Juvenile Law--Equal Protection for Juveniles in the Post-Adjudicative Process

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In September, 1968, Kenneth Brown, a fourteen year old juvenile, was taken into custody by Virgin Islands police and charged with the theft of twelve dollars. At his trial before the Juvenile and Domestic Relations Division of the Municipal Court of the Virgin Islands, defense counsel moved for a dismissal, arguing that Brown had not been proven guilty beyond a reasonable doubt. The motion was denied, and Brown was found guilty by the trial judge. He was committed to the custody of the Virgin Islands Department of Social Welfare until his eighteenth birthday.

After sentencing, Brown petitioned the district court for leave to appeal, pursuant to a statute authorizing appeals in juvenile cases only at the discretion of the district court. The petition asserted that his conviction had been obtained on inadequate evidence, and that certain admissions had been obtained in violation of his fifth amendment rights. Although the petition raised claims involving substantial rights, the district court denied leave to appeal without comment. Appeal from the order of the district court was then taken to the Third Circuit Court of Appeals.

Before the Third Circuit, Brown argued (1) that the district court abused its discretion in denying his petition for leave to appeal, and (2) that 4 V.I. Code § 333 violates the Bill of Rights in that its provisions for discretionary appeal in juvenile cases deny equal protection of law to juveniles.

By a strong majority, the Third Circuit preemptorily dismissed consideration of the claim of abuse of discretion, and proceeded to

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1. 4 V.I. Code Ann. § 33 (1957) provides:
   The district court has appellate jurisdiction to review the judgments and orders of the Municipal Court in all civil cases ... in all juvenile and domestic relations cases, and in all criminal cases in which the defendant has been convicted, other than on a plea of guilty. Appeals in civil, juvenile and domestic relations cases may be taken by the party aggrieved by the judgment or order appealed from, but in juvenile and domestic relations cases they may be taken only if specially allowed by the district court. . . .

2. The Bill of Rights is made applicable to the Virgin Islands by 48 U.S.C. § 1406g (1936).

3. See note 1 supra.

4. Only one of seven justices dissented.
decide the case upon the constitutional issue of denial of equal protection. The court held that where an absolute right of appeal is afforded adults in criminal cases, equal protection of law requires that it also be afforded to juveniles in all cases in which the lower court decision imposes a restraint on the juvenile's liberty. To the extent that it made appeal discretionary in such cases, 4 V.I. Code § 33 was invalidated.\(^5\)

The *Brown* holding is significant, since the United States Supreme Court has not yet dealt with the issue of the post-adjudicative rights of juveniles. However, the Third Circuit's decision to exercise jurisdiction on the constitutional issue bears equally close examination. The court's approach, as well as the decision and its implications, is considered below.

Brown's appeal urged reversal of the district court on alternative theories, abuse of discretion and denial of equal protection. The first theory would have permitted the court to decide the case through statutory interpretation, avoiding the constitutional issue of equal protection. Such an approach would have been in accord with long-standing precedent. Federal courts have traditionally refused to consider the constitutionality of a statute when it may reasonably be construed in such a manner as to avoid the constitutional question. Similarly, where a state ground for decision is present, the alternative constitutional ground has been avoided.\(^6\)

After making reference to the traditional principles of avoidance of constitutional questions, the Third Circuit went on to state that the *Brown* case raised "considerations which compel a decision even if the issue is treated as a constitutional one."\(^7\) Where other federal courts have elected to decide a constitutional question which might have been avoided, over-riding public policy considerations have generally been cited.\(^8\) Such considerations could no doubt have been found in Brown's appeal. However, the Third Circuit did not outline them. Rather, it attempted to ground its exercise of jurisdiction on practical considerations of judicial administration.\(^9\)

The court pointed out that a decision on abuse of discretion would

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5. 439 F.2d 47, 54 (3rd Cir. 1971) [hereinafter cited as *Brown*].
6. A clear exposition of these principles is provided in the concurring opinion of Justice Brandeis in *Ashwander v. T.V.A.*, 297 U.S. 288, 346-48 (1936).
7. 439 F.2d at 51.
8. See, e.g., *Dombrowski v. Pfister*, 380 U.S. 479 (1965), where the importance of the constitutional issue in a civil rights case was found to warrant extraordinary federal injunctive relief, although abstention from deciding the case would have been the normal procedure.
9. 439 F.2d at 51.
require remand to the district court, since that court set forth no reasons for denying leave to appeal. The case would merely return after some delay. The Third Circuit also took judicial notice that abuse of discretion was a recurrent claim. So stating, the court proceeded in a novel direction.

... [T]he District Court should not continue to engage in the delicate and often difficult function of exercising its discretion if such appeals are as of right and it has no discretion to deny them. Its function would be deranged if it were overhung by the threat of invalidity of the statutory provision. ... For these important practical considerations, which affect the proper administration of justice and in the exercise of our supervisory jurisdiction over the courts of the Virgin Islands, we consider the validity of the statutory provision.10

Statutes have often been challenged on constitutional grounds. Yet it has seldom been suggested in a narrow sense that constitutional challenges, if undecided, risk injury to the functioning of the judicial system. That a statute may eventually be invalidated has seldom, if ever, been viewed as affecting the operations of the particular lower courts which must apply it. However, when extended to its logical conclusion, the argument is not without precedent. A policy of consistent avoidance of constitutional issues by the federal courts may ultimately result in undermining public confidence in the judiciary, and in dislocating the system of balance of powers. It was fear of the latter which led Chief Justice Marshall, in 1821, to urge that the Supreme Court not avoid constitutional questions properly within its jurisdiction.11

While there is a danger in avoiding constitutional issues, the Third Circuit did not direct its remarks toward identifying this danger as a consideration in its decision to decide the equal protection question. The argument which it made differed fundamentally from that made by Marshall. It reasoned that decision of the equal protection challenge to 4 V.I. Code § 33 was not only in the interests of the administration of justice, but was itself an exercise of its supervisory jurisdiction over the lower court.

10. Id. (emphasis added).
11. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 404 (1821).
In claiming to exercise its supervisory jurisdiction, the Third Circuit left precedent behind. To reason that a state or territorial law is to be invalidated in the exercise of supervisory jurisdiction over the courts is to stretch the concept of supervisory jurisdiction almost beyond recognition. It is regrettable that this reasoning was employed, for it raises the suspicion that the real reason for deciding the constitutional issue may have been irritation at repeated insensitive and inappropriate dismissals of juvenile appeals by the district court.

Brown's second theory asserted that where absolute right of appellate review is granted to adults by statute, it is a denial of equal protection of law to deprive juveniles of the same right. In vacating the district court's dismissal of his appeal and remanding for a hearing, the Third Circuit did not adopt Brown's position in toto. Juveniles were held to have an absolute right to appeal only where the lower court's decision imposes a restraint on their liberty.

The limitation of the appellate rights of juveniles to cases resulting in loss of liberty resulted from the approach taken by the court. Lacking direct precedent upon which to base its decision, the Third Circuit chose to adopt the reasoning of the United States Supreme Court in Griffin v. Illinois. After noting with obvious disapproval that the right to appellate review is not required by the concept of due process of law, the court stated that once review is granted, it may not be limited in a discriminatory manner.

In Griffin, the Supreme Court held that appellate procedures which discriminate against the poor are arbitrary and invidious,
and are therefore in violation of the equal protection clause. In a concurring opinion, Justice Frankfurter reasoned that equal protection does not prevent a state from creating classes of appellate rights, as long as the differentiation is based on reasonable and appropriate distinctions in crimes and punishments. Proceding by analogy to *Griffin*, the Third Circuit adopted Frankfurter's view, and undertook examination of the differentiation between adult and juvenile appellate rights imposed by 4 V.I. Code § 33.

The once "progressive" view of juvenile proceedings—now the orthodox approach—is that their purpose is "salutory" rather than "punitive". On the theory that lack of formal procedures will best protect the real interests of the child, the courts have often resisted according juveniles in delinquency proceedings the rights granted adults in criminal proceedings. The proposition that delinquency hearings are civil, not criminal in nature, originally designed to prevent future stigmatization of the juvenile, has been employed to buttress the argument that the constitutional safeguards applied to adults in criminal cases have no place in the juvenile courts.

Rejecting the thinking of the "progressive" school, the Third Circuit found that there is no necessary conflict between the desire for a flexible approach to juvenile cases and the availability of procedural safeguards, including the right to appellate review. After commenting that *In re Gault* expressed the Supreme Court's concern to prevent juvenile proceedings from becoming arbitrary and capricious, the Third Circuit went a step beyond that decision.

The informality and flexibility of the juvenile adjudication and the subsequent treatment make the right of appeal perhaps more, and certainly not less, vital to safeguard those subject to the juvenile process. . . .

On such a rationale, the court might well have found no reasonable basis for differentiation between juvenile and adult proceedings. However, it stopped somewhere short of that position. The

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20. *In re Gault*, 387 U.S. 1, 15-16 (1967) [hereinafter cited as *Gault*].
21. Id. at 17.
22. This view is expressed by the sole dissenting justice in *Brown*. See, opinion of Ganey, C.J., 439 F.2d at 55.
23. See note 20 supra.
24. 439 F.2d at 52.
court concluded that a difference could still be found. It lay, not
in the adjudicative process itself, but in the varying dispositions of
juvenile and adult cases.25

A juvenile court may, and in Brown's case did, order institutional
confinement. It may also impose conditions of probation or devise
other rehabilitative measures.26 The Third Circuit addressed it-
self to this point.

If the ultimate result of [the juvenile court's] decree is the loss
of the juvenile's liberty . . . the result is realistically the same as
that which would follow from a declaration of criminality.27

Where juvenile court orders did not result in loss of liberty, the
Third Circuit felt that the same need for protection from the effects
of unreasonably harsh dispositions did not exist. Thus, dispositions
were found to constitute a rational ground for differentiation of
juvenile appeal rights. The court held that to deny an absolute
right of appeal to juveniles who are deprived of their liberty is ar-
bitrary, and therefore in violation of equal protection of law. The
rights of juveniles not deprived of their liberty were not to be af-
ected by the ruling.

Justice Ganey, the sole dissenter from the majority opinion,
pointed out a practical problem raised by the Brown decision.28 In
conditioning the right to appeal upon deprivation of liberty, the
court made no attempt to define those conditions it considered to
constitute a deprivation of liberty. Arguably, the court did not in-
tend to extend the holding beyond the precise facts of Brown's
case, that is, confinement to an institution. Yet it can also be ar-
gued that probation may constitute as real and complete a depriva-
tion of liberty as physical confinement. In any event, probation
may be subject to revocation. The scope of the Brown decision is
therefore unclear.29

The logic of the Third Circuit in arriving at less than an absolute
right to appeal in all juvenile cases is open to criticism. The court,

25. Id. at 53.
26. V.I. Code Ann. § 2506(3) (1957) states:
   (3) [The court may] order such other care and treatment as
   the court may deem best. . . .
27. 439 F.2d at 53.
28. Id. at 55.
29. The identical problem arose in Pennsylvania under section 15 of
   provides for review as of right of final orders committing or placing a ju-
   venile. In Appeal of Moore, 217 Pa. Super. 296, 269 A.2d 395 (1970), it was
   held that an order of probation was included in the mandatory review
   provisions of the statute, since probation constitutes a restriction of the
civil liberty of the juvenile.
dealing with a delinquency case, found that different dispositions may justify the creation of different appellate rights in juvenile cases. While it is true that juvenile delinquency proceedings need not result in institutional commitment, it is equally true that adult criminal proceedings may have results other than imprisonment. Probation may be granted, a fine imposed, or in some jurisdictions more flexible work-furlough programs instituted. The distinctions between adult criminal dispositions and juvenile delinquency dispositions are arguably minimal. Yet in all criminal cases, the right of adults to appellate review is absolute.

In deciding Brown, it was unnecessary for the Third Circuit to rule on the appellate rights of juveniles brought before the courts in guardianship or other protective proceedings in which no violation of the criminal law is alleged. However, the court did comment on such cases in dicta. Under the relevant Virgin Islands statute, commitment could be ordered in both delinquency and custodial proceedings. As a result of the court's focus on dispositions, it was unavoidable that no distinction could be drawn between juvenile appellate rights in delinquency cases and other cases arising under juvenile law. Thus, if any juvenile case results in deprivation of liberty, the right to appellate review is unlimited.

A second result of the Brown court's decision to examine the nature of juvenile dispositions rather than the nature of the proceedings was avoidance of a potential difficulty in applying equal protection to juveniles. Under all juvenile statutes, a child may be taken into custody for acts which would not constitute a crime if committed by an adult. Likewise, a neglected child who is endangered may be brought before a juvenile court. There are no parallel provisions applicable to adults, with the possible exception of statutes permitting the involuntary commitment of the mentally ill. Had the Third Circuit chosen to differentiate juvenile and adult appeal rights according to the nature of either the offense or the proceeding itself, a logically untenable demarcation would have resulted. Those juveniles violating a criminal law would have been guaranteed the right to appeal, since comparable adult offenses

30. 439 F.2d at 53.
31. 5 V.I. CODE ANN. § 2506 (1957).
33. See, e.g., CAL. WELF. & INST'N CODE § 600 (West 1971).
exist. Those juveniles found to be endangered by inadequate supervision would have been denied appeal as of right, since no comparable adult offense or legal status exists. The latter class of juveniles would have been subject to arbitrary dispositions without benefit of appellate safeguards. The purpose of appellate review, avoidance of unreasonably harsh and arbitrary dispositions, would have been defeated.

It was this concern with the purposes of appellate review which led the Brown court to base its decision on examination of juvenile dispositions. The court sought to prevent unreasonable restraint of the juvenile's liberty. It reasoned that the unstructured nature of the juvenile court may enable more individualized and humane treatment of young offenders. However, it may also enable unjust treatment of the children brought before it. The appeal mechanism was seen as necessary to avoid substantial harm to the children whose interests the juvenile courts were designed to protect.

The fault of the Third Circuit's thinking on the function of juvenile appeals is that it does not go far enough. The danger of an overly flexible and uncontrolled adjudicative process was cited by the court. Such a danger would appear to call for clear and unqualified espousal of the principle of an absolute right to appellate review of juvenile cases. If review is to prevent arbitrary dispositions and their accompanying harm, appeal as of right from all juvenile cases would appear to be an essential, and even a minimal, safeguard.

Despite the criticisms which may be directed at the majority opinion in Brown, the Third Circuit's reasoning on the equal protection issue deserves favorable attention. The court decided Brown's case on the assumption that juveniles are entitled to equal protection of law. That principle itself was not questioned. As due process of law was not finally held applicable to juveniles until 1967, that assumption is significant. The willingness of the court to follow the lead of the Supreme Court in Gault and Winship by "piercing the veil" of juvenile proceedings in order to examine their effects, rather than their theories, is likewise significant.

35. Id.
37. Many state courts continue to recite the orthodox view of juvenile court systems. See, e.g., In re Ricky H., 2 Cal. 3d 513, 519-20, 468 P.2d 204, 207, 86 Cal. Rptr. 76, 79 (1970): "... [I]n adult criminal prosecutions a major goal is corrective confinement of the defendant for the protection of society. But even after Gault, ... juvenile proceedings retain a sui generis character: although certain basic rules of due process must be ob-
While the precise holding of Brown appears to be of direct precedential value in few jurisdictions, the reasoning which led the Third Circuit to find a violation of equal protection of law in the area of appellate procedure might well be applied in the future to other areas of juvenile law. Such areas might include substantive as well as procedural provisions of the law. The Brown case itself suggests as a possible starting point those statutes which permit incarceration of juveniles until majority. As the Third Circuit noted, the original disposition in Brown’s case was institutional confinement until age eighteen, a period of almost four years. An adult convicted of the same offense, petty larceny, could have received a maximum sentence of one year in prison.

Recognizing that juvenile institutions are frequently rehabilitative in name only, it would appear that reassessment of existing juvenile law is in order. If, in reality, the operation of juvenile institutions is merely punitive, there is little reason for failure to apply the equal protection clause to juvenile dispositions themselves. Longer terms of confinement for juveniles than for adults can be justified, if at all, on the theory that the young offender will somehow be benefited. If the benefit of institutionalization is more illusory than real, then it is unconscionable that a juvenile should pay a higher price than an adult for the same offense. Equal protection of law should forbid such groundless discrimination in pen...
alties. It is to be hoped that the realistic approach to juvenile law taken by the Third Circuit will be extended.

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