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The Family Court: An Historical Survey

Merril Sobie
Pace University School of Law, MSobie@Law.Pace.edu

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MERRIL SOBIE*
White Plains

The Family Court: An Historical Survey

The New York Family Court this year celebrates its twenty-fifth anniversary.[1] Hailed as an "experimental" tribunal, designed to resolve society's most intractable problems, including family dissolution, delinquency and child neglect, the court has been perceived as a radical development which altered the then existing legal rules governing family affairs.[2] The Family Court Act indeed incorporates several creative provisions. But the court's foundations were built upon solid jurisprudential underpinnings, principles which had evolved over the course of the preceding century. Establishment of the court was neither radical nor experimental; in reality, Family Court represents the latest increment in the development of legal principles to protect children and adjudicate family disputes. In view of the controversies which have surrounded the court since its inception, an historical silver anniversary analysis may be helpful.

At common law and through at least the first generation of of the nineteenth century, legal priciples of nonintervention were applied to children and families. Criminal prosecution of a child less than fourteen years of age could succeed only if the prosecution proved, in the words of Blackstone, "Beyond *all* doubt and contradiction" that the youth could understand the distinction between right and wrong, and could further understand the consequences of the illegal act.[3] Since the burden of proof was extremely difficult, there were few reported prosecutions. The principle, which became known as the infancy presumption, was applied in New

* Professor of Law, Pace University

[1] Constitutionally authorized in 1961, the court was inaugurated on September 1, 1962; see L. 1962, c.686.

[2] For example, the relevant legislative committee commented that the new court "... must deal with sensitive and difficult areas of life about which reasonable men and women differ. Hence it is necessarily an experimental court"; State of New York, *Joint Legislative Committee on Court Reorganization, The Family Court Act* p. IX (1962).

[3] Sir William Blackstone, *Commentaries on Laws of England, Book IV*, Chapter II, pp. 23-24 (1723-1780); emphasis added.

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York throughout the nineteenth century.[4] Even the older child was ordinarily spared the extreme common law punishments; for example, an 1823 official New York criminal law reporter commented that "the lowest period, that judgement of death has been inflicted upon an infant in the United States, has never extended below sixteen years...".[5] Child protective laws were nonexistent: parental discretion reigned supreme, precluding legal action for even extreme child abuse or neglect.

The doctrine of nonintervention began to be compromised as the nineteenth century progressed. With the virtual abolition of capital and corporal punishment in 1796, and the substitution of long-term incarceration, New York's reformers soon perceived the need for juvenile treatment and rehabilitation.[6] In 1824 the legislature incorporated the House of Refuge to receive "all such children [under sixteen years of age] as shall be convicted of criminal offenses, in any city or county of this state, and as may in the judgment of the court, before whom any such offender shall be tried, be deemed proper objects".[7] Modeled after the then novel penitentiary system, children were committed to the House of Refuge until majority. Although committment was discretionary, most children who were convicted were henceforth placed in the special juvenile facility (given the infancy presumption, the predominant age population was probably fourteen through sixteen).

Child protective legislation evolved somewhat later. Although a Juvenile Asylum to house impoverished young children was legialatively incorporated in 1851,[8] and the Children's Aid Society was founded in 1853 to "rescue" immigrant children from streets and poorhouses through placement in foster homes or farm apprenticeships,[9] major legislative reform was a post-Civil War development.

The late nineteenth century witnessed great social and familial

upheaval. First, extreme civil war casualty and desertion rates caused extensive family dislocation. Next, the Industrial Revolution removed children from farm environments, where extended family assistance was available, to city slums. Both parents, and frequently the child, were employed long hours. Last, large waves of immigration, caused in part by industrializatrion, brought impoverished alien children to the streets of New York. An organized effort to protect children from unwhoesome, "unAmerican" environments, subsequently characterized as the "Childsavers" movement, quickly took root. Motivated by increasingly inhuman housing and employment conditions, as well as an anti-immigrant bias, the movement succeeded in obtaining the passage of radical legislation. Between 1865 and 1885 a series of child protective statutes, followed by the legislative incorporation of religious and nonsectarian child care agencies, altered profoundly the legal relationships between children, their parents, and the state.

In 1865 the legislature enacted the "Disorderly Child" Act,[10] a statute roughly equivalent to the present status offense or PINS

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[4] See, e.g., *Garrett Walker's Case*, 5 New York City Hall Recorder 137 (1820); however, the Blackstonian principle of beyond all doubt and contradiction was altered to beyond a reasonable doubt. The last reported case in this state involving application of the presumption is *People v. Squazza*, 40 Misc. 71, 81 N.Y.S. 254 (Ct. of Gen. Sessions, N.Y. Co. 1903).

[5] Note following *People v. William Teller and Jason Teller*, 1 Wheeler's Criminal Cases, 231, 232.

[6] See L.1796, c.30, which abolished corporal punishment, forfeiture and capital punishment except for murder and treason.

[7] L.1824, c. 126, as amended by L.1826, c.24.

[8] L.1851, c.232.

[9] See *First Annual Report of the Children's Aid Society*, 1854, pp. 3-4.

[10] L.1865, c.172.

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legislation; for the first time a child could be commited for non-criminal behavior. Twelve years later the legislature passed an "Act for Protecting Children", a measure which could be characterized as the state's first child neglect law.[11] By 1880 the contemporary triad of major juvenile justice causes of action, delinquency, status offense and neglect, were statutorily in place.[12] The new legislation, which truly was experimental, was refined and codified in 1881 when the state enacted a comprehensive new Penal Code.

In addition, a plethora of child care agencies and societies for the prevention of cruelty to children were legislatively incorporated, and were granted the authority to receive court commitments. Simultaneously, the legislature, reflecting the policy of non-incarceration dating from 1824, gradually decriminalized youthful anti-social behavior. A 1905 act stipulated that "The commission by a child under the age of sixteen years of a crime, not capital or punishable by life imprisonment, which if committed by an adult would be a felony, renders such child guilty of a misdemeanor only...".[13] Four years later, the word "misdemeanor" was changed to the newly coined term "juvenile delinquency".[14] Thereafter, and until the enactment of the 1978 Juvenile Offender Act, any act short of murder committed by a youngster under the age of sixteen could not be deemed a crime.

All the measures outlined above were enacted as part of the Penal Law and were applied by the criminal courts. Faced with an increasing burden of child protective and delinquency cases, the judiciary understandably moved to segregate children's cases. The development of unique juvenile justice standards, such as confidentiality and probation services, further contributed to the need for a specialized judicial structure. Through amendment to the New York City Charter, separate children's parts of the criminal court were established in 1901;[15] within a decade children's parts were common throughout every urban area. Finally, in 1921 the state, joining what by then had become a national movement, completed the divorce between juvenile and criminal courts through the adoption of a constitutional amendment authorizing the establishment of separate children's courts or domestic relations courts for each county.[16]

Prior to 1922, juvenile justice had jurisdictionally and jurisprudentially constituted a part of the criminal law. Hence the full panoply of criminal due process rules applied (although the rigorous rules may have been relaxed in practice). The children's courts, however, were not statutorily bound by the Criminal Procedure Law. Litigation to determine procedural boundaries resulted. In 1927, the Court of Appeals held that criminal due process standards nevertheless applied to delinquency actions:

> There must be a trial; the charge against the child cannot be sustained upon mere hearsay or surmise; the child must first have committed the act of burglary or of larceny before it can be convicted of being a delinquent child. The act remains the same and the proof of the act is equally necessary whether we call it burglary, larceny or delinquency. The name may change the result; it cannot change the facts.
>
> Our activities in bahalf of the child may have been awakened, but the fundamental ideas of criminal procedure have not changed. These require a definite charge, a hearing, competent proof and a judgment. Anything less is arbitrary power.[17]

But a mere four years later, the same court held that criminal due process rules no longer applied, effectively overruling the 1927 decision: "Since the [delinquency] proceeding was not a criminal one, there was neither right to nor necessity for the procedural safeguards described by constitution and statute in criminal cases."[18] The informality and absence of procedural rights, which became synonymous with Juvenile Justice, dated only from 1932.

Such is the legacy of the Family Court, at least in synopsis form. The framework which today governs juvenile justice and child welfare proceedings was formulated throughout the nineteenth century and was largely completed by 1880. Organizationally, the Family Court's predecessors were the children's courts (and the New York City Domestic Relations Court) and the earlier children's parts of the criminal courts. Procedurally, traditional principles prevailed, at least in the main, until 1932. The Family Court was not made from whole cloth, was not "experimental", and did not substantially alter society's treatment of delinquency, child neglect or other manifestations of family dysfunction. The founders prudently built upon a long evolution, augmenting pre-existing jurisdiction (adding, for example, family offenses, though declining to grant the Family Court divorce jurisdiction) and strengthening the crucial Family Court dispositional process.

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[11] L.1877, c.428; another milestone in the development of children's laws was adoption, enacted in 1873 (L.1873,c.830).

[12] Of course, the early statutes were significantly different than their modern counterparts: see Sobie, *The Creation of Juvenile Justice: A History of New York's Children's Laws*, New York Bar Foundation (1987), pp. 43-53.

[13] L.1905, c.699.

[14] L.1909, c.478

[15] L.1901, c.466; the requirement of separate court parts was initially limited to Manhattan and the Bronx.

[16] The implementation was achieved through the Children's Court Act of New York State (L.1922, c.547) and the New York City Children's Court Act (L.1924, c.254).

[17] *People v. Fitzgerald*, 244 N.Y. 307, 313, 316.

[18] *People v. Lewis*, 260 N.Y. 171, 177 (1932); a strong dissent was filed by Judge Crane, who had written the 1927 *Fitzgerald* opinion.

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This is not to belittle the achievements which we justly celebrate. 1962 should be heralded as the year a state-wide court capable of adjudicating most disputes involving the family was finally established. So too, this year marks the silver anniversary of affording counsel to children, a measure which New York pioneered through the enactment of Family Court Act Article Two.[19] Other 1962 accomplishments include the re-introduction of procedural standards and enactment of the first modern child protective act.[20] Twenty-five years of experience, legislation and caselaw development has resulted in an even stronger juvenile justice system.

Much remains to be done.[21] Much remains controversial. Surely, the rules governing the adjudication and disposition of complex emotional, familial and societal problems is one subject in which reasonable people may differ. The bar, the bench and every concerned citizen should be proud of the achievements, should explore and debate reasonable alternatives, and should never lose sight of the court's rich history, traditions and potential.

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[19] See §§241-249.

[20] Family Court Act Article Three, now Article Ten; the 1962 Act was the first in which the parent was deemed the "respondent" and the court could order a wide array of child protective measures.

[21] For example, the court has received neither the resources nor the prestige it needs and deserves; to cite another example, the representation of children remains inadequate in several areas of the state.

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