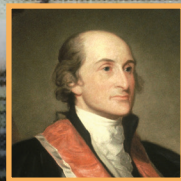
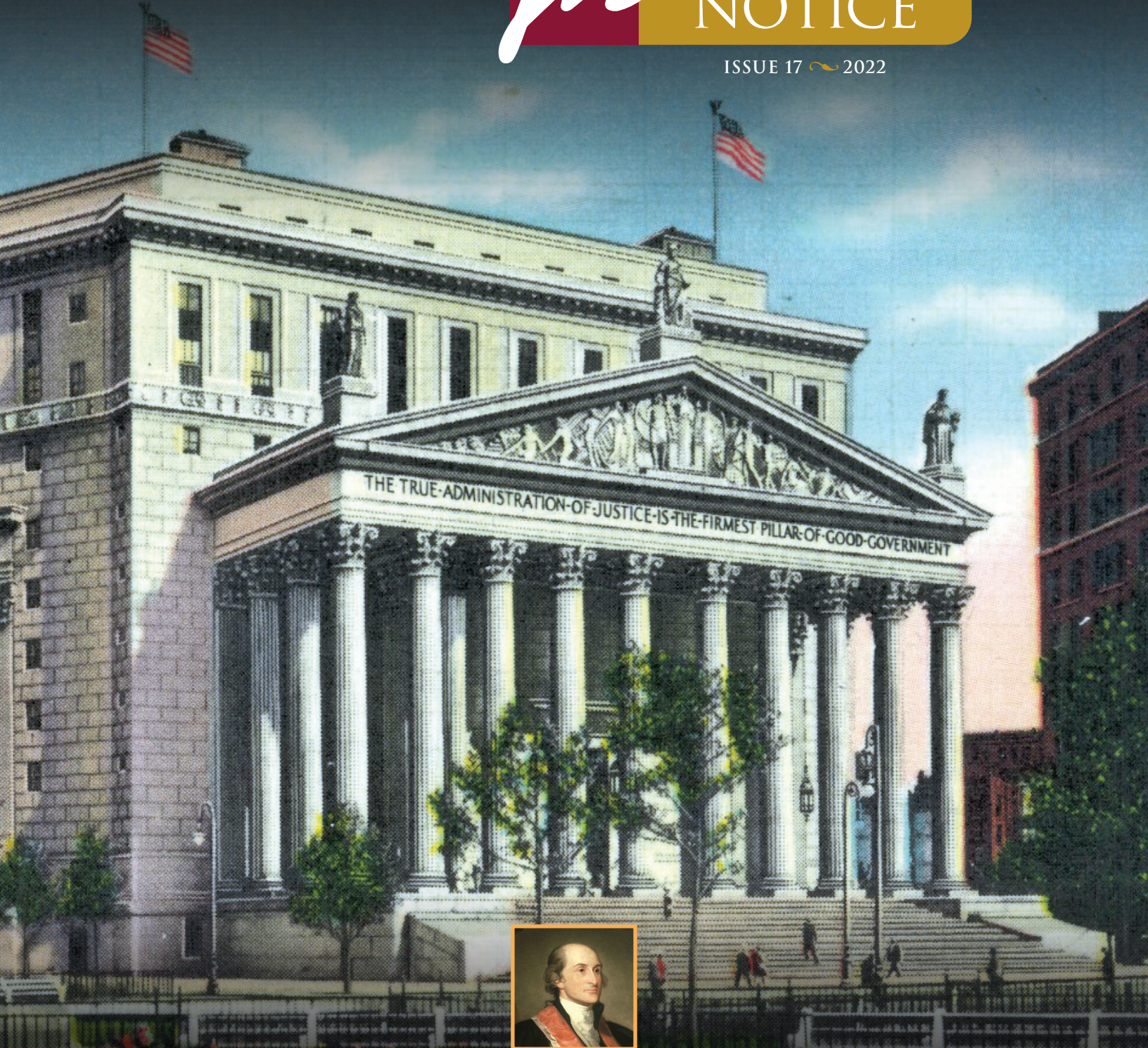


A PERIODICAL OF NEW YORK COURT HISTORY



JUDICIAL NOTICE

ISSUE 17 ~ 2022



HISTORICAL SOCIETY *of the* NEW YORK COURTS

Court Administration by *Marc Bloustein* ~ Natural Law by *Hon. Albert M. Rosenblatt* ~ NY Family Court by *Prof. Merril Sobie*
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Practical Proceedings in the
Supreme Court of the State of
New York. — ^{By Alexander Hamilton}
~~By Mr Hamilton~~

By ALEX^r HAMILT^r
Process.

If the Person against whom you intend to bring your action lives in the County in which the Supreme Court usually sits the first Process is a Bill of that County at present a Bill of Albany in Imitation of the Bill of Middlesex —

If the Person resides in a different County your first Process must be a Capias which is a Writ compounded of the C^opias of Common Pleas and the Bill of Middlesex of the Kings Bench —

If the Person is not found in the County in which your first Writ issues in the first case you must send out a *Subpoena* in the second a *Testum Capias*.

If the Person is not found on the first Writ you expect afterwards to take him in the second

THE DEVELOPMENT OF NEW YORK'S FAMILY COURT

by Prof. Merrill Sobie



Professor Merrill Sobie is Emeritus Professor of Law at Pace University's Haub Law School. Professor Sobie has authored two books *The Creation of Juvenile Justice: A History of New York's Children's Laws* and *New York Family Court Practice*. He is the McKinney Commentator for the Family Court Act and portions of the Domestic Relations Law and has published numerous articles.

In 1782, Alexander Hamilton, commencing his post-Revolutionary War legal career, drafted a manuscript entitled "Practical Proceedings in the Supreme Court of the State of New York." Hamilton practiced law for several decades thereafter, but never published the manuscript, although the volume was periodically updated and probably shared with the then-small band of New York lawyers. A 1798 edition, possessed by the New York City Bar Association, was finally published by the New York Law Journal in 2004.¹

Beyond its historical value, Hamilton's manuscript reveals just how several aspects of the New York courts have changed little in the intervening two-and-a-half centuries. The New York Supreme Court, circa 1782, was remarkably similar to the contemporary Supreme Court. Then, as now, the statewide court was endowed with general trial jurisdiction; proceedings encompassed, among other things, property, contract, and tort disputes. Jurisdiction as well as procedural rules have largely remained stable over a course spanning more than two centuries. Astonishingly, many of Hamilton's guidelines remain valid today. If a contemporary attorney applied a specific "Practical Proceedings" guideline, the odds are that it would prove useful.

The Family Court—the topic of this paper—simply did not exist in 1782. Of greater significance, the causes of action which collectively comprise the court's jurisdiction were then unknown. Juvenile delinquency, child protective proceedings, status offenses, adoption, and domestic violence proceedings were established sequentially in eras that followed. The only significant family law topic that did exist, divorce, was exceedingly restrictive, while paternity jurisdiction was vested, at the time, in the criminal courts (an indication of how society viewed illicit relationships). Unlike historic legal actions, such as property law, inherently social-oriented family proceedings have mutated, changing continually and quickly. Supreme Court may indeed be viewed as a rock of stability. Family Court is for good reason quite the opposite: an unstable tribunal, which ceaselessly progresses to reflect ever shifting societal norms. This article provides an overview of the court's historical development.



New York's first Children's Court part in Manhattan, c. 1902. Courtesy of the author.

The Modern New York Family Court

The present-day Family Court is enshrined in New York's Constitution,² its contemporary jurisdiction includes civil and quasi-criminal cases that affect families and society. Crimes committed by persons under the age of eighteen (juvenile delinquency), domestic violence cases which involve persons who have an "intimate relationship" (married or unmarried, sexual or non-sexual), and children who are accused of non-criminal prohibited conduct (such as truancy) comprise the quasi-criminal docket. The civil component encompasses child support, spousal support, child custody, child protective actions (child neglect or abuse and termination of parental rights), adoption, and the determination of legal and biological parenthood (paternity, maternity, surrogacy, and artificial reproductive technology). Several jurisdictional grants are compounded by concurrent jurisdiction, *i.e.*, jurisdiction shared by more than one court; examples include child custody, adoption, surrogacy, and domestic violence.

Unlike virtually every other American Family Court, the New York Family Court has not been granted jurisdiction to determine divorce, although several aspects, such as custody, may be litigated in Family Court. The historical roots of each type of proceeding are, as will be explained, deep and frequently complex.

The Beginnings: The 1824 Juvenile Delinquency Law

The initial Family Court predecessor statute was an 1824 law which established the concept and name "juvenile delinquency:"

[T]he managers of the [Society for the Reformation of Juvenile Delinquents] . . . shall receive and take in the house of refuge, established by them in the City of New York, all such children 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 objects³

The initial discretionary commitment power became mandatory through an 1846 statute providing that the courts "shall sentence to such house of refuge every male under the age of eighteen years, and every female under the age of seventeen years, who shall be convicted before such court of any felony."⁴

The original statute's scope is unmatched to this day. The maximum jurisdictional age was 18 (for boys), an achievement later reduced to age 16 until finally restored in 2018. The statute applied to every felony conviction, including murder and other violent felonies (as contrasted to recent "raise the age" legisla-



Children's court in session, c. 1902. Library of Congress, Prints & Photographs Division, LC-B2-454-7.

tion). Although children under the age of 14 had been largely protected from conviction by the common law infancy presumption, the complete 1846 separation of every child who had allegedly committed a serious crime from the adult justice system had no precedent.⁵ Jurisdiction remained in the criminal courts; it would be a century before the advent of a separate children's or family court.

Interestingly, another precedent inaugurated by the 1824 legislation mandated that children, unlike adults, be sentenced exclusively to a private non-profit agency. The Society for the Reformation of Juvenile Delinquents, which operated houses of refuge, became the granddaddy childcare agency (although the independent Society was largely state funded). The principle of private agency care was subsequently expanded to encompass neglected and abandoned children and remains rooted in modern children's law. Today a consortium of private and public agencies co-exists. A delinquent youngster may be placed in a private residential facility. Neglected children are frequently placed with private religious or secular institutions. The unique and somewhat awkward inter-relationship between governmental and private agencies is woven into the Family Court fabric.

The Civil-War-Era Child Saver Movement

The next development on the path to a Family Court was the progressive "child saver" movement, which originated and flourished in the aftermath of the Civil War. In 1865, the Legislature enacted the "disorderly child" act,⁶ a direct predecessor of contemporary Person in Need of Supervision proceedings.⁷ The Act required a court, upon parental petition, to commit a "disorderly child" to a House of Refuge, forging a strong link between delinquent and status offense youngsters; the link was not severed until the late twentieth century.

Of greater significance, in 1877 the Legislature enacted a comprehensive Act for Protecting Children, a measure which may be fairly characterized as the initial child protective law.⁸ The lengthy list of proscribed conduct by minors included begging, the lack of proper guardianship, or having a "vicious" or incarcerated parent. Such supposedly egregious juvenile conduct or environment could result in the loss of parental custody. (Oddly, the action was predicated on the status of the child, or the child's conduct; parental malfeasance or misfeasance was initially irrelevant.)

The Act for Protecting Children was enacted almost immediately following the state's first adoption law.⁹ Accordingly, children could be permanently removed from dysfunctional families and quickly adopted by presumably "good" parents. The "child

The Development of New York's Family Court

saver" legislation continued the unique private agency system of prosecution and childcare, largely through the 1875 authorization of societies for the prevention of cruelty to children¹⁰ and the burgeoning network of religious and secular childcare agencies. The foreseeable result was an exponential growth of child related cases and the permanent separation of many children from their parents.

The child saver movement was unfortunately in part fueled by prejudice against immigrants. Immigration had surged in the late nineteenth century; most "saved" children were offspring of immigrant parents. In later generations, immigrant prejudice was replaced by racial prejudice.

Although the triad of "signature" causes of action, encompassing juvenile delinquency, child protective, and status offense proceedings, had been established by 1880, jurisdiction remained vested in the criminal courts. The criminal court's increasing caseload burden was manifest.

Challenges to Summary Proceedings

However, the burden was largely alleviated by the fact that the proceedings were deemed to be "summary." In 1876, for instance, a New York County Supreme Court case held that "the courts of the state may, by virtue of their general powers, interfere for the protection and care of children . . . in which children shall be removed from their custodians and a mode provided over their summary disposition."¹¹ Hence, judges simply signed summary orders prepared by the private agencies, and procedural due process was non-existent. Hearings were brief and *ad hoc*. Appeals were precluded by statute, and once the child was committed there was no possibility of family reunification.

Litigation nevertheless ensued, grounded on the ancient writ of *habeas corpus*. Of several cases, two Court of Appeals decisions were particularly decisive.

The first case, *People ex rel. Van Riper v. New York Catholic Protectory*,¹² involved a young girl who, while seeking her way home, had become lost in Union Square Park—understandable when confronting the multiple streets and avenues which radiate from the park. She solicited directions from a woman who then helpfully led her in the correct direction. However, the woman was apparently a prostitute, a seemingly irrelevant fact which the child could not have known. Because the child protective act stipulated unequivocally that a child who was found in the company of a reputed prostitute could be arrested and committed, the woman's benign assistance led to the arrest of the child. Following the youngster's summary placement, her father filed a *habeas* petition. The upshot was a blistering intermediate appellate decision in the father's favor,¹³ followed by the Court of Appeals decision holding conclusively that "it must appear that the child was abandoned and neglected by the fault of its parents, to justify taking it from their custody."¹⁴ Henceforth, actual parental malfeasance had to be proven to substantiate a placement (at least when a summary commitment was challenged).

A decade later, the statutory irreversible loss of custody was successfully challenged in the Court of Appeals case of *Matter of Knowack*.¹⁵ Four children had been placed summarily. Two years later, citing a common law equity doctrine, their parents brought suit for their return based on parental rehabilitation.

the supreme court in the eleven judicial districts shall receive as a salary a sum to be fixed by the justices thereof, or a majority of them, not designated as justices of the appellate division. The money required to pay such salaries shall be raised and paid in the same manner required to pay salaries of attendants and officers of the supreme court in said districts.

§ 6. This act shall take effect September first, nineteen hundred sixty-two. Enacted Sept. 1, 1962.

CHAPTER 686

AN ACT to establish a family court for the state of New York to implement article six of the constitution of the state of New York, approved by the people on the seventh day of November, nineteen hundred sixty-one.

Became a law April 24, 1962, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Article 1. Family court established.

2. Administration, medical examinations, law guardians auxiliary services.

3. Neglect proceedings.

4. Support proceedings.

5. Paternity proceedings.

6. Permanent termination of parental rights, adoption, guardianship and custody.

7. Proceedings concerning juvenile delinquency and whether a person is in need of supervision.

8. Family offenses proceedings.

9. Conciliation proceedings.

10. Appeals.

EXPLANATION — Matter in italics is new; matter in brackets [] is old law to be omitted.

New Family Court Act added.

Laws of the State of New York Passed at the One Hundred and Forty-Seventh Session of the Legislature, Chapter 686, establishing the Family Court, 1962. Retrieved from Google Books, courtesy of the University of California.





CHILDREN'S COURT SCENE OF NOBLEST OF CHARITIES.



What Has Been Accomplished by the Big-hearted Philanthropic Women Who Devote Their Leisure Hours To Aiding in the Rescue of the Unfortunate Boys and Girls Arraigned Before This Tribunal.

If it were possible for the atmosphere of the Children's Court, at Eleventh Street and Third Avenue, to resolve itself into luminous expression, the words that probably would blaze forth upon the wall would be:

"Faith! Hope! Charity!"

It is down in this quiet little court, in this poor neighborhood, that one of the grandest works of charity is being carried on by the city, in behalf of the children of the metropolis, assisted by a committee of wealthy ladies whose charity is guiltless of hobbyism or ostentation. Here, in this headquarters of those who are devoted to the welfare and protection of poor children, charity reigns supreme, but a charity born of hope for the coming generation and nurtured by faith in the results of its ministering. The greatest of all charities is this.

The story of the Children's Court in this big city has been written scores of times—the quaint or pathetic or amusing tale of the wayward girl, the mischievous boy, and the "outlaw" band seeking the Rocky Mountains, only to find the rooms of the Society for the Prevention of Cruelty to Children; but up to the present, it does not seem as if sufficient justice has been done and deserved credit awarded to the committee whose work is directly responsible for the fact that, out of every 100 children paroled from the Children's Court, 83 turn out well. That percentage speaks for itself, and also for the work of the organization known as the Association of Catholic Charities, the moderator of which is the Rev. Dr. D. C. McMahon.

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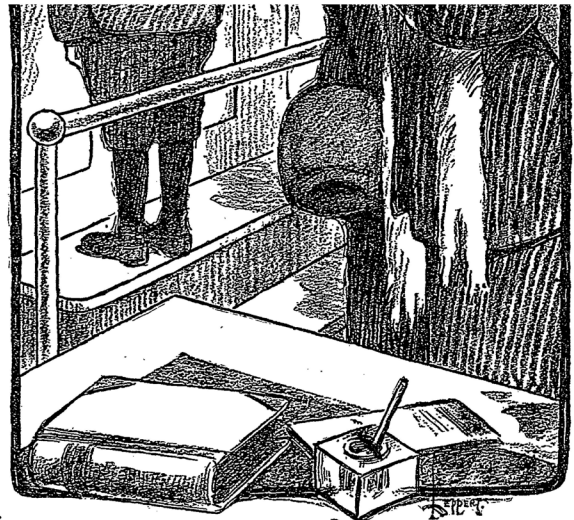
Directly under the supervision of the moderator is this Children's Court Committee, composed of a number of ladies who have voluntarily given a large part of their time and services to helping poor children to better themselves, teaching the parents or guardians of little unfortunates the necessity for awakening self-respect in the children by example in themselves, and that which is the charity hand in hand with faith and hope, rescuing children from the first pitfalls of poverty and rough environment, at an age where it is easy to impress them for good or for evil.

The Chairman of this committee is Mrs. John C. O'Keefe, wife of a prominent broker; Mrs. Thomas G. Fatten, Mrs. W. R. Knapp, Miss Alice E. Hughes, Miss Laura I. Mohr, Mrs. Charles H. Irish, Miss May Buderis, and several others whose names cannot be obtained, make up the committee. Each of these ladies has her own day at the Children's Court, when she makes it her business to speak to all the children who are arraigned, either for an offense or a misfortune of guardianship, and, having learned and jotted down on her tablets all possible information with regard to the little unfortunates, the com-

mittee lady spends her days off from court looking into his or her domestic and social environment and doing in an unostentatious way that which she thinks best for the child. Sometimes it is monetary help for the parents, sometimes a little wholesome, stirring truth and advice to the guardians where they have been guilty of negligence, and again it may be that the Samaritan, with the assistance of the parish priest, gathers in the little ones to the night schools and gymnastiums which are in existence on the east side.

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Fully to realize the grandeur of the work of charity performed by this committee, one would have to spend many, many days beside the Judge who tries the average of



thirty-five new cases brought into the Children's Court every day; but, as few have the time to do this, the next best thing is a study of the reports of the First Division (Children's Court) of the Court of Special Sessions. One of the biggest surprises that one receives after inquiry into the affairs of the First Division is that, during the two years of its existence, the Children's Court has arraigned little ones who have committed every crime on the calendar, with the exception of libel. We speak of the children collectively, of course, and the crimes collectively; one would never credit the existence of an infant reprobate who in less than the age limit of sixteen years could have committed every crime from petit larceny to murder! But it is a fact that the Children's Court of Manhattan has seen some "little terrors" at the rail. This year, although the report has not yet been issued, there have been no less than five homicide cases. Last year there were two boys remanded to the Coroner for the same offense.

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One of the extraordinary and unlooked-for features of the court records is the prevalence of attempted suicide among children, especially girls. From the observation of the court officials and the committee workers, nearly all of the 150 cases of attempted suicide arraigned last year were the result of domestic differences and childish grievances, real or fancied. Here and there one may find a case of attempted self-destruction where "Tommy" had lost at crap shooting 25 cents which belonged to his mother. He contemplated death with the despair of a ruined gambler. There are also a few cases where little girls with quite an extensive education in trashy literature have longed to die for the love of some infant Lothario. Reference to a "ruined gambler" brings to mind the fact that one youthful gambler

FOR WOMEN JUDGES IN CHILDREN'S COURT

Mrs. Frank Cothren and Dean
Kirchway Urge Appointment
of Two Women Justices.

MEN CAN'T AID THE GIRLS

Women Would Win Confidence of
Defendants, They Urge—Bill
Now Before Legislature.

Mrs. O. H. P. Belmont threw open her house, 477 Madison Avenue, yesterday afternoon for a meeting of the representatives of women organizations, settlements, schools, and women lawyers interested in the appointment of two women assistant Justices in the Children's Courts of the city. Miss Edith Julia Griswold, President of the Women Lawyers' Club, was in the chair, Mrs. Frank Cothren of Brooklyn reported the progress that had been made and the names of legislators to be urged to favor the bill, and Dean George Kirchway of the Columbia Law School spoke for the measure.

"We have most of the Judges of the Children's Courts with us," said Mrs. Cothren. "They tell us that they have so much to do that they can hardly manage it. There are 11,000 boys and 2,000 girls who come before them annually, and there will be plenty of work for the women without the women being idle. The women will not really judge the cases: they will hear them and get at the bottom of them—they will be really referees."

The New York Times, March 6, 1914.
Copyright The New York Times.

Finding that the parents were indeed rehabilitated, the Court of Appeals ordered the children's return: "It seems self[-]evident that public policy and every consideration of humanity demand the restoration of these children to parental control."¹⁶ A loss of parental custody could therefore be challenged at any future time, a Family Court bedrock doctrine we now call "continuing jurisdiction."

A Move Towards Specialized Courts

The "child saver" ferment, leading to the enactment and expansion of novel child and parental "child saver" jurisdiction, was a national phenomenon; New York was far from unique in enacting child-protective laws. The next logical step was to cleave jurisdiction from the criminal tribunals and, to a lesser extent, the civil courts by establishing a "Juvenile Court" dedicated to youths. The inaugural Juvenile Court in Chicago in 1900 was quickly replicated.

But New York initially resisted. The state instead opted for "children's court parts"—in essence, specialized criminal court parts—that were first mandated in 1903.

Finally, in 1922, New York established a statewide Children's Court except in New York City, and in 1924 enacted the virtually identical New York City Children's Court Act (the reason for two similar acts remains a mystery, at least to this writer). In 1933, the Legislature established the New York City Domestic Relations Court, adding child custody and support jurisdiction, the initial (albeit tentative) step toward a Family Court.

Criticism of the limited Children's Court jurisdiction emerged within one generation. As but one module of a highly fragmented court system, the children's courts, with an increasing caseload, could not offer holistic remedies. For example, an unmarried woman with a child who resided with the child's abusive father would confront the labyrinth of seeking an order of protection in the criminal court, a filiation order in the New York City Court of Special Sessions, and a child support and custody order in the Children's Court—three separate lawsuits before three independent courts housed at different locations.

NEW CHILDREN'S COURTS.

Governor Signs Bill Creating One for Each County.

Special to The New York Times.

ALBANY, April 10.—Governor Miller signed today the Walton bill providing for the establishment of children's courts in all the counties outside of Greater New York.

Under the bill the County Judge will act as the Judge of the newly created court in each county in which the Board of Supervisors certify that he is able to discharge the duties of the office. Otherwise a children's court Judge will be elected in each county.

The Governor issued a memorandum which said, in part:

"It is said that an additional expense will be placed on the counties. That expense will be trivial as compared with the importance of the work involved. Counties which will require an additional Judge would soon require an additional County Judge in any event. Some additional machinery will doubtless have to be provided, but the existing machinery of the county courts can be utilized. In any case, the additional expense will be small and should be many times offset by a reduction in institutional expense, to say nothing of the economic value to society of useful citizens.

"We have to make a large annual capital outlay to provide for our constantly increasing institutional population, and the cost of maintenance, both to counties and the State, is increasing correspondingly. The way to solve the problem is to prevent, as far as possible, the institutionalizing of our boys and girls. Too many of them now regularly graduate from correctional schools to reformatories, to institutions for mental defectives, to insane hospitals, or to State prisons, and even to the electric chair. Many of them, even the mentally deficient, could have been made useful members of society by right handling in time.

"It is much better to spend the public money on the child than on the convict. I do not believe that the people of any county will begrudge the small expense required to maintain these courts, but, wholly apart from the humanitarian aspect of the case, money rightly spent on the child will be returned many fold."

The New York Times, April 11, 1922.
Copyright The New York Times.

The Establishment of Family Court

In an influential report and book published in 1954, Walter Gellhorn, a Columbia Law School professor, cogently outlined the deficiencies and advocated for the establishment of a unified Family Court.¹⁷ The court was finally established by a 1961 constitutional amendment, part of a comprehensive judicial realignment. The constitutional amendment authorized somewhat compromised jurisdiction, leaving divorce jurisdiction solely in the Supreme Court and, as noted earlier, granted the Family Court only concurrent jurisdiction over several other causes of action.

However, a contemporary judge or attorney would barely have recognized the Family Court in its formative years. Although children involved in juvenile delinquency and child protective cases were granted state paid representation, implementation was gradual. Indigent adults gained representation later.¹⁸ Prosecutors were absent, a fact now unimaginable in a court served by county attorney offices or the New York City Law Department (judges or probation officers acted as *de facto* prosecutors). Proceedings continued to be largely summary. Trials were rare events, as one would expect in a lawyer-less court. Child protective jurisdiction was very limited; children were instead placed in foster care through largely unregulated "voluntary" public and private social agency agreements which were never judicially reviewed (the court lacked the necessary jurisdiction).

Evolution in Procedure and Doctrine

Procedurally, through an evolution spanning several post-1962 decades, Family Court has matured to a tribunal which is very similar to its brethren courts, including the Supreme Court. Hamilton's Practice Manual, totally alien to Family Court procedures in 1970, is now at least partially applicable.

Given the underlying nature of family and children's law, the doctrinal principles have been equally revolutionary. Science and social science advances have profoundly shaped legal principles. For example, during the first half of the Family Court's existence, genetic testing was unknown. Today, DNA testing is

The Development of New York's Family Court

a daily occurrence. Ergo, paternity determinations (and to a lesser extent maternity determinations) are mathematically definitive. The occasional inequitable result has been checked by the judicial development and codification of the equitable estoppel rule.¹⁹ Legal parenthood and biological parenthood, formerly synonymous (except in the case of adoption) are now distinguishable. Non-biological parties routinely seek legal parenthood. The decreasing number of marriages and concomitant increasing number of out-of-wedlock births have resulted in a Family Court case surge. The advent of artificial reproductive technology and surrogacy arrangements has engendered further changes.²⁰

To cite one additional historical revolution (amongst many), in recent years the child protective laws have been modified virtually annually. In 1962, the protective caseload was minimal (placements were ostensibly “voluntary” and without judicial review); today child protection is the dominant caseload. Permanency hearings, kinship foster care, the rights of the non-respondent parent (the parent not charged with abuse or neglect), the independent rights of the child (unheard until recent years), and individualistic disposition and post-disposition remedies have proliferated.

The avalanche of procedural and substantive reforms, which converted the era of virtual summary determinations in the absence of counsel into a truly adversarial system, in itself required a huge resource increase. Adding new causes of action and hearings, such as permanency, as well as post-dispositional remedies, such as the sealing and expungement of records, exacerbated the resource problem. Increasing complexities in determining more historic proceedings also contributed; for example, determining child support is today far more detailed and complicated.

Growth Outpacing Resources, and the Judicial Response

Family Court resources have expanded, but at a rate far below the need. The number of judgeships has increased incrementally,²¹ while the sheer number of actions and the maturing procedural due process requirements has increased exponentially.

One aspect of an independent children's or family court has been increasing judicial gender equality or, more accurately, less gender inequality. From the

commencement of a new court for families in the early twentieth century, women judges were viewed as acceptable in light of the court's unique jurisdiction—as were, eventually, women of color. In the mid-1930s, the first female judge in New York, Justine Wise Polier, was appointed to the New York City Children's Court (another pioneer, Anna Kross, had earlier been appointed as a criminal court magistrate). New York City's Domestic Relations Court was home to Jane M. Bolin, who became the country's first African American woman judge in 1939. And in 1967, Judge Nanette Dembitz was appointed to the Family Court bench, where she pioneered modern approaches to child custody determinations and adoption. By 1970, seven of the Family Court's complement of 36 judges, including the Administrative Judge, were women. On the other hand, in 1970 only two of the Supreme Court justices in the First Department were women.

A large part of the resource deficiency has been met through the growth of non-judge adjudicators. In 1962, every petition or complaint was assigned to a judge or judicial part (as in the predecessor tribunals). That was modified in 1978 when, through a largely federal funded program and mandate, the position of “Hearing Examiner” was established to adjudicate most child support cases (the title was subsequently changed to “Support Magistrate”).²² The non-judge component was further expanded through the increasing employment of referees, commonly referred to as “court attorney referee” pursuant to CPLR Article 43, who preside over mainly child custody and permanency hearings. Further augmentation was achieved through the appointment of retired judges as judicial hearing officers. By the turn of the twenty-first century, a large majority of the New York City caseload was assigned to the “new” adjudicators, and a significant number of cases in the rest of the state were similarly processed—quite a leap from the original “judge only” paradigm.

Another innovation worth noting is the establishment of multi-court integrated parts. Examples include the integrated domestic violence parts, and the more recent adolescent offender juvenile parts (part of “raise the age” legislation). Integrated parts resolve jurisdictional problems which are inherent in New York's still-fragmented judicial system.²³ Holistic determinations to meet the multiple needs of a specific family are now frequently possible.



The Development of New York's Family Court

The twenty-first century has already brought important new initiatives. One is the development of ameliorative alternatives to formerly strict adversarial litigation. Mediation is one alternative which is gaining acceptance throughout the case spectrum. An as yet unheralded reform of “raise the age” has been expanded diversion or “adjustment” provisions designed to avoid the formal prosecution of most misdemeanor and non-violent felony cases.²⁴ The recognition of parenthood when couples conceive a child through agreement regardless of biological ties is one additional example of a legal rule intended to address changing family concepts.²⁵ These and other trends are likely to mature in the near future. Additional societal family needs will undoubtedly be addressed well into this century, although identifying those norms would be an exercise in sheer speculation.

Conclusion: How Far We've Come

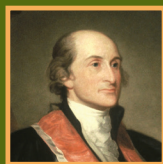
In conclusion, Family Court developed over the course of many generations. Reactive to ever changing and accelerating societal social needs, the court has evolved continuously and rapidly. One overarching fact is that the evolution will continue in future decades.

Alexander Hamilton's Practice Manual proves that the New York Supreme Court remains stable, evolving at a glacial pace as a tribunal imbedded in centuries of largely common law causes of action. Family Court jurisdiction and procedure, inherently based on societal developments, is by necessity a very different institution. A Family Court practice manual is likely to become outdated not long after the ink has dried. Viewed historically, the court has adapted well, and will in all probability continue to progress successfully into the largely unforeseeable Family Law future.

ENDNOTES

1. The facts in this paragraph were distilled from the introduction to the 2004 publication.
2. See N.Y. Const. art. VI, § 13.
3. L. 1824, c. 126; as amended in 1826.
4. L. 1846, c. 134, § 16.
5. Children who were convicted of a misdemeanor offense could, until later that century, be briefly incarcerated in a local jail.
6. L. 1865, c. 172, § 5.
7. F.C.A. Art. 7.
8. L. 1877, c. 428.
9. L. 1873, c. 830, § 1.
10. L. 1875, c. 130.
11. *Matter of Donohue*, 1 Abb. N. Cas. 1, 10 (Sup. Ct., N.Y. Co. 1876). The original volume of Abbott's New Cases is available at archive.org, <https://archive.org/download/newcasesselecte05smitgoog/newcasesselecte05smitgoog.pdf>.
12. 106 N.Y. 604 (1887).
13. 51 N.Y. Sup. Ct. 526 (Gen. Term. 1st Dept. 1887). The Supreme Court noted that the statute “would render the child of the worthiest citizen, who happened to lose her way in the public streets and sought guidance from the first woman she met, liable to arrest and incarceration.” *Id.* at 529. The original reporter is available here: <https://books.google.com/books?id=U5IDAQAAMAAJ>.
14. 106 N.Y. at 609; see also *People ex rel. Heck v. The Catholic Protectory*, 38 N.Y. Sup. Ct. 126 (Gen. Term. 1st Dept. 1885), available at <https://babel.hathitrust.org/cgi/pt?id=coo.31924066130208&view=lup&seq=174>.
15. 158 N.Y. 482 (1899).
16. *Id.* at 487–88.
17. Walter Gellhorn, *Children and Families in the Courts of New York City* (1954).
18. See F.C.A. § 262, which in part codified the 1972 *Ella B.* decision, *In re Ella B.*, 30 N.Y.2d 352 (1972).
19. See F.C.A. § 532.
20. See, for example, recently enacted Family Court Act Article 5-C.
21. An historical anomaly which still exists is the selection of judges. In New York City, the Mayor appoints Family Court judges (with the assistance of a screening committee). The rest of the State Family Court judges are elected. The dichotomy originated when the separate children's court acts were enacted (and may be the result of a 1922 political decision).
22. L. 1978, c. 456.
23. The fragmentation includes divorce. Only the Supreme Court may issue a divorce decree. However, the consequential issues which result, including child custody or visitation, support, and orders of protection are frequently litigated in Family Court. Jurisdictional divisions are very complex, and parties may be sequentially or concurrently litigating in both Supreme and Family courts.
24. See amended F.C.A. § 308.1.
25. See, e.g., *Matter of Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d 1 (2016).





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