

ful death of the child but that allowed the father to sue only if he had legitimated the child and there is no mother.<sup>1830</sup> Similarly, the Court let stand, under the Fifth Amendment, a federal statute that required that, in order for an illegitimate child born overseas to gain citizenship, a citizen father, unlike a citizen mother, must acknowledge or legitimate the child before the child's 18th birthday.<sup>1831</sup> The Court emphasized the ready availability of proof of a child's maternity as opposed to paternity, but the dissent questioned whether such a distinction was truly justified under strict scrutiny considering the ability of modern techniques of DNA paternity testing to settle concerns about legitimacy.

As in the instance of illegitimacy classifications, the issue of sex qualifications for the receipt of governmental financial benefits has divided the Court and occasioned close distinctions. A statutory scheme under which a serviceman could claim his spouse as a "dependent" for allowances while a servicewoman's spouse was not considered a "dependent" unless he was shown in fact to be dependent upon her for more than one half of his support was held an invalid dissimilar treatment of similarly situated men and women, not justified by the administrative convenience rationale.<sup>1832</sup> In *Weinberger v. Wiesenfeld*,<sup>1833</sup> the Court struck down a Social Security provision that gave survivor's benefits based on the insured's earnings to the widow and minor children but gave such benefits only to the children and not to the widower of a deceased woman worker. Focusing not only upon the discrimination against the widower but primarily upon the discrimination visited upon the woman worker whose earnings did not provide the same support for her family that a male worker's did, the Court saw the basis for the distinction rest-

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<sup>1830</sup> *Parham v. Hughes*, 441 U.S. 347, 361 (1979). There was no opinion of the Court, but both opinions making up the result emphasized that the objective of the state—to avoid difficulties in proving paternity—was an important one and was advanced by the classification. The plurality opinion determined that the statute did not invidiously discriminate against men as a class; it was no overbroad generalization but proceeded from the fact that only men could legitimate children by unilateral action. The sexes were not similarly situated, therefore, and the classification recognized that. As a result, all that was required was that the means be a rational way of dealing with the problem of proving paternity. *Id.* at 353–58. Justice Powell found the statute valid because the sex-based classification was substantially related to the objective of avoiding problems of proof in proving paternity. He also emphasized that the father had it within his power to remove the bar by legitimating the child. *Id.* at 359. Justices White, Brennan, Marshall, and Blackmun, who had been in the majority in *Caban*, dissented.

<sup>1831</sup> *Nguyen v. INS*, 533 U.S. 53 (2001). *See also* *Miller v. Albright*, 523 U.S. 420 (1998) (opinion by Justice Stevens, joined by Justice Rehnquist) (equal protection not violated where paternity of a child of a citizen mother is established at birth, but child of citizen father must establish paternity by age 18).

<sup>1832</sup> *Frontiero v. Richardson*, 411 U.S. 677 (1973).

<sup>1833</sup> 420 U.S. 636 (1975).