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Standard Family Court Act

Frederick J. Ludwig

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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...
might well make this proceeding unavai-

liable to the poor. If the son of this unfor-
tunate 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 Do-
mestic 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 Ses-
sions, if the offense was committed in Man-
hattan, 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 Stan-
ard Family Court Act certainly meets this
shortcoming in resolving family disputes.

The Act is the work of committees of law-

yers and social workers representing three
major groups concerned with families in
conflict with the law: the NPPA, the Chil-
dren'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 Amer-
ican Law Institute. The Act sets up a uni-
fied 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 delin-
quency and neglect, but also for custody
and support, even when arising out of
matrimonial actions. Adoption and pa-
ternity proceedings would be vested in
this court. Adults would also be subject to
the court's jurisdiction in all of these pro-
cedings. In addition, the court would have
control over adults for all crimes com-
mited against their children, crimes less
than felonies committed against any chil-
dren, and commitment in lunacy proceed-
ings. Finally, the proposed Act gives the
Family Court jurisdiction over divorce, an-
nullment, separation, and matters of sup-
port 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 speciali-
ization of courts produces conflicts of
jurisdiction with the consequence of con-
centration 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 counseling 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.