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FAMILY COURTS

A great deal has been said, but very little has been authoritatively written upon the subject of Domestic Relations Courts in this country. So far as I know, no such court has yet been successfully established embodying the jurisdiction and powers the advocates of such a court claim it should possess. I am not unaware, however, that courts under the name of Domestic Relations Courts have been established, notably in New York City and Cincinnati, and that certain Municipal Courts, notably in Chicago, have been given jurisdiction in certain family matters, but none of these courts, as at present organized, have the broad and exclusive jurisdiction the advocates of these courts demand. There are substantial and fundamental difficulties in the way. These difficulties strike at the very root of our established judicial system. Nevertheless, there is much that has been said that must appeal to the judgment of all those interested in the betterment of our social conditions.

It is no doubt true that the causes of juvenile delinquency and dependency, desertion and non-support, pauperism, divorce and marital dissensions, generally speaking, are all interrelated subjects. They cannot be treated separately; nor will any legislation which seeks so to do be wholly successful. All these matters can be traced to some defect in the administration of the family. This defect in most instances is so obscure that it cannot always be reached by the ordinary methods appointed by law for dealing with domestic relations.

All social workers now concede that the unit of society is not the individual, but the family, and that whatever tends to undermine the family will crumble and destroy the foundations of society and the state. As one such worker has said, "the family is the mechanism which delivers over to the nation the raw material or the partially improved material out of which the nation must be composed, the adolescent individual."

If there is dissension in the family, if there is an absence of sympathy, forbearance, self control and the other qualities necessary to the development of character, if the social reciprocities are not cultivated, then the conduct of all members of the family is likely to be characterized by anti-social acts, not only with the members of the family itself but with the members of the community with whom they come in contact.

It is therefore apparent that if we are to deal with the family effectively and relieve present distress by ascertaining and remedying

the causes of disruption and of anti-social conduct in general, some court or other tribunal must be given power to deal with the family as a unit. As our laws are now constituted, however, the various phases of the family life are considered by independent courts whose work is in no way inter-related and is consequently more or less wasteful and barren of the results many of our people believe ought to be obtained. In this state these courts are the Circuit Court, having original and exclusive jurisdiction in divorce cases, including the custody of children of the parties and the granting of alimony; the Juvenile Court, having charge of the delinquent and dependent children of the community; the Probate Court, having exclusive jurisdiction over the matters of estates and the adoption and guardianship of children; and the Criminal Courts, having jurisdiction over various offenses growing out of the family relation such as adultery, abandonment, failure to support, and the like. Exclusive jurisdiction in bastardy cases is conferred upon the Circuit Court, and marriage licenses are issued by the county clerk.

There is no adequate jurisdiction in which the responsibility of the parents for the delinquency or dependency of their children can be effectively treated. Some attempt has been made to this end but as yet such legislation has failed of its purpose. The inability of the Juvenile Court as at present constituted to reach the family is well understood, although in its treatment of the child it has, I believe, fully justified itself. Yet it cannot be doubted that much of the opposition to the Juvenile Court has been because of the inquisitorial powers given to the judge of that court under the law.

The only possible solution of the difficult and complicated problems involved, if they can be solved at all, is to combine in one court exclusive jurisdiction to hear and determine all matters concerning the family growing out of the family relations. Such a combination would not only prevent the present economic waste, but separate the purely sociological questions that arise from domestic disturbances from those that arise solely in the economic and business affairs of the community, giving to each class of cases a separate tribunal.

Any legislation which attempts to deal with this subject in any other way than by a complete subordination of all domestic troubles, whatever their source, to the jurisdiction of a single court, will, in my judgment, prove abortive and unavailing. Nor can such a combination be brought about except by an amendment to our present constitution. The courts as at present organized have certain exclusive constitutional powers. These powers cannot be taken away

by mere legislation but only by an amendment to the constitution itself, creating and conferring these powers upon some other or a new tribunal. To shift the responsibility from one tribunal to another, as our courts are now constituted, will bring us no nearer the solution of the problems involved than we were before.

The serious question in this whole matter, however, is as to whether we are prepared to incorporate into our judicial system courts possessing the far-reaching powers proposed to be given to the judges of family courts. There are serious and fundamental objections to the extension of the authority of our courts as at present constituted. It is perfectly clear from what has already been said as to the functions of such a court that the judge of a Domestic Relations Court cannot be confined in his activities to the narrow limits of a strictly judicial officer. In addition, he must have large executive and administrative powers. The judgments of a judicial officer as at present constituted in this country are confined to the pleadings and to the testimony taken in open court. He does not take the initiative in any proceeding brought before him. His sole duty is to determine under the law and the facts the questions presented. The judge of a family court must have larger powers than these. He must be at liberty to investigate or cause to be investigated every anti-social or abnormal act growing out of family disturbances. His duties must necessarily be inquisitorial rather than accusatory. In this respect he will resemble more nearly the judge of a civil law court than the judge of a common law court. The civil methods of procedure are those adopted by the continental countries of Europe from the Roman law. The common law methods are those originating in England and later adopted in this country. There are fundamental differences in principle between the two systems. Under the civil law methods, the rules of evidence and of *stare decisis*, as we understand and apply them, are wholly unknown. The presiding judge examines witnesses and performs many of the duties of a prosecuting officer. These powers are not conferred upon the judge of a common law court. Trained as we are, therefore, in the common law methods, the civil methods will appear to many of us as not only radical but in many respects inconsistent with our notions of the judicial function. But if we are to establish family courts we must accustom ourselves to the inquisitorial methods of the civil law courts. For to limit a judge of such a court to the usual common law functions will result in useless efforts and vain legislation.

The courts as now established in this country have all the powers in family matters that the common law can give them. To empower

a judge to act on his own initiative immediately and without pleadings; to authorize him to become the general supervisor and mentor of the home and its several occupants, will be a new thing in our jurisprudence. It is apparent, therefore, that a judge who is given these extraordinary powers must be a man well versed in the law, of large experience, unswerving firmness, broad sympathies, and clear, quick and accurate judgments. Wanting in any of these elements, his work must fail.

Our people will not submit to tyrannical methods unless they are fruitful of good results. They will accept and approve any scheme that will effectively cleanse the Augean stables of domestic strife whereby the moral and social standards of the community may be lifted to a higher plane; but they must first be convinced that such a result will follow.

Assuming, however; that the best interests of the community demand the establishment of such courts, their jurisdiction to make them the effective agents expected of them, should at least include:

1. All divorce and alimony matters;
2. All separate maintenance cases;
3. All matters pertaining to the adoption and guardianship of children;
4. All matters relating to the care and treatment of delinquent and dependent children;
5. All prosecutions of adults, responsible for the delinquency or dependency of children;
6. All cases known as bastardy cases;
7. All cases of desertion and non-support.

With such a court with ample provisions for the prosecution of its work, it is believed that the whole subject of family relations may be effectively covered and controlled. At least, it is clear that in no other way can the purpose of a family court be accomplished or the ideals of its advocates be even approximately fulfilled. With adequate probation departments, departments for investigation, medical and other treatment, and the carrying on of such scientific and other investigations as are essential to get at the root of the disturbances, and a presiding judge with the qualifications I have indicated, a court with these powers can no doubt become a great force for good in every community.

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