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Constitutional Law - Freedom of Religion - State Does Not Have Interest of Sufficient Magnitude to Outweigh Parent's Religious Beliefs in Compelling Medical Care for Minor When Child's Life Is Not in Immediate Danger

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fraternal orders. Certainly, the policy arguments against segregation in schools would weigh more heavily on the *Burton* scale than the policy arguments against discrimination in social organizations. Since the IRS changed its policy regarding tax exemptions for segregated private schools based on the policy argument articulated in *Green v. Kennedy*,[80] the determination of the unconstitutionality of those benefits would mean the IRS would have no choice but to continue its new policy and to eliminate any benefits that continue to be given to such schools.

The thrust of the *McGlotten* opinion could also be extended beyond schools and fraternal orders to any private organization which is allowed to solicit contributions by use of the deduction incentive.[81] Hospitals, literary societies, art appreciation leagues, and other charitable organizations which insist on discriminating in their membership on the basis of race might no longer be able to enjoy the privilege of soliciting tax-induced contributions. Perhaps, this would compel, to a limited extent, a more integrated society. However, as pertinently concluded by the court, this holding will not "put an end to racial discrimination or significantly dismantle the [more subtle] social and economic barriers,"[82] but government will no longer be able to support or encourage discrimination in any manner, even on a social level.[83] Benevolent neutrality toward discrimination should not be sufficient.

Marc Howard Jaffe

CONSTITUTIONAL LAW — FREEDOM OF RELIGION — STATE DOES NOT HAVE INTEREST OF SUFFICIENT MAGNITUDE TO OUTWEIGH PARENT'S RELIGIOUS BELIEFS IN COMPELLING MEDICAL CARE FOR MINOR WHEN CHILD'S LIFE IS NOT IN IMMEDIATE DANGER.

In re Green (Pa. 1972)

A petition was filed under the Pennsylvania Juvenile Court Law[1] seeking a declaration that a child was neglected within the meaning of the statute[2] as a result of his parent's failure to provide adequate medical

80. *See* notes 33-39 and accompanying text *supra*.

81. The holding as to exemptions would not seem to have any significance beyond fraternal orders and their exclusive passive investment income exemption. Other exemptions can generally be explained in terms of the definition of income.

82. 338 F. Supp. at 462.

83. It is possible that the Supreme Court could reverse if it finds that the policy invoked against segregated schools is not so strong when applied to discriminatory fraternal orders. The Court could also find the district court's distinctions between *Walz* and this case insufficient to justify reaching different results, and therefore follow *Walz*. *See* note 59 *supra*.

1. PA. STAT. tit. 11, §§ 243 *et seq.* (1965).

2. PA. STAT. tit. 11, § 243(5)(c) (1965). *See* text accompanying note 24 *infra*.

care.[3] The parent, a Jehovah's Witness, contended that a court order mandating the administration of a blood transfusion to her son attendant to corrective spinal surgery[4] violated her right to the free exercise of religion.[5] The court of common pleas dismissed the petition,[6] but, on appeal, the superior court reversed and remanded for the appointment of a guardian,[7] relying on *In re Sampson.*[8] In a 4–3 decision, the Supreme Court of Pennsylvania reversed the superior court, *holding* that the state interest was not of sufficient magnitude such that it would outweigh the parent's religious beliefs when, as the court emphasized, the child's life was not immediately imperiled by his physical condition.[9] However, the court maintained jurisdiction and withheld final disposition pending the outcome of a hearing to determine the child's views. *In re Green,* 448 Pa. 338, 292 A.2d 387 (1972).

The *Green* case involved two potentially conflicting interests: free exercise of religion for the individual versus the state's power to require medical treatment for a minor despite the objection of the recipient or of the recipient's guardian. The United States Supreme Court had previously attempted to separate the distinct aspects of freedom to believe and freedom to act in accordance with belief in *Reynolds v. United States.*[10] There, the Court took the position that religious belief and opinion were beyond the law, but that the state could legitimately regulate certain actions which flowed from religious conviction.[11]

Later cases, such as *Cantwell v. Connecticut*[12] and *Barnette v. West Virginia Board of Education,*[13] exemplified the Court's concern with

3. For a discussion of the problems of consent to medical care for minors and of recent legislative efforts to deal with this problem, *see* Pilpel, *Minor's Rights to Medical Care,* 36 ALBANY L. REV. 462 (1972).

4. As a result of two attacks of poliomyelitis, the child suffered from a curvature of the spine which would deteriorate over time to the point where he would be totally bedridden. At the time of the decision, he was a "sitter." Spinal fusion, the recommended surgical treatment, involved taking bone from the pelvis and transferring it to the spine. *In re* Green, 448 Pa. 338, 340, 292 A.2d 387, 389 (1972).

5. For a discussion of the Scriptural basis of this belief, *see* Ford, *Refusal of Blood Transfusions by Jehovah's Witnesses,* 10 CATH. LAW. 212 (1964).

6. *In re* Green, No. 174612 (Juv. Branch C.P. Phila., July 7, 1971).

7. 220 Pa. Super. 191, 286 A.2d 681 (1971).

8. 65 Misc. 2d 658, 317 N.Y.S.2d 641 (Family Ct. 1970).

9. 448 Pa. at 348, 292 A.2d at 392.

10. 98 U.S. 145 (1878). This case dealt with a bigamy prosecution against a member of the Mormon Church in the Territory of Utah. The Court alluded to practices of human sacrifice and self-immolation by a grieving mourner on a funeral pyre as those which would not be tolerated if the case should arise. Bigamy was viewed as a threat to the very basis of Western society which the state had a duty to suppress. *See* Davis v. Beason, 133 U.S. 333 (1890).

11. 98 U.S. at 166.

12. 310 U.S. 296 (1940). In a decision concerning Jehovah's Witnesses proselytizing on public streets, the Court noted:

> Thus the [First] Amendment embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.

Id. at 303–04.

13. 319 U.S. 642 (1943). Justice Jackson spoke of a "clear and present danger," the test of Justice Holmes in Schenck v. United States, 249 U.S. 47, 52 (1919), and

reconciling unhindered belief and potentially regulated practice,[14] but it was in *Prince v. Massachusetts*[15] that the Court enunciated a general policy to be followed in situations where a parent's religiously motivated practice affected his child's welfare:

> The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to *ill health* or death. . . . The State has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare, and that this includes, to some extent, matters of conscience and religious conviction.[16]

The second aspect of the issue presented by *Green* centers specifically on state-compelled medical treatment.[17] This problem has been examined by several jurisdictions, and the most frequent distinction made has been between cases involving adults[18] and those involving children.[19] The power of the state to compel medical treatment has not gone unchallenged, however. In the case of *Jehovah's Witnesses v. King County Hospital*,[20] a class action which sought to have the Juvenile Court Law of the State of Washington declared unconstitutional,[21] a three-judge federal court considered itself bound by *Prince* and held the statute constitutional as applied. On appeal, the United States Supreme Court, also citing *Prince*, affirmed in a per curiam opinion.[22]

It was against this background that the Pennsylvania Supreme Court stated the question as whether the state could interfere with a parent's

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that first amendment freedoms of speech, press, assembly, and worship "are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect." 319 U.S. at 639.

14. *See* School Dist. v. Schempp, 374 U.S. 203 (1963); Murdock v. Pennsylvania, 319 U.S. 105 (1942); Pierce v. Society of Sisters, 268 U.S. 510 (1924).

15. 321 U.S. 158 (1944).

16. *Id.* at 166–67 (emphasis added).

17. *See* Comment, *Court Ordered Non-Emergency Medical Care for Infants*, 18 CLEV.-MAR. L. REV. 296 (1969); Comment, *An Adult's Right to Refuse Blood Transfusions: A View Through John F. Kennedy Memorial Hospital v. Heston*, 47 NOTRE DAME LAW. 571 (1972); Comment, *Compulsory Medical Treatment and Constitutional Guarantees: A Conflict?*, 33 U. PITT. L. REV. 628 (1972).

18. Application of Georgetown College, Inc., 331 F.2d 1000 (D.C. Cir. 1964), *cert. denied*, 377 U.S. 978 (1964); John F. Kennedy Memorial Hosp. v. Heston, 58 N.J. 576, 279 A.2d 670 (1971). *Contra, In re* Brooks Estate, 32 Ill. 2d 361, 205 N.E.2d 435 (1965); Annot., 9 A.L.R.3d 1392 (1966).

19. People *ex. rel.* Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1952); State v. Perricone, 37 N.J. 463, 181 A.2d 751 (1962); *In re* Clark, 21 Ohio Op. 2d 86, 185 N.E.2d 128 (C.P. 1962); Annot., 30 A.L.R.2d 1138 (1953).

20. 278 F. Supp. 488 (W.D. Wash. 1967). Plaintiffs alleged violations of the first amendment, as made applicable to the states by the fourteenth amendment, in that they were deprived of the free exercise of religion, that they were denied life, liberty, and property without due process of law as guaranteed by the fifth and fourteenth amendments, that they were denied the right of family privacy protected by the ninth and fourteenth amendments, and that they were denied equal protection of the laws of the State of Washington. *Id.* at 500–01.

21. WASH. REV. CODE §§ 13.04.010(12), 13.04.095 (1962).

22. 390 U.S. 598 (1968).

religious beliefs in order to enhance the child's well-being, even when there was no immediate danger to the child's life.[23] The majority focused on the statutory definition of a neglected child. In Pennsylvania, a "neglected child" is "a child whose parent . . . neglects or refuses to provide proper or necessary . . . medical or surgical care."[24] If a child is found to be neglected, the court is thereby empowered to take such remedial action as may be deemed necessary.[25] The majority indicated that, absent the first amendment issue, it might agree with the dissenting justices and consider the matter settled at this point, since the facts clearly placed Ricky Green within the statutory definition of a "neglected child."[26] The dissent, in contrast to the majority, placed its emphasis on the boy's status as a "neglected child" rather than on the combination of this status with the first amendment rights of the mother.[27]

Confronted by the United States Supreme Court's per curiam affirmance of *Jehovah's Witnesses,*[28] Chief Justice Jones, speaking for the majority in *Green,* distinguished that case as one in which the transfusions given were, in the opinion of medical authorities, necessary to save the lives of the children.[29] Neither the *Jehovah's Witnesses* nor the *Green* opinion dealt with the danger involved in a blood transfusion itself;[30] the *Green* court did examine the danger of the particular operation, but only in passing.[31] *Green* also avoided consideration of life and death circumstances and confined its discussion to the "improvement of physical well being" situation, thereby seeking the narrowest grounds upon which to rule.

The dissent took issue with the emphasis the majority had placed on distinguishing life and death cases[32] and relied instead on references to the statute[33] under which the petition was brought, as well as on *Prince.*[34] As Justice Eagen pointed out in his dissent, even if, for purposes of argument, *Wisconsin v. Yoder*[35] could be read to apply, the emphasis should be placed on the *Yoder* guideline that parental power *may* be

23. 448 Pa. at 345, 292 A.2d at 390.

24. PA. STAT. tit. 11, § 243(5)(c) (1965).

25. "The Court may . . . [c]ommit a child to the care, guidance and control of some reputable citizen of good moral character . . . . " *Id.* § 250(b). The child may be committed to a "crippled children's home or orthopaedic hospital or other institution" for treatment. *Id.* § 871.

26. 448 Pa. at 341, 292 A.2d at 388.

27. *Id.* at 350, 292 A.2d at 393.

28. *See* notes 20–22 and accompanying text *supra.*

29. 448 Pa. at 345, 292 A.2d at 390.

30. For a concise portrayal of some of these dangers, *see* TIME, Aug. 17, 1970, at 43; Oct. 19, 1970, at 57.

31. 448 Pa. at 340, 292 A.2d at 388.

32. *Id.* at 354, 292 A.2d at 395.

33. The Juvenile Court Law is generally concerned with the health and well-being of juveniles appearing before the court. PA. STAT. tit. 11, §§ 243 *et seq.* (1965).

34. 448 Pa. at 353–54, 292 A.2d at 394. *Prince* spoke of the protection of the child from ill health, as well as from death. 321 U.S. at 166–67.

35. 406 U.S. 205 (1972).

subject to limitation under *Prince* if the parents' decision will jeopardize the health or safety of the child.[36] The majority, however, read this part of the *Yoder* opinion as being permissive, emphasizing only the word "may."[37] It is significant that the only reference in *Yoder* to a case involving forced medical treatment was to *Application of Georgetown College, Inc.*[38] which was distinguished by the *Green* majority on two grounds: first, as a case involving life or death and, secondly, as a case involving an adult patient.[39] The *Green* court interpreted the broad holding of *Yoder* as lending support to the mother's position, not to the Commonwealth's.[40]

The dissent declined to follow the *Yoder* decision, noting that not only was *Yoder* not a case where there was any evidence of physical harm to the children involved,[41] but also that *Yoder*'s focus was primarily upon the education of children, not upon their physical health.[42] By exercising control over education in a way inconsistent with the religion of the parents, a state could greatly influence, if not determine, the child's religious future. Such potentially overwhelming state influence is not present where the state only intervenes to insure the health of the child since the state's interference ceases when the physical condition has been rectified.

The court discussed only two cases, *In re Seiferth*[43] and *In re Sampson,*[44] both of which presented a set of facts sufficiently similar to *Green* to merit consideration and analysis. *Seiferth* involved a boy afflicted with a harelip and a cleft palate. The state sought appointment of a guardian because the father refused to grant permission for corrective surgery on philosophical grounds.[45] Influenced by his father's feel-

36. 448 Pa. at 353–54, 292 A.2d at 394. *Yoder* spoke of the *"harm to the physical or mental health of the child"* as not being present in the particular case. 406 U.S. at 230 (emphasis supplied).

37. 448 Pa. at 346, 292 A.2d at 390.

38. 331 F.2d 1000 (D.C. Cir. 1964). The Supreme Court also referred to other cases which involved threats to society rather than involving this medical issue: Jacobson v. Massachusetts, 197 U.S. 11 (1905) (compulsory vaccination); Wright v. DeWitt School Dist., 238 Ark. 906, 385 S.W.2d 644 (1965) (compulsory vaccination). 406 U.S. at 230 n.20. *See* Cleveland v. United States, 329 U.S. 14 (1946) (polygamy); Prince v. Massachusetts, 321 U.S. 158 (1944) (child labor). 406 U.S. at 239 n.1 (White, J., concurring).

39. 448 Pa. at 346, 292 A.2d at 391.

40. "[T]he State's interest in the education of its children must fall before a parent's religious beliefs . . . ." *Id.* at 346, 292 A.2d at 391.

41. The dissent quoted from *Yoder:* "This case [*Yoder*] . . . is not one in which any harm to the physical or mental health of the child . . . has been demonstrated or may be properly inferred." *Id.* at 353, 292 A.2d at 394 (dissenting opinion) (emphasis supplied by the court).

42. *Id.* at 354, 292 A.2d at 394–95.

43. 309 N.Y. 80, 127 N.E.2d 820, *rev'g* 285 App. Div. 221, 137 N.Y.S.2d 35 (1955).

44. 65 Misc. 2d 658, 317 N.Y.S.2d 641 (Family Ct. 1970), *aff'd,* 37 App. Div. 2d 668, 323 N.Y.S.2d 253 (1971), *aff'd per curiam,* 29 N.Y.2d 900, 278 N.E.2d 918, 328 N.Y.S.2d 686 (1972).

45. The father believed in mental healing based on "forces in the universe," but did not consider this belief to be religious. He was willing to consent to the

ings, the boy feared surgery and desired to wait. Since his cooperation was necessary to obtain favorable results in post-operative therapy, the trial court ruled the operation should not take place until the boy was willing. The appellate court reversed,[46] but the New York Court of Appeals reinstated the verdict of the trial court, considering the decision to be appropriately within the discretion of the trial judge.[47]

Sampson concerned a youth who suffered from a severe facial deformity which, although the result of an incurable disease, posed no immediate threat to his life or general health.[48] His mother, a Jehovah's Witness, refused permission for a blood transfusion, without which corrective surgery was impossible.[49] Greatly influenced by psychological and developmental factors,[50] the court found the boy to be neglected and appointed a guardian to authorize corrective surgery.[51] It is significant to note that the consent of the boy was neither solicited nor considered.[52] The appellate court affirmed with the observation that restricting state intervention to a life and death situation was too narrow an approach.[53] The New York Court of Appeals affirmed per curiam, adding that *Seiferth* turned on how best to exercise a court's discretionary powers, and that "religious objection to blood transfusion [does not] present a bar, at least where the transfusion is necessary, to the success of required surgery."[54]

The Pennsylvania Superior Court had noted with approval the *Sampson* decision,[55] and the *Green* dissent quoted the superior court opinion extensively.[56] However, the majority refused to be guided by the New York decision in a non-fatal situation, as in the instant case, and expressed no opinion as to the propriety of *Sampson* in a life-or-death

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operation in a few years if the mental healing failed and if the boy consented. 309 N.Y. at 84, 127 N.E.2d at 822.

46. 285 App. Div. 221, 137 N.Y.S.2d 35 (1955) (3–2 decision). The court reasoned that the danger to life was not necessary, but danger to the chance for a normal life was sufficient. The opinion of the child was considered immaterial. *Id.* at 225, 137 N.Y.S.2d at 38–39.

47. The trial judge had heard the testimony of both father and son and had also considered the boy's unwillingness and the need for his cooperation in the therapy. 309 N.Y. at 85–86, 127 N.E.2d at 823.

48. The disease had not affected either hearing or eyesight at the time the petition to appoint a guardian was filed. 65 Misc. 2d at 659, 317 N.Y.S.2d at 644.

49. There was considerable risk involved with this type of surgery, and surgery was impossible without permission to use a blood transfusion. Physicians advised delay until the boy was older and the volume of blood greater because the risk would then be lower. *Id.* at 661, 317 N.Y.S.2d at 645.

50. The fifteen-year-old boy was a virtual illiterate as a result of not having attended school. He had an inferiority complex and social intercourse was extremely difficult because of his appearance. *Id.* at 660, 317 N.Y.S.2d at 644.

51. *Id.* at 676, 317 N.Y.S.2d at 659.

52. The court was unwilling to put such a decision, which would obviously affect the rest of the boy's life, on his shoulders and instead assumed itself the responsibility to decide. *Id.* at 672, 317 N.Y.S.2d at 655.

53. 37 App. Div. 2d at 669, 323 N.Y.S.2d at 255.

54. 29 N.Y.2d at 901, 278 N.E.2d at 918–19, 328 N.Y.S.2d at 687.

55. 220 Pa. Super. at 196–97, 286 A.2d at 683–84.

56. 448 Pa. at 351–53, 292 A.2d at 393–94.

situation.[57] Chief Justice Jones took issue with the word "required"[58] in the New York decision — the court had not defined that term nor had it provided guidelines for a lower court to apply in its determination as to whether the surgery is "required." Such a dearth of medical and philosophical standards greatly influenced the *Green* court to avoid a situation where it might be called upon to decide whether surgery would be "required" in an individual case.[59]

By failing to express any opinion on "required" surgery, the court left open the possibility that Pennsylvania may yet recognize a "right to die" by refusing certain medical treatment. Such a "right to die" does not necessarily imply what the literal meaning conveys. Rather, it is the right to refuse to accept certain types of assistance in circumstances where the result of such refusal will be death. Death is not the end sought, but only the unfortunate consequence of the previous decision. In the context of *Green,* why should not an adult or a sufficiently mature minor be permitted to refuse a life-saving transfusion based upon his religious beliefs? Such a refusal would not signify that he wished to end his life, but rather that his conscience forbade him to use this specific means of saving it. Such freedom of conscience should not depend on the political power a particular religion may be able to generate or on the popularity of its adherents. Furthermore, society should not be subjected to a state-imposed requirement that everyone accept whatever type of medical help might be available to prolong or save life, no matter how offensive to the patient. In this vein, one commentator has suggested that elderly and terminal patients should have the right to refuse treatment which might prolong "life" but which would be accompanied by increased suffering or merely result in a vegetable-like existence.[60] Although the majority has clearly taken Pennsylvania away from *Sampson* and in a new direction, it remains to be seen whether the court will accept the full implication of such a philosophy.

Chief Justice Jones stated the ultimate question as whether a parent's religious beliefs are paramount to the possibly adverse decision of the child.[61] To answer this question, the majority looked to the dissent of Justice Douglas in *Yoder*: "Where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's right to permit an imposition without canvassing his views."[62]

57. *Id.* at 348, 292 A.2d at 392.

58. *Id.*

59. "Required" surgery could, if extended to ridiculous extremes, lead to mandatory cosmetic surgery to achieve a society in which all appear aesthetically pleasing. Such a concept of "required" surgery could also result in unacceptable interference with the integrity of the individual's person in attempts to correct purported physical defects.

60. *See* Note, *Death With Dignity: A Recommendation For Statutory Change,* 22 U. FLA. L. REV. 368 (1970).

61. 448 Pa. at 348-49, 292 A.2d at 392.

62. 406 U.S. at 242 (Douglas, J., dissenting). The majority and concurring opinions did not reach this point because the parents, not the children, had been

Recent decisions of United States Supreme Court have extended the rights of children in diverse areas.[63] The Supreme Court of Pennsylvania considered it anomalous in the light of these developments to ignore the views of Ricky Green in the instant situation since his preference would have been considered in custody proceedings,[64] since a waiver of constitutional rights by a person his age would also have been valid,[65] and since, significantly, minors have been permitted to bring personal injury actions against parents.[66] Therefore, buttressed by its own precedents, as well as by *Yoder,* the court, while retaining jurisdiction, remanded the case to determine the wishes of the boy.[67]

The dissent in *Green* was influenced by the argument advanced by the dissent in *Seiferth*[68] and was not pursuaded that Ricky Green, totally dependent on his mother because of his condition, could make a mature decision regarding consent to a blood transfusion. The conflict facing the boy in *Sampson* was similar, and there the court did not submit the question to the child for his views. Such an approach was regarded by the dissent in *Green* as the most appropriate.[69] The minority feared that a choice between the wishes and religious beliefs of the mother and a desire for a normal life, which the boy had not enjoyed and which he might be forfeiting, would be framed so as to render the final decision of the boy virtually meaningless[70] — certainly it would not be the mature and rational statement which the majority sought as guidance before making a final decision.

The full impact of this decision cannot be known for some time. Unlike the unanimous decision in *Sampson,* the Pennsylvania Supreme Court divided four to three, with the dissent voting to follow the *Sampson* position. The holding of the court was narrowly drawn to cover only a situation where the child's life is *not immediately imperiled*[71] and treatment is contrary to the parent's religious beliefs. The majority appeared unwilling to commit itself to a clear statement on a life and death situation where there is a conflict between treatment and the parents' religious

charged with a criminal violation, and the record indicated no conflict between the parents and children. Justice Douglas voted to remand to determine the wishes of the individual children.

63. *See, e.g., In re* Winship, 397 U.S. 358 (1970); Tinker v. Des Moines School Dist., 393 U.S. 503 (1968); *In re* Gault, 387 U.S. 1 (1967).

64. 448 Pa. at 349, 292 A.2d at 392. *See* Snellgross Adoption Case, 432 Pa. 158, 165, 247 A.2d 596, 600 (1968).

65. Commonwealth v. Moses, 446 Pa. 350, 287 A.2d 131 (1971).

66. Falco v. Pados, 444 Pa. 372, 282 A.2d 351 (1971).

67. 448 Pa. at 350, 292 A.2d at 392–93. The record contains no indication of the boy's religious beliefs or his feelings regarding the proposed transfusion and surgery.

68. *Id.* at 355, 292 A.2d at 395 (dissenting opinion). *See* 309 N.Y. at 87, 127 N.E.2d at 824 (Fuld, J., dissenting).

69. 448 Pa. at 355, 292 A.2d at 395 (dissenting opinion).

70. *Id.*

71. *Id.* at 348, 292 A.2d at 392.

beliefs. The court also avoided any indication of the position it might take if the patient were an adult rather than a child. This reluctance to clarify these issues has the effect of restricting the power of the state in its efforts to extend "the good life" to all its citizens. As the Pennsylvania Superior Court stated in *In re Rinker*,[72] a child can not be declared neglected merely because his condition could be improved by changing his parents.[73] At the same time, the *Green* court's decision advanced the power of the individual to make his own decisions with regard to his life, as well as with regard to protecting his privacy and freedom of religion.

Emphasis on consulting the child would seem to indicate, at least with a mature, intelligent child, that the court may expand the freedom of children to choose their own destinies independent of their parents. Irrespective of *Green's* impact on other rights, clearly Pennsylvania has expanded the right of free-exercise of religion, relying on *Yoder*, but whether the Supreme Court intended *Yoder* to be read that way awaits further clarification.

On the other hand, the *Sampson* position, adopted by the dissent, emphasized that "life" is a concept difficult to define. *Sampson* stressed the need for good health if a child is to take full advantage of his opportunities and to realize his full potential as a human being. Such considerations are not to be taken lightly, especially in recognition of the ever increasing knowledge of psychological and psychiatric factors in human development.

Whether the *Green* decision will affect other jurisdictions is difficult to predict. The facts, as far as they are pertinent, are almost identical, yet New York and Pennsylvania have reached opposite results. The unanimity of the New York court, however, presents a more solid front than Pennsylvania. *Green's* refusal to follow the lead of the *Sampson* court serves as an indication that Pennsylvania may be attempting to explore new ground in this area. The strong dissent, however, illustrates that the entire court is by no means convinced that this tack is correct, and therefore, any further expansion may not come quickly.

The result of the *Green* approach is to emphasize not only the free exercise of the parent's religious belief as opposed to state regulation, but also the importance of the right of a child to have his views considered in a situation in which the decision to be made affects his body or mind. With regard to this last issue, the age of the person involved is less of a factor in the overall consideration than is his intelligence and mature understanding. How far down the chronological ladder the court will go is open to question, but at least the principle has been recognized.

James P. Cullen

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72. 180 Pa. Super. 143, 117 A.2d 780 (1955).

73. *Id.* at 148, 117 A.2d at 783.