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THE FAMILY COURT—A SHORT HISTORY

*T*he New York State Family Court was established in 1962.

The framer's 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 juris-



Resembling a very well appointed library more than anything else, the court room, strange though it may seem, attracts more than it repels juvenile incorrigibles. (Edison Monthly, May 1916)

diction, 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." Partly 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 poor-houses 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 piecemeal 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 case-

load, the growth of the social sciences, the development of childcare agencies, and the inappropriateness of mixing children's and criminal proceedings, the progression to a specialized court was probably inevitable. In 1901, the year the first juvenile court in America was established in Chicago, the New York State legislature segregated juvenile cases by creating specialized children's parts within New York City. Within a decade, the children's court parts were operating in most of the state's urban areas.

Finally, joining the by then national movement, New York established a separate Children's Court in 1922. Children's issues, involving specialized social, educational and mental health expertise, were divorced from the criminal court milieu.

Separated from the mainstream of criminal and civil jurisdiction, the children's courts developed unique characteristics, including confidentiality, privacy of proceedings and the disuse, if not abhorrence, of procedural due process standards. The courts even substituted their own nomenclature for traditional legal terms; for example, the substitution of "fact finding" hearing for trial and "dispositional hearing" for sentence dates from the 1922 establishment of the Children's Courts.

The Children's Courts continued for forty years (1922-1962). By 1960, the court's limitations and deficiencies had been well documented. Split jurisdiction, the absence of legal represen-

tation and procedural anarchy were among the criticisms which led to the development of a Family Court concept. Of equal significance, in 1961 the state decided to reorganize the entire court structure, the first major judicial restructuring in almost a century. The reformers finally achieved the establishment of a Family Court, with the mandates and the compromises outlined at the beginning of this paper.

The Family Court Act, circa 1962, incorporated several landmark provisions (in addition to the grant of more extensive jurisdiction). For the first time, children were afforded assigned counsel, a measure which enhanced procedural and substantive safeguards. It also indirectly spawned litigation which expanded children's rights, such as the right (and the empowerment) to appeal adverse decisions, and the right to discover and present evidence addressing the child's interest. The Act also incorporated expanded child protective provisions affecting children and their parents.

In forty years the Family Court Act has changed in several respects, although the basic structure remains. Substantive statutory amendments include the expansion of termination of parental rights provisions (virtually unknown in 1962), the enactment of the Child Support Standards Act, which enhanced the economic responsibility of parents and, through several sequential amendments, the legislature has greatly

enhanced the Court's domestic violence authority. The court has also grown exponentially, a phenomenon driven by many factors, including the enforcement of individual familial rights (of children, of parents and of extended family members), the unfortunate increase in family dysfunction and the expansion of procedural safeguards. Of perhaps paramount importance, the court has slowly shed the perception of "judicial stepchild," and is increasingly viewed as an co-equal branch of the unified court system.

Viewed in perspective, as an institution which has evolved progressively over the course of almost two centuries, Family Court has much to be proud of. At the same time the court remains a work in progress, a perhaps permanent attribute of a tribunal devoted to the family. The next step may be merger with the Supreme Court, a move that would enhance the court's stature and lead to a truly unified family tribunal that would encompass divorce jurisdiction and juvenile justice proceedings (now divided between juvenile delinquency, juvenile offender and youthful offender jurisdiction). The court has a rich history to cherish and, hopefully, to build upon throughout the twenty-first century. ■



The Children's Court - This impressive ionic structure is dedicated to the task of straightening out the snarls in the lives of little folks (Edison Monthly, May 1916)

...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