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Standard Family Court Act

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BOOK REVIEWS

STANDARD FAMILY COURT ACT

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Reviewed by

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"Not this Man but Barabbas." The cry has re-echoed for two thousand years. Despite the vastness of their empires and their billions in gold, the followers of Barabbas are frank failures in the management of marriage and its consequences. The most Barabbasque of modern nations has confessed failure in its experiment to abolish forthwith the family structure. Other nations, marked for their material advancement, have experienced a decrease of family ties almost in direct ratio to increase of national income. In Great Britain, divorces and separations increased from 500 to 50,000 per year in the first half of the twentieth century. In the United States, while national income was increasing almost a third between 1948 and 1955, juvenile court cases increased more than two-thirds. This Man raised marriage alone among all human transactions to the divine dignity of a Sacrament. No nation has been sane enough to follow His way. The patchwork of poultices provided by human laws has failed to save marriage. How can naturalistic remedies alone eliminate evils that arise directly from ignoring the supernatural nature of marriage?

A family court structure, ideally conceived by naturalistic standards, may not succeed in saving marriage; it can alleviate abuses arising from overlapping and fragmentation of court jurisdiction over family problems. To take an extreme example, there are as many as thirty-eight different courts and parts of courts that may have to be resorted to in order to provide a legal solution to the related difficulties of a single family in the City of New York. A wife may have her husband brought before the district Magistrate's Court for a perennial problem euphemistically labelled "family fight." If a blow was struck, the husband may have to face trial in another court, Special Sessions, before three justices. If the wife complains also of non-support, she can be aided neither by the Magistrate's nor Special Sessions courts. Still another court, the Domestic Relations, Family Part, will have to be resorted to. If the suggested solution is a permanent separation, she must go to the Supreme Court, where the usual requirement of retaining counsel

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might well make this proceeding unavailable to the poor. If the son of this unfortunate union comes into conflict with the law, the jurisdiction of any one of a dozen courts, or their parts, may be invoked. If the conflict is a criminal one not involving the penalty of death or life imprisonment, then the Children's Court part of the Domestic Relations Court will have exclusive jurisdiction if the youngster is under sixteen at the time of committing the offense. If the youth is over sixteen at the time of commission, but has not yet reached his nineteenth birthday, then the court having jurisdiction may depend upon the part of the city in which the offense was committed. If in Brooklyn, Queens, or Richmond, the matter may be brought to the Adolescents' Court, a part of the Magistrate's Court, or in other parts of the city to the Youth Part of the Court of Special Sessions. If this youth has committed an offense of the grade of felony, then he is subject to the Youth Part of the Court of General Sessions, if the offense was committed in Manhattan, or to a similar part of the County Court, if committed in other parts of the city. If the daughter of this hapless couple gives birth to a child out of wedlock, then the court having jurisdiction to determine paternity and support would be that of Special Sessions.

A sound court system ought to provide a just method of dispute-settling so as to avoid resort to self-help. That method should also be convenient and expeditious. A litigant should not be required to run the risk of going to the wrong court; or, if he has gone to the right court, to learn that it can only dispose of a small segment of the entire controversy. The proposed Standard Family Court Act certainly meets this shortcoming in resolving family disputes. The Act is the work of committees of lawyers and social workers representing three major groups concerned with families in conflict with the law: the NPPA, the Children's Bureau, and the Council of Juvenile Court Judges. It represents the maximum that a social worker might demand of a Family Court, and at the same time offers the careful draftsmanship of bold-faced statutory text and explanatory comment that would satisfy a committee of the American Law Institute. The Act sets up a unified tribunal with power over virtually every family difficulty involving the law. Children under eighteen would be subject to this court, not only in proceedings for delinquency and neglect, but also for custody and support, even when arising out of matrimonial actions. Adoption and paternity proceedings would be vested in this court. Adults would also be subject to the court's jurisdiction in all of these proceedings. In addition, the court would have control over adults for all crimes committed against their children, crimes less than felonies committed against any children, and commitment in lunacy proceedings. Finally, the proposed Act gives the Family Court jurisdiction over divorce, annulment, separation, and matters of support and custody incidental thereto.

One defect of the proposed Act is that it would stretch the span of specialization of its judges beyond the breaking point. Early American state court systems were based on Coke's idea, expressed in his *Fourth Institute,* of a series of specialized courts. The New York system, dating from 1846, embodies this notion. Such specialization of courts produces conflicts of jurisdiction with the consequence of concentration on these abstruse questions at the expense of those relating to the merits

of the case. When meritorious controversies are thrown out on jurisdictional grounds, they must be relitigated. This wastes the time, money, effort, and ingenuity of court, counsel, litigants, and witnesses. A series of fragmentary dispositions of a single, entire controversy may produce a result considerably at variance with one disposition by a unified tribunal. And separate courts dealing with a single dispute may cause successive appeals that unnecessarily burden appellate courts. The superior system, suggested by equity jurisprudence, would be a unified tribunal staffed with specialist judges.

It is this superior principle that is strained by the proposed Act. A district judge sitting in the proposed Family Court may have special talent for resolving cases of delinquent and neglected children in which issues of fact seldom arise, procedure is informal, and counsel almost never appear. Does such skill suggest the temperament and training necessary for the conduct of the trial before jury of a felony indictment against an adult? Does it imply special ability to deal with the involved issues of law that may arise out of a matrimonial action and that can be resolved only after consideration of competing principles of private international law that are pressed by carefully prepared counsel? Aptitude for settling family fights might well be correlated with the proposed duty of the Family Court judge to supervise marriage counselling attached to his court. But there is no reason to suppose that such a judge would be expert in ruling upon the admissibility of evidence and in summing up to a jury. In insisting that so many different sorts of duties be assumed by a single judge, there is serious risk that the weighty interest in maintaining the integrated viewpoint of the family might be overbalanced by the equally weighty interest in having a judge and tribunal specially adapted to the demands of a particular case.

Perhaps this objection could be overcome by vesting some of the jurisdiction of the proposed Family Court concurrently rather than exclusively. The Judicial Conference of the State of New York, sympathetic to the idea of a unified Family Court, proposed in 1958 such a court without jurisdiction over trial of felonies before juries, or over matrimonial actions. This might well be an acceptable first step in striking a balance between the interest in a specialist judge and that of providing unified service for an integrated problem.

The proposed Act also would have the judges on the Family Court rank with those of the highest state tribunal with trial jurisdiction. This poses an acute political problem in most states. Objectively, there is no sound reason why the disposition of family problems ought not to enjoy the same prestige as the disposition of monetary disputes. But in insisting that the proposed Family Court have power to mandate its budget from the Legislature, the proponents of the Act go beyond the necessities of maintaining the independence of the judiciary. Such provisions may be justifiable in special situations, such as that of the Supreme Court within the City of New York when almost a third of the litigation in that court involves the municipality and there is danger of budgetary reprisal for adverse decisions. No such situation would be conceivable in a Family Court. Such power to mandate a budget would indeed invade the province of the Legislature to apportion funds available for family purposes among various agencies, judicial and non-judicial.