

nate between the ‘rich’ and the ‘poor’ in its system of criminal appeals. That statement of course commands support, but it hardly sheds light on the true character of the problem confronting us here. . . . All that Illinois has done is to fail to alleviate the consequences of differences in economic circumstances that exist wholly apart from any state action.” A fee system neutral on its face was not a classification forbidden by the Equal Protection Clause. “[N]o economic burden attendant upon the exercise of a privilege bears equally upon all, and in other circumstances the resulting differentiation is not treated as an invidious classification by the State, even though discrimination against ‘indigents’ by name would be unconstitutional.”²⁰²⁷ As he protested in *Douglas*: “The States, of course, are prohibited by the Equal Protection Clause from discriminating between ‘rich’ and ‘poor’ *as such* in the formulation and application of their laws. But it is a far different thing to suggest that this provision prevents the State from adopting a law of general applicability that may affect the poor more harshly than it does the rich, or, on the other hand, from making some effort to redress economic imbalances while not eliminating them entirely.”²⁰²⁸

Due process furnished the standard, Justice Harlan felt, for determining whether fundamental fairness had been denied. Where an appeal was barred altogether by the imposition of a fee, the line might have been crossed to unfairness, but on the whole he did not see that a system that merely recognized differences between and among economic classes, which as in *Douglas* made an effort to ameliorate the fact of the differences by providing appellate scrutiny of cases of right, was a system that denied due process.²⁰²⁹

The Court has reiterated that both due process and equal protection concerns are implicated by restrictions on indigents’ exercise of the right of appeal. “In cases like *Griffin* and *Douglas*, due process concerns were involved because the States involved had set up a system of appeals as of right but had refused to offer each defendant a fair opportunity to obtain an adjudication on the merits of his appeal. Equal protection concerns were involved because the State treated a class of defendants—indigent ones—differently for purposes of offering them a meaningful appeal.”²⁰³⁰

Criminal Procedure.—Criminal appeals “ [I]t is now fundamental that, once established, . . . avenues [of appellate review] must be kept free of unreasoned distinctions that can only impede open

²⁰²⁷ *Griffin v. Illinois*, 351 U.S. 12, 34, 35 (1956).

²⁰²⁸ *Douglas v. California*, 372 U.S. 353, 361 (1963).

²⁰²⁹ 372 U.S. at 363–67.

²⁰³⁰ *Evitts v. Lucey*, 469 U.S. 387, 405 (1985) (holding that due process requires that counsel provided for appeals as of right must be effective).