

Michigan Law Review

Volume 52 | Issue 8

1954

Kahn: A COURT FOR CHILDREN. A Study of the New York City Children's Court.

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Recommended Citation

Maxine Virtue, *Kahn: A COURT FOR CHILDREN. A Study of the New York City Children's Court.*, 52 MICH. L. REV. 1255 ().

Available at: <https://repository.law.umich.edu/mlr/vol52/iss8/20>

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and matters closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

A COURT FOR CHILDREN. A Study of the New York City Children's Court. By *Alfred J. Kahn.* New York: Columbia University Press. 1953. Pp. 359. \$4.50.

This is the report of a three year study of the New York City Children's Court, a juvenile court dealing with dependent, neglected and delinquent children, as carried out under the auspices of the Citizens' Committee on Children of New York City with the support of the Field Foundation. The author is an Associate Professor of Social Work at Columbia University. In a foreword, Dean Kenneth D. Johnson of the New York School of Social Work of Columbia University described the author as holding the first doctorate in social welfare granted in New York State.

The book examines the facilities, staff, caseload and performance of the court in terms of the objective of this and similar courts established since the beginning, in 1899 in Chicago, of the juvenile court movement. The objective, grounded in the chancery concept of "parens patriae" and the common law concept that a child of or under seven can have no criminal intent, may be briefly stated as the desire of society to protect itself against harmful behavior on the part of children by rehabilitating the individual instead of punishing him. It is to the interest of society to reclaim its dependent and neglected children, and it is clear that much delinquent behavior on the part of juveniles is the result of dependency or neglect. Thus society attempts, through juvenile courts, to protect itself and to discharge its parental responsibility toward children by cherishing and retraining those found in need of help by reason of antisocial conduct. All states now have juvenile court laws, though both as to structure (i.e., placement in the statewide hierarchy of courts) and operationally, they differ greatly from state to state and even within the same state. Nowhere but in metropolitan districts occurs anything like a trained and specialized juvenile court staff operating in separate physical facilities. Here in the Kahn study is a thorough and skillful examination, from the view of a professional social worker, of one metropolitan juvenile court.

Structurally, the New York court operates under the Domestic Relations Court Act, creating a unified administration for the children's (juvenile) and Domestic Relations (support only) courts. The act says: "This Act shall be construed to the end that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that as far as practicable, they shall be treated not as criminals but as children in need of aid, encouragement

and guidance." The court has exclusive jurisdiction in cases of children under sixteen alleged to be delinquent, physically handicapped, material witnesses, mentally defective, or neglected, and "the court is in a position to intervene in a wide range of situations involving deviant behavior by a child, parent-child difficulties, or questionable care of children by their parents." Its jurisdiction does not include custody, separation, divorce or habeas corpus proceedings.

The author and his staff have studied in detail various aspects of the court, such as "doorways to the court" (i.e., intake), procedures in the courtroom, case studies in probation department, analysis of probation as treatment, mental health services, and finally a discussion of all services and resources. The statistical, descriptive and analytical material is then climaxed by an evaluation and by some suggestions for improving performance.

Judges in the Domestic Relations tribunal of which the juvenile court is a part are shown to be scheduled for monthly rotation between the Family Court and the Children's Court. Coordination between the two branches is said to be slight, and this is consistent with findings in other studies which have examined practices between specialized divisions or courts dealing with different aspects of family breakdown. The study does not deal at all with the significant problem of integration among all the other New York courts dealing with family cases. Such material may be found, however, in Professor Walter Gellhorn's recent study of family cases in New York courts, which is soon to be published. The Gellhorn study, when it appears, will furnish a professional legal analysis of some of the material in the Kahn study as well.

There does not appear to be, in the New York Children's Court, a strong enough long-term presiding judge or other personage at judicial level to obtain consistent knowledgeable handling of docket and calendar. Instead, the assignment of judges to particular cases seems to be carried out piecemeal, so that various phases of the same cases are heard by different judges, with no consultation or carry-over from one to another. The eighteen judges (who are appointed by the Mayor for ten year terms) differ greatly in their attitudes and skills, as well as in their willingness to use socially or medically trained personnel to develop facts and to aid in arriving at a solution to a child's problem. This "piecemeal" assignment system, which as the author points out is not conducive to an adequate quality of disposition of individual cases, is not a necessary or even a typical use of a judicial rotation system—though not only here but elsewhere the piecemeal handling of juvenile cases is regarded as the unavoidable attribute of rotation. On the contrary, in many jurisdictions properly designed and administered rotation systems confer the advantage of keeping the entire bench fully informed and able to cope with all parts of the caseload. But such rotation systems also operate on the basis that once a case is assigned to a judge, it remains his case throughout its entire docket progress until final disposition. Such would seem to be a minimum essential for any court concerned with individualized dispositions, as is the case in juvenile court work.

It is surprising to note that the Children's Court in New York had 15,670

new cases in 1909, and only 9,417 in 1952 (7,959 in 1950). The national trend, as indicated by several recent reports, is one of rising juvenile caseloads. No doubt development of new noncourt social agencies has resulted in many referrals elsewhere. Even so, it would be interesting to know more of the reason for what seems an incredibly restricted intake.

The chapter on the court's threshold service (the information and adjustment services) is among the most valuable and provocative. It presents a picture—typical of other metropolitan juvenile courts—of untrained, unskilled and sometimes unpleasant staff making the first contact between court and prospective litigant, so that the all important initial conditioning, tone-setting, and sometimes the referral, is poorly handled in some cases. Here, as elsewhere, is also shown excellent and even inspired work by able people, with level of performance not equated with possession of any certain academic degrees. The author well notes that the court is nowhere in need of more highly skilled and sympathetic people than at first contact, and suggests a unified applications center which will clearly distinguish between the functions of directing traffic in the building, of referring cases best handled outside the court, and of initiating court contact as carefully and skillfully as possible.

In the chapter dealing with courtroom procedures, considerable attention is devoted to the judges. The material is frank and forthright, and no one can read it without becoming aware of the need for special skills and insights on the part of judicial personnel dealing with juvenile court problems. In New York, the work of the court is in some aspects a tribute to the good work of a few outstanding judges, notably Presiding Judge Hill. Some of the case histories display judicial skill at the highest level used to aid a troubled child; others depict a travesty on the juvenile court purpose—as where a judge differentiates between several offenders by selecting for probation those able to recite their catechisms, or where a judge reads a long, stern lecture on parental duty to a foster mother with whom a child has just been placed.

Similarly, in the material dealing with probation, the familiar dilemma appears of an unevenly trained and overworked staff, and considerable attention is given to the delicate problem of the relationships between the judges and the probation officers. Discussion of mental health services is especially valuable since it includes a description of a recent demonstration study carried on in the Reception Unit.

The final discussion strengthens a point being emphasized by various contemporary researchers: need for clarification of the court's "basic role," as the author puts it. Do we want the juvenile court to divest itself of all the accouterments of legal traditions, safeguards, authority, and vocabulary, so as to be free to become a first-rate social agency? Or shall we, alternatively, regard such a tribunal as a necessary evil, and limit it to strictly legal functions, so that the judge is relieved from all contact with any aspect of each case save the translation into legal phraseology of an analysis and plan arrived at by professional social workers operating outside the court. Example: separate

"adjudication" from "disposition," as is suggested by many commentators who appear to regard the two as separable.

Dr. Kahn discusses both alternatives from the point of view of one who is committed, as he states his position in the introductory chapter, to the view shared by many able social work professionals: "That human conduct is caused; *that ordering and forbidding cannot change it. . .*" (Emphasis added.) It follows from this position that a court, being an agent for the application of social force, is "authoritarian" and therefore not able to obtain the voluntary cooperation which is regarded as essential to good social work. Ergo, to obtain good performance we must either change the court into a noncourt social agency unhampered by legal concepts, or gradually cut away its functions so that all real policy making and decision takes place outside the court, away from the stigmatizing legal phrases and conduct.

To a lawyer—and, I would suppose, to anyone who has ever been a part of a smoothly working parent-child, teacher-pupil, doctor-patient, or employer-employee relationship—the emphasized phrase is plain nonsense. Most friction between legal and social personnel can be related to the latter's identification with this position.

Dr. Kahn's excellent and competently prepared study, however, is soundly reasoned and based. From it, and much other data, it is clear that (1) the juvenile court is not doing what it is supposed to be doing; (2) the main reason for its failure to achieve the promise of its high ideal, despite fine work by certain people, lies in the unavailability of sufficient adequate and sympathetic legal personnel, and of sufficient non-legal professional personnel to function as part of the court operation, to investigate facts, to aid in presenting cases and making plans, and to follow through the post-decretal phase of court supervisory contact. The unavailability of such aid results not only from lack of trained social workers, but from the misuse or disuse of specialized staff already available and a consequent reluctance of graduates to go into court social work; (3) in this kind of court, participation by legal (including judicial) personnel not fully oriented to the aims and techniques of the juvenile court as one of a group of community resources dealing with personal problem families is sometimes almost as bad as no legal participation, in terms of results to the individual child supposedly being rehabilitated; (4) the legal profession, as a whole, has shown almost no interest in improving its participation in juvenile court work, being content generally to accept the premise that these are social problems and not legal problems, hence better handled outside the legal framework.

Until we in the legal profession have studied our own function and position in the personal problem case area, we are not in a position to resist the recommendations, being made from many quarters and with growing confidence, that we abdicate from a zone wherein we are doing more harm than good.

It can be demonstrated, however, that the juvenile and domestic relations caseload, now in all its manifestations representing as much as half the total

burden of some metropolitan court systems, is not adequately to be solved until these tremendous social problems are recognized as embracing legal problems demanding full participation from several professions including the legal profession. For good social dispositions, either in terms of humane solving of individual problems or in terms of efficient use of both court and noncourt agencies, cannot take place without knowledgeable professional legal analysis of the problem, choice of litigation techniques, advising of parties, and preparation of final order. Otherwise the adoption turns out to be no adoption at all, the "delinquent" child spared that label to avoid hurting his feelings turns out to be under the jurisdiction of another court so that a vengeful ex-spouse can defeat custody, or the grandparents work out a devious method, perhaps by guardianship proceedings, to break up a careful juvenile court plan for mother and child.

The Kahn study, a first-rate job of research, shows how far the juvenile court's objective is from realization, what the social workers can offer, and where the present shortcomings lie. The legal profession has an essential contribution to make to the juvenile court movement, but the burden of proof is on us to show that if the objective is to be realized, lawyers must fully participate to make the basic contribution of the legal tradition so that children and society may be served well.

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