id.* at 276. Thus, all four of the *Trimble* dissenters joined or concurred in the judgment in *Lalli*. Justices Brennan, White, Marshall, and Stevens—who, with Justice Powell comprised the majority in *Trimble*—all dissented in *Lalli*. Only Justice Powell, therefore, actually found a distinction between the Illinois statute in *Trimble* and the New York statute in *Lalli*.

42. *Id.* at 272 n.9. Appellant also claimed that § 4-1.2, *see* note 39 *supra*, together with N.Y. DOM. REL. LAW § 24 (McKinney 1977), which classifies as legitimate children born out of wedlock whose parents later intermarry, "impermissibly discriminates between classes of illegitimate children" by substituting marriage for § 4-1.2's requirements. "Thus, these 'illegitimate' children escape the rigors of the rule unlike their unfortunate counterparts whose parents never marry." 439 U.S. at 272 n.9. The Court responded that under § 24 one claiming to be the legitimate child of a decedent not only must prove paternity, but also evidence maternity and intermarriage; thus, "[t]hese additional evidentiary requirements make it reasonable to accept less exacting proof of paternity than required under § 4-1.2 and to treat such children as legitimate for inheritance purposes." *Id.*

43. 59 Ohio St. 2d 6, 391 N.E.2d 333 (1979) (per curiam). The Ohio Supreme Court adopted the opinion of the court below, rendered after *Trimble* but before *Lalli*.

44. The court previously had sustained the constitutionality of these statutes in *Moore*. *See* notes 26-30 *supra* and accompanying text.

45. 59 Ohio St. 2d at —, 391 N.E.2d at 334.

46. Moreover, the Ohio provisions do not discriminate between legitimate and illegitimate children *per se*. All children may inherit from their mothers. Some illegitimate children and all legitimate children may inherit from their fathers. The group 'discriminated against' is that class of illegitimate children whose fathers did not formally acknowledge them or designate them as heirs-at-law, pursuant to R.C. 2105.18 or R.C. 2105.15.

*Id.* at —, 391 N.E.2d at 335.

the classification in light of the legitimate state purposes advanced to support it, and recognized substantial state interests in avoiding spurious claims and providing for the stability of land titles.<sup>47</sup> The *White* court thus concluded that Ohio's intestate scheme occupies precisely that "middle ground" between complete exclusion and case-by-case determination of paternity found acceptable under *Trimble*.<sup>48</sup> The court viewed *Lalli* as further evidence of the substantial relation between the Ohio intestate provisions and important state interests.<sup>49</sup>

In dissent Justice Palmer argued that there was "no substantial basis" for distinguishing the Ohio statutory scheme from the Illinois law invalidated in *Trimble*,<sup>50</sup> rather, the statutes shared a constitutional defect: "[N]either state provides any method by which the *illegitimate child* may initiate any proceeding to secure parity of inheritance with legitimate children of his father."<sup>51</sup> Justice Palmer read the New York statute in *Lalli* to avoid this defect because an illegitimate child could secure an order of filiation during the lifetime of the father.<sup>52</sup> The dissenting justice, therefore, concluded that the Ohio intestate statutes deny equal protection to illegitimate children of intestate fathers.<sup>53</sup>

Following *Lalli*, it is difficult to envision grounds upon which the *White* court could have invalidated Ohio's restrictions on the rights of illegitimate children to inherit from their intestate fathers; the New

47. *Id.* at —, 391 N.E.2d at 334-35.

48. "In conformity with the dictates of *Trimble*, we believe that the Ohio statutory provisions present a reasonable middle ground for the recognition of certain categories of illegitimate children of intestate men." *Id.* at —, 391 N.E.2d at 335.

49. *Id.* at —, 391 N.E.2d at 335-36.

50. *Id.* at —, 391 N.E.2d at 336 (Palmer, J., dissenting). Justice Palmer also contended:

The only significant difference I have been able to determine between the statutes of the two states is that Ohio provides one additional method by which the father may recognize his illegitimate child for purposes of intestate succession, *viz.*, through a formal proceeding in Probate Court, initiated by the father, to designate such child as his heir at law.

*Id.* at —, 391 N.E.2d at 336 (Palmer, J., dissenting). See note 13 *supra*. Justice Palmer found this difference insufficient to distinguish this case from *Trimble*.

51. 59 Ohio St. 2d at —, 391 N.E.2d at 336 (Palmer, J., dissenting) (emphasis in original).

52. *Id.* at —, 391 N.E.2d at 337 (Palmer, J., dissenting). Justice Palmer's statement that the New York statute upheld in *Lalli* permitted an illegitimate child to secure an order of filiation during the lifetime of the father is not entirely correct. The statute requires that the paternity proceeding be instituted "during the pregnancy of the mother or within two years from the birth of the child." See note 39 *supra*. The Supreme Court expressly withheld review of the constitutionality of the two-year limitation in *Lalli*. See 439 U.S. at 267 n.5 (1978). If this limitation is valid, the New York statute does not provide a method by which an illegitimate child may initiate paternity proceedings, and Justice Palmer's distinction is chimerical.

53. 59 Ohio St. 2d at —, 391 N.E.2d at 337.

York law upheld in *Lalli* is at least as restrictive as that of Ohio.<sup>54</sup> *White v. Randolph* is nevertheless significant for its rejection of the *Green* approach to intraclass discrimination among illegitimates. Had the *Green* court prevailed in its requirement of a “full loaf” or “no loaf” for illegitimates, it would have established a principle with ominous implications for legislation in general. Classification is inherent in legislation,<sup>55</sup> and “few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results.”<sup>56</sup>

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54. Compare notes 8-14 *supra* and accompanying text with N.Y. EST., POWERS & TRUSTS LAW § 4-1.2 (McKinney 1967).

55. For a discussion of legislative classification and its relation to equal protection, see Dixon, *The Supreme Court and Equality: Legislative Classifications, Desegregation, and Reverse Discrimination*, 62 CORNELL L. REV. 494, 499-533 (1977).

56. *Lalli v. Lalli*, 439 U.S. 259, 273 (1978).

