and a careful review of how well the classification serves, or "fits," the aim.[1854] The common rationale of all the illegitimacy cases is not clear, is in many respects not wholly consistent,[1855] but the theme that seems to be imposed on them by the more recent cases is that so long as the challenged statute does not so structure its conferral of rights, benefits, or detriments that some illegitimates who would otherwise qualify in terms of the statute's legitimate purposes are disabled from participation, the imposition of greater burdens upon illegitimates or some classes of illegitimates than upon legitimates is permissible.[1856]

Intestate succession rights for illegitimates has divided the Court over the entire period. At first adverting to the broad power of the states over descent of real property, the Court employed relaxed scrutiny to sustain a law denying illegitimates the right to share equally with legitimates in the estate of their common father, who had acknowledged the illegitimates but who had died intestate.[1857] *Labine* was strongly disapproved, however, and virtually overruled in *Trimble*

[1854] Mathews v. Lucas, 427 U.S. 495, 503–06 (1976); Trimble v. Gordon, 430 U.S. 762, 766–67 (1977); Lalli v. Lalli, 439 U.S. 259, 265 (1978). Scrutiny in previous cases had ranged from negligible, Labine v. Vincent, 401 U.S. 532 (1971), to something approaching strictness, Jiminez v. Weinberger, 417 U.S. 628, 631–632 (1974). *Mathews* itself illustrates the uncertainty of statement, suggesting at one point that the *Labine* standard may be appropriate, 401 U.S. at 506, and at another that the standard appropriate to sex classifications is to be used, id. at 510, while observing a few pages earlier that illegitimacy is entitled to less exacting scrutiny than either race *or* sex. Id. at 506. *Trimble* settles on intermediate scrutiny but does not assess the relationship between its standard and the sex classification standard. *See* Parham v. Hughes, 441 U.S. 347 (1979), and Caban v. Mohammed, 441 U.S. 380 (1979) (both cases involving classifications reflecting both sex and illegitimacy interests).

[1855] The major inconsistency arises from three 5-to-4 decisions. Labine v. Vincent, 401 U.S. 532 (1971), was largely overruled by Trimble v. Gordon, 430 U.S. 762 (1977), which itself was substantially limited by Lalli v. Lalli, 439 U.S. 259 (1978). Justice Powell was the swing vote for different disposition of the latter two cases. Thus, while four Justices argued for stricter scrutiny and usually invalidation of such classifications, Lalli v. Lalli, 439 U.S. at 277 (Justices Brennan, White, Marshall, and Stevens dissenting), and four favor relaxed scrutiny and usually sustaining the classifications, Trimble v. Gordon, 430 U.S. at 776, 777 (Chief Justice Burger and Justices Stewart, Blackmun, and Rehnquist dissenting), Justice Powell applied his own intermediate scrutiny and selectively voided and sustained. *See* Lalli v. Lalli, *supra* (plurality opinion by Justice Powell).

[1856] A classification that absolutely distinguishes between legitimates and illegitimates is not alone subject to such review; one that distinguishes among classes of illegitimates is also subject to it, Trimble v. Gordon, 430 U.S. 762, 774 (1977), as indeed are classifications based on other factors. *E.g.*, Nyquist v. Mauclet, 432 U.S. 1, 9 (1977) (alienage).

[1857] Labine v. Vincent, 401 U.S. 532 (1971). Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 170 (1972), had confined the analysis of *Labine* to the area of state inheritance laws in expanding review of illegitimacy classifications.