

THE EMOTIONAL IMPACT ON CHILDREN,
OF DIVORCE AND CUSTODY

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It is commonly accepted that the "best interest of the child" be the foremost consideration in determining custody and access to a parent or parents who have divorced.

For those of us whose professional lives are concerned with children and their families, it is evident that what is of best interest one day may not extend to the next.

A one year old child requires constant protection, he/she has dependency needs. A thirteen year old child not only wishes less protection, he/she has independency needs. There is a vast difference as to what is in the best interest of a one year old as compared with a thirteen year old, yet both are 'children'. Recommendations regarding children must be refined according to a developmental spectrum of childhood, so that questions which are commonly raised, are answered with a developmental perspective. These questions include "at what age shall we have a child testify on his or her behalf? At what age can we believe him/her to reflect a reasonably accurate opinion? Can a child be coerced by one parent to ignore the other? When is a child most vulnerable to such coercion or persuasion?"

Clinically my experience is that children of eight are able to make a reasonable contribution to their destiny. There exists research support for choosing age eight for this distinction. Children under eight comprise the preschool group under age 5 and the school age group who are over 5.

With respect to the emotional impact of divorce, children under 5 may demonstrate few clinically apparent signs of distress yet suffer terribly. Human bonding and attachment takes place primarily during the first two years of life. The loss of a psychologically bonded and important person is devastating. In fact such loss probably remains a prominent feature of that person's personality.

In our society, children under five are dependent primarily on their parents. The great majority of a child's waking hours and some of the sleeping ones as well are spent with one or other parent. The loss of either is a critical event. In societies where psychologic bonding takes place with more adults and many peers, as in the Israeli Kibbutz, the emotional consequences of parental loss are lessened.

Children over age five benefit from several factors which may have protective value. If the quality of the first few years of life was good, if friendships exist in the present, and school is relatively satisfying, then some emotional cushions are in place. With increasing age the sense of loss is likely to be more acute, particularly because of the increased capacity to understand the problem. But greater understanding also allows for greater comprehension through explanations and reasoning. By age eight, the conceptual understanding of a child has increased sufficiently to allow relatively sophisticated communication.

From age eight through twelve, the capacity to abstract, to understand, to grasp logic increases at a phenomenal rate. With allowance for individual variations, one can nevertheless assume the child's understanding of the situation to be sufficient to have formed opinions, and perhaps taken decisions.

In light of the foregoing, "the best interests of the child" could perhaps be reformulated to relate broadly to stages of childhood. One could anticipate that different measures are required to diminish the emotional impact of divorce and custody on these respective age groups. From the child's perspective the period of 0 - 5 reflects a relative helplessness within a narrowly defined world (parents and home); 5 - 8 a degree of autonomy and wider boundaries (parents, home, neighbourhood, friends, school); and 8 - 12, increasing conceptual abilities as well as growing independence.

Persons who make decisions about children must keep in mind however artificial it may seem, some sense of the major developmental changes in a child's life toward adulthood. What is certain, barring the unforeseen, is that children do become adults with or without intervention by anyone. The ravages of marital strife and family breakdown, and even prolonged custody battles do not stop the inevitable physical unfolding of the child but may leave lasting emotional scars.^{1,2,3,4} How mental health professionals can assist is well documented.⁵

A COMMENT ON DIVORCE AND CUSTODY

One of the major failings of my psychiatry colleagues, lawyers, and perhaps of some judges, is the inability to distinguish between the process of divorce and the process of custody.

Divorce is the prerogative of marital partners who do not get along. And each may have very good reason for dissolving the marriage, even tolerating the accusations and invectives hurled at one another.

Divorce is perhaps appropriately an adversarial contest, simply an extension of an adversarial marriage, where little remains to be done.

So when a psychiatrist treats a lady who dislikes her husband, that psychiatrist may be convinced that indeed the man is an ogre and the patient's decision to divorce him is sound. The lawyer representing that lady is equally convinced and indeed duty bound to seek the best settlement for his client. The husband's side of assorted professionals and friends are in his camp and the stage is set for the quintessential battle over the main ingredient to be contested, namely money.

But add a child to that mix. Now divorce is a custody proceeding. The

ogre-husband is described as a miserable father. The wife-mother is accused of parental incompetence. Whereas two adults are quite willing to take the frontal assault of poor spousing, few will accept the notion of being unfit parents.⁶

And that is reasonable. Each spouse may be an entirely fit parent and in most instances the child loves both of them.

Confusion reigns when the evidence collected to dissolve the marriage is utilized to serve the additional purpose of proving an unfit marital partner to be also an unfit parent. The custody battle has until recently had a life of its own; frequently having nothing to do with the child but entirely with the parents' personal needs in relation to that child. Each parent can easily acquire a psychiatrist, a lawyer, and friend to testify as to his or her parental virtues and unless the parent is indeed blatantly incompetent, it becomes a Solomonic decision. Judges deserve every honour due them simply for their willingness to sit in and make such close calls. It is a grave responsibility and an unenviable position. And yet it must be done.

Allow me to cite you portions of the psychiatric examination of two individuals who were contesting custody. I shall name them the fictional Mr. and Mrs. Baker, although the quotes are accurate.

The report by a psychiatrist in regards to Mr. Baker states "I have known Mr. Baker for ten years. He has never had more than minor physical ailments and I consider him to be in good physical condition. With regard to his mental state, it is my opinion that he is of better than average intelligence and that his sanity is above question. I am aware of the intense domestic emotional strains he has undergone in his relationship with Mrs. Baker. I have also heard from him of the apparent hostility which his wife's psychiatrist bears towards him and have read

a letter from her to Judge Mitchell which would seem to me to support his opinion that such a hostility does exist. At all events I find myself in fundamental disagreement with her in relation to the psychiatric charges she has made against him. I would point out that it takes a person with a particular tenacity of willpower to mentally withstand the emotional adversities to which he has been exposed".

The attack to which this doctor refers is the wife's psychiatric report which reads as follows, "There is concern for the welfare of the two Baker children since the parents have separated. Both parties feel that the other is an unsuitable parent, and both will fight for custody of the children. Both parties have sought psychiatric help during the past year and previous assessments of their mental status can be helpful now to the court.

Mr. Baker is mentally ill and operates on a marginal level within his family and community. His rigid strict domination of his wife and children has been crippling to their emotional growth. This radiates from a delusional stance of self righteous power, with the belief that a persecutory evil arena surrounds his family. Mr. Baker presents an intelligent, handsome presence, and he only rarely exposes his terrifying temper and paranoid attitudes. Rather he tends to placate and comply with others."

This psychiatrist who had been treating Mrs. Baker, described her as a "warm dependent person who has martyred herself to the style of life her husband has demanded. Her neurotic tendency to accept derision and abuse has gradually made her feel suffocated and inferior and her frustration in fighting for freedom has caused her excesses of anxiety. Her competence as a housewife has often been undermined, but her warmth for the children and her clarity of child care goals have been evident always. Mr. Baker is a desperate man and may run away with the children before any action can be taken to sort out their respected rights."

With two such determined persons, and two determined psychiatrists giving evidence, you can well imagine the opportunities extended to the legal profession. The situation was resolved after two years, thirty thousand dollars in legal expenses (including the mortgaging of the family home), and untold heart-ache.

Allow me to return to the emotional consequences for the child. Let us assume that divorce and custody has an impact upon all children, positive for a very few since the resolution of a troubled marriage may occasionally be worth losing one parent, but in the majority of cases, a shattering loss. In order to minimize the negative emotional consequences a number of factors must be considered.

1) The Age Of The Child

"The tender years" doctrine which holds that a very young child belongs with the mother, is helpful only insofar as that mother has indeed become the primary psychological parent (which is likely).

I have been involved in a number of child assessments of one-parent families to determine their emotional status. In some of these families the children have been raised almost entirely by grandmother for the first few years. When the mother returns full time to claim and/or take care of her child, that child is already bonded to the grandmother as mother and the problems which arise are very complicated indeed. In one such situation the grandmother sued for custody of her grandchild claiming that her daughter was incompetent to raise him. If psychologic bonding really were a major determinant, we might discover a host of important grampas, cleaning ladies, nannies and other assorted care takers!

I do not think there is a need to bend backwards to assign custody to fathers but there is evidence that "maternal fathering" is on the increase and there now exists the possibility that fathers contribute equally to the psychological well being of their children. In that event, the evidence of psychological bonding to the father should be considered.

2) The Duration Of The Proceedings

The wear and tear of custody proceedings are enormous. I have been involved in one tug of war which is going into its fifth year without adequate resolution.

I am acutely aware of the amount of fact finding which has to be done in order to reach a reasonable conclusion, and yet would urge all participants to set a time frame which would allow everyone to get on with life, particularly the children.

3) The Alternatives To Adversarial Custody Proceedings

The past decade has seen a major shift in dealing with matters of custody. I can recall attending one workshop where lawyers bitterly denounced the adjudications of a mediator, whether family court counsellor, child psychiatrist, or anyone else. I believe the fear was that the adversarial process would be undermined and I can see the need for protecting that system as the mainstay of many court room procedures. I also believe time has shown that one simply must make some exceptions to traditional practice and it is evident that the law has been responsive to examining different approaches to matters of divorce and custody. The answers are not yet in, perhaps never will be. But the increasingly multi-disciplinarian efforts to resolve these critical issues are to be applauded and continued.

4) The Type of Custody

This is an area of great flux. Two extremes are evident as boundaries of the spectrum of custody and access. On the one extreme is the contribution by Goldstein, Freud and Solnit⁷ in their book "Beyond the Best Interests of the Child". These authors state that "once it is determined who will be the custodial parent, it is that parent, not the court who must decide under what conditions he or she wishes to raise the child. Thus, the non-custodial parent should have no legally enforceable right to visit the child, and the custodial parent should have the right to decide whether it is desirable for the child to have such visits."

At the other extreme is the developing trend that children have rights to both parents and these rights are set out in an arrangement labelled "joint custody".

In the Goldstein et al proposition, the custodial parent is allowed to vent personal frustrations relating to the marriage through blatant interference with the child/other parent relationship. One might argue that this could work if the adults are able to reach reasonable compromise on access for the child. Of course, if reasonableness prevails, custody matters could frequently be settled before reaching court and with reasonableness, joint custody arrangements could not be considered at the other end of the spectrum. Goldstein et al's work has been severely criticized. Perhaps the criticism warrants mention.

To paraphrase the criticism, Goldstein, Freud and Solnit base their conclusions on the notion that the child has a single psychological parent, and therefore that the custodial (psychological) parent determine contact between the child and other parent. There is considerable research to demonstrate that children

from early infancy can and often do have more than one psychological parent as well as multiple attachments to other significant persons (grandparents, siblings, uncles and aunts). Additionally, the power of the custodial parent in this situation is to effectively divorce the child from the other parent, whereas the child has a right and need for both parents.

Joint custody is a cute idea. Let us examine what it means in terms of the developmental stages of childhood mentioned previously.

A child aged 0 - 5, will be psychologically perplexed indeed if in the care of one parent for a week or two, then with the other for a similar period of time. It is equitable for the parents. For the child it could be disastrous.

Between 5 - 8, it helps to know where to hang your hat. In other words, it is reassuring to a child to live in one neighbourhood, attend one school, and leave and return to the same home over the five school days.

Joint custody may mean the maintenance of an apartment for one parent while the other moves into the house and vice versa. I am not sure that adults are resilient enough to move weekly for three or four hundred weeks. Between age 8 and 13, and certainly into the adolescent years, joint custody affords the child every opportunity to play one parent off against the other.

I have seen many adolescents who are constantly on the run. They stay with mother until mother needs to discipline them. They then return to father to live life until the next major obstacle which prompts their return to mother. Such goings on are disruptive to the life of the pre-adolescent and adolescent and especially to the parent who has established a new family unit.

No doubt there are situations of joint custody, where parents have retained goodwill to one another because they recognize each other's qualities as parents

and have come to grips with their incompatibility as spouses. Where that degree of maturity exists, I am sure that children can confidently manage with their parents.

However, given the thousands of combinations and possible options, I would support the choosing of a custodial parent with primary responsibility, and provide the other parent with such access as to maintain for the child the maximum opportunity to an enriching relationship with the non custodial parent.

5) The Rights of the Child to Offer an Opinion

As stated earlier this right should be a consequence of developing maturity. I happen to feel that the opinions of children are important. Children have expressed to me their desire to be with one or the other parent but fearful of what it would do to the one they did not choose.

In fact one 9 year old child chose her father because she actually viewed her mother as the stronger and her father as needing her. Her personal preference would have been to stay with the mother. There are professionals who can talk with children and know how to elicit information and opinions which may have a bearing on the situation. Such opinions should be sought and considered, especially in children over age 8.

6) • Sibship Systems

Siblings generally become great friends in their late twenties and thirties. But somewhere between age 3 and 16, they fight alot, especially same sex siblings. Not infrequently, one of the sibs will take the opportunity of parental divorce to get away from the other. The motivation for such decisions within sibling groups has to be carefully assessed. In one such situation, of a sibship of five children,

three of them opted to live with the father and two had already moved out of the house with the mother. They self selected themselves with the parent they felt provided most nurturance for them. None of the children were desperately vindictive towards the other parent but each was able to express a rationale for their decision.

CONCLUSION

The complicated field of divorce and custody precludes easy answers, sometimes any answers. All we can hope for is that continuing discussion between the various professionals will evolve a sufficient basic knowledge which can be molded to fit the specific situations that present themselves. We must continue to focus on, evaluate, and consider first and foremost the child's emotional needs. We must attempt as best as possible to separate out the parental concerns as parents from those as marital partners. And perhaps most importantly we have to be constantly alert to our own emotional responses in the process of evaluating and assessing or adjudicating divorce and custody issues.

We are all somebody's spouse, a child's father or mother, and someone's child. None of us have escaped the emotional consequences of our own experience with being adopted or adopting, with being married happily or unhappily, with being a success or failure with our children. Not only that. Our views of family as shaped by our experience with family is put to the test with rapid and oft bewildering social change.

Before putting pen to paper, expressing opinions or judgments, it behooves us as professionals to reflect for a few minutes on the possibility that bias has crept into attempts at objective observation and objective decisions. We fallible

people are expected to come up with answers to situations that frequently defy objectivity and logic. I think so long as we remain aware of that, we shall do alright.

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