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Session Paper

**TITLE: “EARLY CHILDHOOD HEALTH IN SEPARATING FAMILIES”**

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Almost fifty percent of our children are impacted on by separation and divorce. Parameters for decisions are determined by adult demands in an adversarial process increasingly influenced by adult lobby groups. In this process the attachment and bonding needs of babies and young children are not understood and are discounted. This paper would discuss the forces that shape the current thinking in making determinations around care arrangements for children in the family law arena, the developing patterns of early childhood care and contact arrangements, and how Family Court determinations set a standard in the community and influence parental thinking about early childhood care in separation. The trend is increasingly for shared arrangements for children of all ages including infants and very young children. This paper will address the disruption to bonding and attachment and implications for children's coping and adjustment. Suggestions for informed, child-focussed input in legal proceedings and community education will be discussed.

## **INTRODUCTION**

This paper discusses the lack of focus on child need and developmental considerations when parents, and the Family Court make decisions about child arrangements in separating families.

The trends in decisions made in relation to infants and young children are disturbing. The trends are shaped not by informed thinking on the developmental needs of children, but by individual parental demand (frequently the least child centered parent) supported by misguided thinking in the community, determined by increasingly powerful lobby groups, and exacerbated by the adversarial process.

The paper looks at how the Family Court, the legal process and society can be unwitting contributors to the 'frozen futures' of many of our children. In my opinion it is an extensive problem impacting on a significant proportion of children.

## **SOCIAL CHANGE**

### **Competing Interests**

We live in a society where in the many competing interests, children's needs are increasingly lost. The care of children, has become a gender issue. Working mothers, debate about how the needs of babies and young children can be met in fulltime childcare, greater paternal involvement, the roles played by mothers and fathers in the healthy development of children, are all factors causing confusion. Add the process of separation and legal dispute and the child can become invisible.

### **Factors Impacting on Thinking around Separation**

Women working and the placing of young children for extensive periods in childcare has contributed significantly to the devaluation or refocusing away from the importance of the mother/child relationship. Realistically, it is hard to argue against long separations from the primary parent in divorce disputes, when the child may spend many hours in childcare. The mother's primary parenting role can diminished in legal argument if the child is placed in childcare two or three days per week.

Greater participation of fathers in parenting has resulted in men making increasing demands in terms of time with their children on separation with the result that there is an alarming trend to share the children.

Children increasingly are required to navigate the separation, rather than the parents supporting each other in child-focussed arrangements. Orders have been made in Brisbane where parents have month about with the children and are required to leave the marital home every other month.

Research outcomes finding that children growing up without fathers are more prone to problematic behaviour in adolescence and adulthood can result in simplistic responses. Commonly it is interpreted that fathers should have more time with their children when families separate, without taking into consideration factors such as the capacity for co-operation in the parental relationship, the quality of the parent-child relationship, age and developmental considerations.

Orders made by the Court, including agreements parents are encouraged to make, do not reflect the parenting and childcare pre-separation. It is interesting to note that research findings throughout the western world suggest that for all the greater visibility and participation of fathers in family life, there has not been a significant redistribution of parental and homemaking responsibilities in families.

Of the separating population, which in Australia is now almost 40%, 70-80% of separating couples manage their separation without making applications to the Court. Characteristic of the 20-30% who constitute the Court clientele are higher incidences of violence, child abuse, substance abuse and mental illness. Violence is a factor in 60-70% of cases presenting with children's issues. These statistics correlate with patterns in the United States.

## **WHAT HAPPENS TO THE BABIES IN SEPARATION**

Babies are dependent on the health, awareness, capacity for containment and empathy of the adults caring for them. They are the most vulnerable group in our society in every way, yet the least able to advocate for themselves. They have no ego protection, they cannot directly communicate their stress, they have not developed the capacities to process and understand what is happening in their world. They absorb everything that is going on around them and what they absorb become internalised scripts for a lifetime.

The children of the Family Court clientele are less likely to have healthy, empathetic parental care. They are more likely to be exposed to parental dysfunction including intense parental conflict, intense parental grief, domestic violence, physical and sexual abuse, have at least one parent who is mentally ill or personality disordered and/or abusing substances.

It is in these infant and early childhood years that our sense of self and identity are formed, patterns and capacity to form constructive relationships in the future are shaped. These are, as the title of this conference suggests, the most crucial developmental years. Yet they are the least acknowledged and least attended to. I would in fact suggest that as a society we are numbed to the experience of infants. Why is that. We see them as cute and lovable, but in my experience we are shut down to the infant experience. We do not see them as 'real' until they are walking, talking, socialising. Is it their total vulnerability that is so threatening to us, their defencelessness in a society where we all must seem to be in control, 'on top' of things, or is it their total dependency that is so unnerving.

The issue of bonding, appropriate attachment and separation/individuation from the primary carer, is crucial to healthy 'self' and personality development, social competency and coping. Although bonding and attachment in psychotherapeutic study and thinking has been understood to be the cornerstone of personality development and identity, we are just now in society seriously considering the implications of the attachment process.

The ignorance demonstrated by society is reflected in parental lack of awareness and advice given by professionals at separation, with the result that the denial of the needs of young children in the family law arena is a significant problem.

## **PARENTS ROLES**

The Family Law Act proscribes equal rights of parents to their children under the law. This does not however, reflect infant experience or need, nor does it reflect child rearing practice.

### **The role of the primary carer**

Freud described 'The mother-infant relationship as 'unique without parallel established unalterably for a whole lifetime as the prototype of all love relations'.

It is interesting and disturbing how much this relationship, born of the fact that women are the vehicle through which the child achieves life, an undeniable reality determined by forces greater than human intent, is disputed in the legal process.

We know that not all mothers are 'adequate' mothers. Sometimes the primary parent is the father or grandmother or other, and sometimes both parents share primary caretaking responsibilities. However generally in our society, mothers continue in their primary caring role on the birth of their babies.

We also know at an instinctive level, as well as in psychological theory, that a healthy mother-child relationship, well supported by the father and society, is essential for healthy function throughout life.

### **The father's function**

Father's have many unique and important functions and paternal involvement in infancy is important. Father's play a fundamental socialising role in the development of their children and early father-child interactions form the basis of children being able to form healthy self-concepts as females and males in later life. Father's however should not be competing for primary attachment when the mother is available and adequate.

It is of concern that in the family law arena, one can be considered biased or anti-male, to assert the importance of the mother-child relationship at this age. When parents separate this issue of primary care becomes central to the legal dispute. It is not uncommon for men who have been working fulltime, even though the mother has been at home, to claim that they have been the primary carer.

Usually this is a reflection of the grief and fear of loss being experienced by the father at this time. However once claimed the issue needs to be tested in evidence and can distract from focus on the real needs of the child.

Combine the interactional and intrapsychic processes of parents in separation with legal premises that both parents have equal rights to parent their child under the law, and the increasing sense of entitlement engendered by men's lobby groups, which seems to have considerable support in society, the needs of the child can have little visibility indeed.

It is my thesis that the starting point in any forum, whether it be parental discussion, counselling, mediation or litigation, must be child need. At this stage adult focus, adult rights and adult pain, shape the decision around children and these are powerful forces as I will attempt to explain.

## **THE CHILDREN**

### **The First 3 Years**

The primary developmental task of infancy is to form strong attachment to enable the development of trust in oneself and the world. In the first three years of life the most fundamental developmental achievement is to establish an authentic sense of self as a person physically and psychologically separate from the mother or primary parent. (Johnston & Roseby 1997)

Healthy separation from the mother or mother figure must occur at a pace that is supportive of the child's developmental tasks in the context of safety and security, preferably supported by both parents.

### **The Importance of the Attachment Relationship**

Broadly attachments are seen as secure or insecure. Insecure attachment may serve as a significant risk factor in the development of psychopathology. Secure attachment in contrast, appears to support emotional resilience and greater resilience in brain chemistry. (Newman 2002)

Dyer (1995) reports that there is an enormous amount of evidence to demonstrate that the loss of a central parent figure produces substantial psychological harm. The harm is found in several areas of functioning, primarily in the subsequent capacity to regulate mood and anxiety, to serve adequately in the role of parent for the next generation, to form new attachments and to feel empathy. There is greater likelihood of delinquent behaviour and personality disorders manifesting.

Attachment relationships serve a vital function in providing the infant with protection from dangers of many kinds. The internal experience of an activated attachment system is often associated with the sensation of anxiety or fear and can be initiated by frightening experiences as well as the threat of separation from the attachment figure.

### **Infant development and Trauma**

'Psychic trauma occurs when a sudden intense external experience overwhelms the individual's coping and defensive operations, creating the feeling of utter helplessness' (Lenore Terr 1987)

Much of the infant and toddler experience among this clientele could be categorised as traumatic. Inappropriate separation of the infant from the primary parent, as is characterised by excessive contact regimes, is a traumatic experience. Being separated from the mother or mother figure is an overwhelming emotional and sensory event, which leaves the child with overwhelming feelings of helplessness, abandonment and loss.

Many of these children of the Court's population are also victims of physical, sexual and emotional abuse, emotional abuse through prolonged intense conflict, are secondary recipients of domestic violence (in utero or as a babe in arms), are victims of abduction and separation from the primary parent sometimes for months at a time, or loss of a parent through contact refusal caused by unresolved parental conflict.

The types of orders made by the Court include shared residence of breast feeding babies, arrangements where a toddler will spend every weekend from Friday morning to Monday morning with a parent who has had minimal involvement with them and who frequently has no prior parenting experience. Often this occurs in a context of violence, threat and intimidation. In fact the younger the child the longer and more frequent the separations from the primary parent. For this age group, the lawyers would seem to have picked up on the words 'frequent contact', but have left out the essential proviso 'for short periods'.

### **THE TASKS OF SEPARATION**

Parental coping is the key determining factor in child adjustment. However separation for parents is a shattering, dramatic and emotional time and it takes time to progress through it.

Separation is akin to bereavement and the 'Grief Model' is a helpful structure to provide parents with some understanding of what they are processing. The depth of feeling and reaction can be intense. Rage, jealousy, loss, abandonment, hopelessness and despair are usual and people can be 'stuck' in these emotional states for years. It is unrealistic to believe or expect that parents can maintain a healthy, child sensitive focus if they are locked in the extremes of such emotional reaction.

In their study of divorce, Johnston and Campbell (1998) identified external, interactional and intrapsychic factors, which create impasse for separating couples.

Their description of intrapsychic factors explain well the primitive and powerful vulnerabilities which distort parental focus and allow many to justify the most appalling behaviour and demands in relation to their children.

For some, maintaining the fight defends against the insult of narcissistic injury. They need to prove that they are the successful parent to defend against feelings of failure and rejection or restore battered and vulnerable self-esteem by demonstrating that other person is bad or wrong.

To defend against 'Loss' parents will continue the fight, will not agree with anything in relation to children, child support, property, as a way of hanging onto the relationship, or they may continue to hold unrealistic hopes of reconciliation and agree to arrangements that are not in their own or their children's best interests.

The need to ward off a sense of helplessness, to have a sense of power or control in a situation where they feel or fear they have none, to be the one to lay down the rules as a means of controlling the other parent results in petty disputes on the one hand, or violent intimidating behaviour and using litigation as a way of controlling the other parent. Many of these young and vulnerable parents have no resources, poor capacity for self advocacy, little comprehension of the legal process, have been victimised in their relationships and are re-victimised by the system.

Projecting unreasonableness and pathologising the other parent, to defend against guilt and to justify leaving, is a self-serving dynamic that can be very destructive in the legal process.

Separation loss is inevitably compounded by earlier traumatic loss in childhood. Other significant losses which heighten the intensity of the bereavement include miscarriage, abortion, death of a child, death of a parent.

### **Parenting Children in Separation**

Children are at psychological and emotional risk at the height of separation angst, which can continue for months and years. The capacity of both parents for responsible, informed co-operative parenting, is the exception rather than the norm in this population.

Assessment of parental capacity is essential in making determinations about children. Parents need to demonstrate maturity in a range of areas, to psychologically separate child needs from their adult needs, to provide financial support and greater emotional support to offset anxiety suffered by the child. Not all parents can or should try to be co-parents nor should all parents be encouraged to remain close to their children. In the real world some parents are detrimental to their children and contact may not be in the child's best interests. In other instances, occasional contact may prevent a child from idealising an inadequate parent. These are complicated matters and need to be assessed case by case.

### **FAMILY BREAKDOWN AND THE LAW**

Family breakdown is a social issue not a legal issue and lawyers in this jurisdiction face a dilemma. The adversarial process represents adult legal rights, yet the Court's mandate is to find 'in the best interests of the child'.

In my experience one cannot advocate for individual legal rights of the adult client and at the same time seek the truth of the situation in terms of the needs of the child. Seeking the truth of the matter is lost in the need to discredit witnesses or 'disallow' evidence in order to get the best outcome for the client.

The precept on which our legal system was developed, 'innocent until found guilty' does not allow for conservative child protective decisions before evidence is tested. For instance in a case involving a two year old whose mother was murdered. The baby was asleep in the house at the time of the assault. Initially she was placed, and spent some months with the maternal grandparents who had extensive support from the child's aunts and their families. The father was a suspect in the murder and was eventually charged. During this period he was successful in an application for residence and had the two year old returned to his care interstate.

The legal thinking was that the father's legal rights would be prejudiced, if the Court found against him on the basis of the untested charges. A year later he was tried and found guilty of the murder of his wife. The child had spent a year, at a crucial time in her development, in an unsupported environment with the man who had murdered her mother. A child protective decision would have left her with her maternal grandparents until after the murder trial.

In the practice of family law boundaries have become blurred. The Family Court and family law legal practitioners have developed a hybrid practice of law and social science, with the result there is some confusion about who are the experts. Legal and judicial thinking is frequently informed by the trend of the moment, however, lawyers are essentially arbiters of the law. They are paid to advocate for their client's legal rights, although advocating for client rights is all too often done in the 'name of the child'. The process is at least confused, certainly misleading and frequently dishonest.

As mirrored in society, there is systemic denial of realities of human interaction and family life. The adversarial process in fact would seem to act as an agent of suppression and denial. Recent studies of convictions for rape in the United Kingdom found that despite greater acknowledgement of the problem, higher rates of notification, improved police investigation techniques such as DNA, there are fewer convictions.

In the family law arena, the mythology would seem to carry more weight than empirical research. For instance sexual abuse allegations are almost universally treated as malicious and vindictive despite studies in Australia and the USA, which have found no difference in the substantiation of cases in the family law clientele compared to the broader community.

The legal process is vulnerable to manipulation. Many abusive parents use the legal process as a mechanism for control and intimidation. Desensitisation, denial, lack of understanding of abuse dynamics among evaluators, lawyers and judicial officers can frequently result in victims being re-victimised by the system.

Responsible decision-making around children in separation is a child development issue, not a gender issue. Opportunistic interpretation of developmental considerations to win the case is usual, though damaging for the children involved and set precedents in law, and in community thinking about child arrangements in separation.

## **CONCLUSION**

Discussion and thinking in the community would suggest dissociative attachment to fairy tale concepts about family life. We cannot as a society continue in our delusional comfort and subscribe to the 'happy families' mythology as a way of avoiding the harsh realities, with attendant responsibilities, of the lives of many children.

The challenge is how do we meet the needs of children in separating families on terms that are realistic and child responsive in an arena where adult battles are being fought. The facts are that when parents separate, in reality one parent loses their day to day involvement with the child, they are in effect relegated to visitor status. It is a source of profound loss and hard to mitigate against. This occurs at a point of greatest vulnerability, frequently not by choice, as usually one person initiates the separation, and in 70% of cases it is the woman.

The trend to use children to mitigate against adult parents' pain is unacceptable. A sound knowledge base on developmental considerations is prerequisite in making decisions about residence and contact. Confusion caused by competing interests of adult rights, lobby groups and the adversarial process need to be seen for their self-serving interests, if the Court and society not to be unwitting parties to child abusive practice.

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