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CHILD CUSTODY:
Ameliorating the Pain for Parents and Children
Au-Deane S. Cowley, Ph.D.

This article will address four questions with regard to the complex phenomena of child custody: (1) How are custody decisions determined? (2) How does a child custody conflict feel to parents and children? (3) What are some specific ways counselors can be supportive to parents and children affected by custody conflicts? The purpose of this article is to enhance the awareness of the procedures and dynamics related to child custody cases for Mormon counselors whose client's lives are touched by divorce and custody conflicts.

How are custody decisions determined?

Sometimes a parent relinquishes his/her rights to custody through desertion, abandonment, or through voluntary relinquishment in an agreement that the other parent can best serve the needs of the child. Often, however, a bitter and destructive marriage becomes a bitter and destructive custody conflict centered around who is going to "win" the children. For such parents the fact of their retaining custody vindicates their marital failure and proves to the world that they were in the right and their partner wrong. Sometimes the child custody issue becomes a vehicle used by one spouse to intimidate or manipulate the other. Under such circumstances, the lawyers, judges and social workers or other helping professionals that are involved in determining custody are faced with a conflict-ridden situation where "facts" may be distorted and much psychological damage has already been done. In such an atmosphere, how are custody decisions reached?

First, a judge makes an order for a child custody study to be done. Then, armed with the evaluator's findings and recommendations, the judge is faced with deciding which parent will become the custodial parent and which will be the visitor parent.

Historically, there have been various "doctrines" or predominate points of view to guide judges in making the difficult and complex decisions required in matters of child custody. These judges may or may not have the benefits of professionals from the helping professions in making these determinations. Many judges would not make such a decision without input from the social and behavioral sciences. Others feel confident in their own analysis and judgments and work independently or in contradistinction to recommendations from social workers, psychologists and psychiatrists. Occasionally, one may even encounter an "enlightened judge" who has a sound knowledge of the law combined with the hard-won psychoanalytic knowledge of child development (Goldstein, Freind, Solnet, 1973, XI).

The guiding doctrines most used by judges in making custody determinations are:

1. **Tender Years Doctrine**: This philosophical stance is related to the myth of maternal instinct and anachronistic legislation supporting a "natural presumption," which means that all things being equal, a child is better off with its mother in divorce or separation cases. No such presumption now exists in Utah laws, and a father's right to a child is considered equal to that of the mother. (From 1969 to 1972, of those fathers in Utah who asked for the custody of their children, more than fifty percent were awarded custody.)

2. **Fitness of Parent**: This doctrine takes a judgmental kind of stance that implies that one of the parents, as a person, is "fit" while the other (or both) is/are "unfit." This sense of unfitness is often predicated on assumed or documented "evidences" of a parent's moral flaws, "bad" habits, judgments or behaviors, or a lack of parenting skills or parental responsibility.

Divorcing parents sometimes believe they have "the goods" on their spouse because of evidences of "an affair," only to find that the judge does not ascribe to the fitness doctrine and is only concerned about whether discretion was used by the parent in such a relationship, and whether or not the child's welfare has been concretely affected in a negative way by that alleged relationship. Such an example illustrates the fact that this doctrine, though extant, is becoming less and less a determining factor in custody cases.

3. **The Best Interest of the Child**: This guideline has suffered from lack of specificity and has therefore resulted in the fact that despite good intentions to act "in the child's best interest—decisions based on this doctrine have not always benefitted the children involved. The lack of objective criteria for determining what is in the best interest of the child has resulted in this doctrine's being called to question in
the book, *Beyond the Best Interests of the Child*. In that book, the authors maintained that the better guideline would be “the least detrimental alternative for safeguarding the child’s growth and development.”

The least detrimental alternative, then, is that specific placement and procedure for placement which maximizes, in accord with the child’s sense of time and on the basis of short-term predictions given the limitations of knowledge, his or her opportunity for being wanted and for maintaining on a continuous basis a relationship with at least one adult who is or will become his psychological parent. (Goldstein, Freud, & Solnit, 1973, p. 53).

More and more this “psychological parent” figures prominently in custody determinations as evaluators are concerned for the psychological as well as physical well-being of the child. Evaluators must try to determine which of the available adults is the person who on a continuing, day-to-day basis, through interaction, companionship and shared experiences has developed a relationship of mutual attachment with the child (Goldstein, Freud, & Solnit, 1973, p. 19).

Clues to aid the evaluators in determining the psychological parent can be gained by asking the child such questions as: “If you had a difficult problem, who would you go to for help?” or “When you’re hurt or sick, who takes care of you?” or “If you wake up in the night with a bad dream, who would you want to comfort you?”

Both custody evaluators and judges need to be aware that sometimes children will manipulate so they will be placed with the parent they feel they can control of from whom they anticipate getting the most “rewards”. This may indicate that a child has not yet developed a relationship with either parent that connotes the kind of caring and generativity associated with the concept of a “psychological parent.” In the case wherein a child does have a psychological parent, however, being separated from him/her could be most detrimental.

**How does a child custody conflict feel to parents and children?**

The knowledge that a stranger in a black cloak, somewhere in a courtroom—just like on T.V.—is going to make a decision that will drastically affect the lives of all family members, is a scary thing for both parents and children. Sometimes parents become so anxious about this loss of control that they are able to overcome their disagreements and come to an agreement with regard to custody before the court rules for them—or against them as the case may be.) (When possible, counselors should encourage couples to resolve the custody issue before it goes to trial. In many instances after the study has been concluded, the judge and lawyers will discuss it together and reach an agreement to “settle out of court.” In those instances when custody matters do go to trial, parents and children alike experience the destructive influence of an adversary proceeding.

Child custody trials are ugly in every sense of the word. The testimonies of custody evaluators, friends, relatives, teachers, doctors, etc., are often preludes to examinations under oath of both parents and occasionally, even the children. The damage to relationships incurred in such a trial cannot even be estimated or fully comprehended.

For a child the word “custody” can be a fearful addition to their vocabulary. It is sad to observe the terrible anxiety experienced by children old enough to understand that their whole future is in the hands of a stranger somewhere who may elect not to place them with either parent. I want to point out that in the State of Utah, the child cannot choose which parent he or she wants to live with; the court sees this as too big a burden for any child. It is sad to see parents put pressure on their children to choose sides since this can only make them feel like the rope in a tug-of-war contest, torn apart and guilty regardless of which parent is “chosen.”

Sometimes children also are unhappy with the court’s decision because they would prefer to live with a parent they can manipulate, the one who gives them no structure or limits. One such child called me when I recommended the firmer parent, crying and asking, “Don’t you want me to be happy?” For obvious reasons children are not considered as competent to decide where their best long-term interests lie as are the judges and social workers who are more objective and more aware of all the issues involved. It is not unusual for children to have strong opinions about where they want to live based on parental promises they do not realize are unrealistic. I have had parents promise everything from a new pony to unlimited night-time television privileges to lure children into “picking” them.

For marriage counselors, trying to help couples solve these and many other problems that divorce creates for their children can be most distressing. Too
"She told me she was worried that the Easter Bunny would not know where to find her."

Often we see parents forcing their children into destructive roles such as spies, messengers, referees, protectors and even cupids. I remember the sad plight of an eight-year-old boy who felt it his sole responsibility to find a boyfriend for his mother. He also refused to take a summer vacation on his grandparents’ farm, stating that “my momma needs me.” This illustrates the sad fact that too many divorcing parents have an over-reliance on their children and use them as an emotional “security blanket.” Please advise your clients not to tell their children that they cannot live without them or that they are their only source of happiness. This is too heavy an emotional burden for children to carry. I remember the mother who told her five-year-old daughter that if the judge gave custody to daddy, she was going to go out in the backyard and “blow her brains out.” What an irresponsible way to worry a powerless child! Also, do not let your clients try to divide their children in two, emotionally if not literally, for believe me, there is no just no fair way to divide a child.

I guess one of the most famous custody cases in history is that recorded in I Kings 3:16-28, where two women, both claiming the same child, were brought before King Solomon for his judgment:

And the king said, Bring me a sword. And they brought a sword before the king. And the king said, Divide the living child in two, and give half to the one and half to the other. Then

spake the woman whose the living child was unto the king, for her bowels yearned upon her son, and she said, O my Lord, give her the living child, and in no wise slay it. But the other said, Let it be neither mine nor thine, but divide it. Then the king answered and said, Give her the living child, and in no wise slay it: she is the mother thereof. And all Israel heard of the judgment which the king had judged; and they feared the king: for they saw that the wisdom of God was in him, to do judgment.

There is no threat today to physically divide children in two, but split custody—where children live half of the time with the mother and half with the father—is still viewed as a situation that is not conducive to healthy child development. One little girl was spending two nights with her mother, three with her father and grandmother, and two with a paternal aunt who took her to swimming lessons. She told me she was worried that the Easter Bunny would not know where to find her. Most authorities agree that in order to be “whole,” the child should have his or her home with one parent or the other, and that times with the other parent should be in the nature of visits. It is too hard for most children to be emotionally divided between two homes. The home with custody has the ultimate authority in disciplining the child and when this concept is supported by both judges and parents, it helps prevent the child from using one parent against the other.

For the parent who loses custody of the child, the post-divorce period is doubly trying, for then he must learn the hard lesson from the movie Charlie that sometimes “truly loving is letting go.” For them, I would like to repeat a short story found in the Gesell Institute’s book on child behavior called “A Silent Lesson In Love.”

A mother was asked by her young daughter, “How do you hold on to someone you love?” The mother silently picked up two handfuls of sand. One hand squeezed hard and the sand escaped through her fingers; the tighter she squeezed, the more the sand disappeared. The other hand she kept open; the sand stayed. The young girl watched her mother in amazement and said quietly, “I see.”

As hard as adjusting to the loss of custody can be for parents, how does it feel to the child? It tears me apart to experience with children some of the
conflictive situations in which their parents place them. Perhaps one of the most explicit descriptions of custody from a child's point of view appeared in McCall's magazine in a short story by Laura Hobson entitled merely, "Custody." Dramatic as it sounds, my experience with children and divorce leads me to still view it as a good representation of that trying time. To really get into it, let's imagine that we are crouched in the hall with little Peggy and see how her parents' discussion of custody feels to her.

"But you wanted complete custody," he said angrily. "Nothing would satisfy you but cutting me out completely. Now...

"Now," she said, "I don't. I've had her for a year. Now you're going to take her and give me a chance. We're leaving next week."

"It's impossible, I tell you. Irene is too young to be saddled with an eight-year-old, and you're not going to wreck this marriage, too."

"Your child bride isn't going to wreck mine, either. Doug is not about to give up the biggest job he's ever had, and if you think we can cart her all over Europe and Asia with us...

"When is this job starting?"

"I told you. We're flying May 5."

There was silence, and behind the closed door, in the hall that led away from the living room, the child stared at the stripes of the wallpaper, counting from the first one outward until she got to ten. Ten was where the silver lines began to run together so you couldn't separate them any more. She wondered what they were doing in there now; she couldn't hear anything. That sour taste was in her throat again but if she had to run to the bathroom, she'd miss the rest of what Daddy and Mommy would say, so she swallowed faster (Hobson, 1970:88-89).

What are some specific ways counselors can be supportive to parents and children affected by custody conflicts?

Below are some specific suggestions that counselors can pass on to parents who are concerned with finding an answer to the question, "How can we help our children through the emotional turmoil of our divorce?"

First of all, I think it is most important for both parents to SPARE THE CHILD FROM AS MANY OF THE UNPLEASANT DETAILS OF THE DIVORCE AS POSSIBLE. Not everything has to be exposed. There is a real element of hostility involved in the parent that has to tell all the sordid facts of personal rejections and indiscretions to the children. A child continues to need two parents; and in most cases it is most important to preserve his emotional bond to each parent and thus prevent his feeling abandoned, ashamed or unloved. Children need to be defended from this basic fear of loss and thus should never be subjected to "reasons why" they should reject one of their parents.

Parents need to EXPLAIN TO THE CHILDREN WHAT IS HAPPENING. Parents should let the children know that their efforts to save their marriage have failed but that no matter what happens, they will take care of them. Nothing is more disturbing to a child than to know something is going on but to not know what. Thus, both parents, if possible, should make perfectly clear to the children involved just exactly what is being planned and what it will mean to them in terms of actual everyday living. These explanations should be geared in terms of the age of the child and his ability to understand. Children are interested in all kinds of practical matters like, "Will I still get an allowance?" For younger children parents may need to "play act," that is, tell stories or otherwise prepare them for any changes of routine or to explain how
visits work, etc. Since one of the greatest fears a child has is that of being unloved and abandoned by his parents, parents should be sure that a child is never threatened, either in jest or in anger, with abandonment, as did one mother who told her daughter, "I'm going to pack you up and give you to welfare." This was truly cruel and inexcusable behavior, particularly since the daughter had witnessed daddy packed up and sent away. Such a threat then seemed very realistic and possible.

In explaining financial facts of divorce, SPARE ANY REFERENCES THAT ARE INTENDED TO MAKE A CHILD FEEL OBLIGATED TO ONE PARENT OR WORRIED ABOUT THE FINANCIAL ASPECTS OF THE DIVORCE. Parents should avoid comments like, "Poor me, no house, no car, I have to leave everything behind. What am I going to do?"

DESTRUCTIVE ARGUING SHOULD NOT BE DONE IN FRONT OF THE CHILDREN. Children in divorce are under enough tensions without having to witness fights between their parents. Misunderstandings and problems do have to be worked out. The important question is, how? Parents' constructive settling of differences is a good model for children in view of the reality of interpersonal relationships, that sometimes people who care about each other fight—and make up—and still love each other. Destructive arguments between parents, however, are doubly anxiety-provoking for children because their total source of security is at stake. Parents are security. If parents desire to win a specific victory, regardless of the effects it could have upon the children, they could very well win the battle with each other but lose the war in terms of their children. I wish parents could have the dubious opportunity I have often had of hearing how their arguments sound to children. If they could listen to a taped interview of their children telling what they heard in arguments at home it might make a difference. I had one case where the child heard the mother call the father "a philandering drunk"; the father in the same case called the child "a little punk" in the midst of the battle. This child also heard his mother threaten "to kill" his father. Obviously, such experiences are unpleasant and horrifying for children. Sometimes the destructive name-calling continues after divorce. It really is a poor commentary on adults when children come home from visits with questions like, "Mommy, daddy said you're a two-bit whore; what's that?"

Besides the obvious ill effects of tearing down one of the child's parents, this kind of interaction also runs the risk of creating a CREDIBILITY GAP between parent and the child. A child's experience with a parent is different than the spouse's. An abusive, wife-beating man in relating to his wife may be sentimentally attached to a child and be very good to him. Conversely, a devious, demanding or manipulative woman in a marital relationship may nonetheless be very nurturing in relating to her children. Where children have had a different experience with a parent than the parents have had with each other, any and all attempts to deny the child's reality will not only fail but will cause them to doubt the word of judgment of the complaining, downgrading parent.

THE CHILD'S ROUTINE SHOULD BE MAINTAINED AS MUCH AS POSSIBLE. Such things as regular meals and living in the same neighborhood can really be a big source of security to help the children through this troubled period of social transition. Particular attention should be paid to bedtime. Some undisturbed time alone with mommy and daddy just before sleep can do a lot to make a child feel more comfortable and secure amid change.

HEALTHY VISITATION PRIVILEGES SHOULD BE MAINTAINED. I want to stress that in most cases, children have the right and the desire to have a relationship with both of their natural parents. When such visitation has been set up by the courts, the parents owe it to the children to make these visits as pleasant and happy as possible. I cannot stress too much the importance of having the children ready for the visit both emotionally and psychologically. I know one mother who handled this beautifully by rehearsing on the calendar with her children the days of the week with Saturday marked with stars as "Daddy's Day." Compare that to the mother who used to send her boy off with all kinds of tears and admonitions to call her on the phone from wherever he was going and greeted him on return from a two-hour visit as though it had been a year, saying, "Oh, I'm so glad you're back. I've missed you so! I was so worried, etc., etc."

PARENTS SHOULD NOT TRY TO GET THE CHILDREN TO TAKE SIDES BY OFFERING REWARDS. This makes the child naturally vacillate from one parent to the other. If they are used in such competitive exploitation, they may grow up saying "no" to any closeness. This bribing of children makes them feel guilty, disloyal and frightened. It also
encourages children to lose respect for their parents and to try to use them. In any situation, whenever one tries to buy good will or love, the price goes up like that of any other commodity, and this often leads to blackmail. One little boy had a good thing going with his mother. He told me, “I get what I want by keeping mother thinking I’ll be bad. Of course, I have to be bad often enough to convince her she is not paying me for nothing.”

In their book *Parents on the Run* (1967), the Beechers illustrate how children can manipulate their parents, especially if the parents are feeling guilty, through the principle of “divide and conquer.” The chapter entitled, “There Are Little Terrorists in Our Midst,” reminds us that “no actor puts on a play when the audience has left.” When parents ignore the bad behavior of children and reward the good, the good gradually increases.

CRITICISM OF THE ABSENT SPOUSE SHOULD BE AVOIDED. Divorced parents must continue to be parents although they are no longer husband and wife. It is not an easy arrangement, since it often requires cooperation and a certain amount of friendliness when they do not feel like being nice to each other. But what is the alternative? Whenever a parent tears down or berites another source of authority over his children, he should remember that once a child begins to doubt or lose respect for another authority or the other parent, it is not long before he loses respect for all authority and both parents. Attacks by one parent on the other also undermine the child’s good feelings about himself, out of which grows his capacity to love others. After all, his parents are part of him and if they are bad, he is somehow at least partly bad, too.

Sometimes a parent is left with the reality of explaining to a child the other parent’s thoughtless, immature or perhaps even criminal behavior. With all such problems the child benefits from an honest, valid explanation, tempered if possible by adjectives like confused, troubled, and so forth.

PARENTS SHOULD AVOID PROJECTION. Be particularly aware, if your client has really bitter feelings toward an “ex,” that they do not let them spill over onto his children. Whenever I see a family where one of the children gets more than his share of grief from a parent, the first question I ask that parent is, “Who in the family is this child most like?” And when the answer is, “He’s just like his dad—walks like him, talks like him . . . ” then I know that parent is probably placing the hostility that should go to the father onto a more helpless victim: the child.

In summary, remember to caution clients that it is not always just a matter of what is said to a child about an upcoming divorce, since how it is said is also vastly important. Whatever is said when a child is told of a coming divorce should be said by parents in a reasonably calm and accepting manner. If a child feels that this is something that the parents themselves have accepted and adjusted to, there is a better chance that he or she may be able to accept and adapt to it also.

“Divorced parents must continue to be parents although they are no longer husband and wife.”

Of course, these few suggestions do not exhaust the possible areas that need special attention where children and divorce are considered. But if parents could handle these areas, they would have far fewer divorce-related problems with their children to add to the many problems they will need to cope with in the post-divorce period. (Cowley, 1975, pp. 37-48).

A counselor can provide a valuable service by helping the child directly—and providing an opportunity for the child to ventilate the anger they are uncomfortable in acknowledging with parents. Also, she can make sure the children understand that the Judge decides who will get custody and that their parents know this. Counselors should also help children to accept the fact that the divorce is not their fault—that it’s a problem between their parents. It is also important to help children to ventilate their fears about the process of divorce and custody and “rehearse” or role play with them so they can prepare to cope with the situations around meeting with custody evaluators, coping with the curiosity and questioning of friends, what it’s like to talk to a judge (or go to a trial if such occurs), and how “visitation” works. If very young children are involved, it is helpful if counselors use family dolls to enact the various aspects of custody and visitation with them. One common problem with which children of divorce need help is in learning how to deal with the stress generated when their parents have conflicting expectancies (Folkman, 1956, p. 106.) Counselors will also need to facilitate the child in giving up the wish to get his/her parents back together again. The grief reaction around giving up this fantasy may need to be worked through the five phases of “loss” as developed by Kubler-Ross: (1) denial; (2) anger; (3) bargaining, (4) depression, and (5) acceptance (Hozman, 1976, pp. 272-275).

When working with the parent’s pain it is a good
3. With or without divorce, the process of growing up is often stormy. (Counsel clients to beware of blaming the divorce for these "normal" growing pains.)

4. A two-parent home is not the only emotional structure within which a child can be happy and healthy. (Only 7% of the nation's families are constituted as a "normal" family of a mother and father and two kids. Mace Workshops, University of Utah, March, 1977).

5. The parents who take care of themselves will be best able to take care of their children. Parents who have lived through a creative divorce realize that sacrificing personal growth "for the sake of the children" places an intolerable burden of guilt on their offspring which inhibits the happiness of all concerned (Krantzler, 1974, pp. 194-199).

In summary:

In a country where 1,000,000 people divorced in 1975 and the lives of one and a quarter million children were thereby affected one can anticipate that the numbers of child custody conflicts will continue to "explode" along with the divorce explosion. In Utah where there were 13,000 divorces in 1975 (a 76% increase in the last ten years) counselors can anticipate being called upon to provide services to support families through the trauma of divorce, which is considered to be second only to death in terms of stress placed on individuals and family systems. When one adds to that divorce trauma a custody conflict it is easy to understand why such domestic cases are low on the preference lists of judges and lawyers, and why they are so demanding of counselors.

Providing the necessary remedial and preventive support to parents and children during divorce and/or custody crises when families are confronted with situations wherein divorce is the best solution is but one link in the total chain of services families must have if they are to reach their potential as fully functioning, nurturing systems. The other links of the chain of necessary family services span the continuum of the relationship from premarital education and counseling to marital support and enrichment across the predictable crises of "normal" family living.

It takes a certain dedication and expertise to provide divorce and custody related services, but such work can be very rewarding not only in terms of anticipating and guarding against possible visitation problems but also prevention of the psychological pain that occurs when divorce related emotions are not tactic to reassure them that just because two people have had a failure in a marital relationship does not mean that they have failed as persons or need to fail as parents. Divorce does not have to produce disturbed children, although parents often blame "normal" developmental problems conveniently on a divorce. To produce healthy children despite divorce, parents have to be able to cooperate—not in a forced hypocritical friendliness that is confusing to all—but in a businesslike manner. Parents then can consider themselves as being involved in a "helping relationship" together, for the benefit of their children, with the children's needs taking precedence over their own needs and feelings.

Some of the most frequent and disturbing feelings couples have around divorce and child custody have to do with their concerns about what effect the whole experience will have upon their children. Some of the questions which haunt them are frequently like these:

"How will our marital failure affect our children;"

"Will they be more prone to delinquency because of the divorce?"

"Does the trauma of divorce produce lasting emotional scars in children or lead to mental illness?"

"Can I handle it when my children have a continued relationship with my 'ex'?—or with a new stepfather or stepmother?"

"Will the children blame us some day for breaking up the family?"

"Will our divorce make our children less capable of achieving a happy marriage of their own?"

"Can they ever forgive me for leaving their mother/father?"

Mel Krantzler in his book, *Creative Divorce*, has listed five cogent research-backed reassurances to aid parents in dealing with their child-related guilt:

1. Children are resilient—short of actual neglect and physical abuse, they can survive any family crisis without permanent damage—and grow as human beings in the process—if they can sense some continuity and loving involvement on the part of their parents.

2. The impact of divorce on children is far less severe than the consequences of remaining in an unbroken but troubled home.
constructively resolved (Messinger, 1976, p. 193). Helping couples to divorce as constructively as possible is the best preparation for remarriage that there is.

LDS families will not be immune to this social disease of divorce, and Mormon counselors will need to develop expertise in handling these complex cases. One important skill that must also be mastered is the skill of referral if the trauma in the family is such that the full range of professional team services is indicated. For example, a grief and mourning period is to be expected, but if a depression becomes chronic, medication may be required and referral to a mental health clinic or a qualified private practitioner a must. Also, the services of school social workers should be enlisted as support systems for children.

The important question with regard to the ultimate health or pathology of the family system is not "to divorce or not to divorce?"—but "how?"

REFERENCES


