The Family Court—A Short History

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The New York State Family Court was established in 1962. The framers' intent, which was largely achieved, was the formation of an omnibus tribunal capable of adjudicating every justiciable family related dispute. Accordingly, Family Court incorporated the former State Children's Courts, the domestic violence parts of the local criminal courts, and the paternity parts of the former Court of Special Sessions. In addition, Family Court was granted adoption and abandonment jurisdiction, concurrent child custody jurisdiction, and concurrent post-divorce modification and enforcement jurisdiction. This paper will outline the pre-Family Court history in synopsis form, and briefly describe the Court's post-1962 developments.

The Court's roots run deep, reaching to the early nineteenth century. The initial measure separating children's issues from traditional common law rules was the 1824 legislative incorporation of a House of Refuge for Children to receive, and hopefully rehabilitate, "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." Parity modeled upon the then new adult penitentiary system, children, unlike adults, received indeterminate sentences, which could remain in effect until age twenty-one. The idea was to segregate errant children where they could be educated, rehabilitated and, upon rehabilitation, be released to lead productive adult lives.

In 1851 a Juvenile Asylum was legislatively incorporated to house impoverished, neglected young children and, in 1853, the Children's Aid Society was founded to "rescue" immigrant children from the streets and poorhouses through placement in foster homes or farm apprenticeships.

The post-civil war era further awakened a perceived need to protect children who were maltreated, or who had lapsed into wayward behavior. The post-war social repercussions, rapid industrialization, and massive immigration spawned a "child savers" movement which lobbied successfully for extensive children's legislation. In 1865 the legislature enacted the "Disorderly Child" Act, a statute roughly equivalent to the present status offense or PINS statute. Twelve years later the legislature passed an "Act for Protecting Children," a statute that may be fairly characterized as the state's first child neglect law; under its provisions children could be placed in public or private childcare agencies upon a finding of parental malfeasance. The initial adoption laws and compulsory education laws also date from that period. Administered by the criminal courts, the piece-meal enactment of "child saving" legislation was refined and codified as part of the 1881 Penal Code. By the late nineteenth century the major causes of action involving children had hence been enacted, and were enforced by public or private agencies, including the police and the societies for the protection of cruelty to children. Simultaneously, the legislature incorporated a plethora of childcare agencies to care for needy and maltreated children.

Completing the evolutionary decriminalization of children's activities, a 1909 Act coined the term "juvenile delinquency." 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.

The important contemporary proceedings heard before the Family Court, child neglect or abuse, juvenile delinquency, status offenses and adoption, were thus developed and applied in postbellum America. However, jurisdiction had been lodged in the criminal courts (a not illogical choice given the absence of specialized family tribunals). Given an increasing children's care-
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