

DYNAMICS, NOT DIAGNOSES

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I am grateful for the opportunity to contribute to this compilation of insightful articles and, in particular, for the opportunity to respond to the critical commentary on rhetoric and alienation by Milchman et al. (2020). I write as much to complement those authors on their incisive perspective, as to suggest that we may all be asking the wrong questions.

Milchman et al., renew the call for objective, scientifically sound research informing the constructs and methods that underlie child custody evaluations (“CCEs”). They correctly disparage rhetoric in favor of empiricism. They demand that balance replace advocacy, and they caution professionals and courts not to be misled by emotionally compelling, but logically flawed and statistically weak arguments. These observations are as important today as they were when they were first formulated by Aristotle (Cooper, 1993) and codified under Frye (1923), Daubert (1993) and Mohan (1994).

Milchman et al., are furthermore correct to remind us of one of the central tenets of cognitive behavioral therapy and cognitive science more generally, that is, that words reify experience (Boroditsky, 2011). Thus, the labels that we use carry meanings that often communicate more than what may be intended. This is why many jurisdictions have replaced emotionally-loaded language, such as “custody” and “visitation,” with more descriptive and objective concepts, such as “decision-making responsibility” and “parenting time.” Indeed, my other article in this volume (Garber, 2020) advocates for just such an objective, balanced, and behavior-based approach to resist-refuse dynamics.

For all of the wisdom in these words, I fear that we are, nonetheless, asking the wrong questions. Careful attention to our choice of words, to the capitalization of labels, to the empirical credentials and consensual acceptance of those labels is necessary, but not sufficient. I fear that we are trying to tape and glue together a workable structure on an essentially flawed foundation. That foundation is the medical model of individual illness, diagnosis, and intervention that psychology inherited from its physician parents, disseminated more or less effectively among its allied mental health siblings, and has since brought to bear on our efforts to assess and intervene with high conflict, court-involved families.

It is the medical model that prompts us to even consider whether “alienation” should be codified as a “syndrome,” a “disorder,” or a lower-case description of behaviors. It is the medical model that prompts us to try to impute family law meaning to clinically designed methods. It is the medical model that prompts so many custody evaluators, attorneys, and courts to incorrectly believe that an assessment of mother, father, and child is the same as an assessment of the system that they make together. Thirty-plus years in the trenches have slowly and painfully worn away my training as a clinician and diagnostician. Trial by fire has allowed me to finally understand that family law questions are about relationships, not individuals. The work that we do is about dynamics, not diagnoses.

There is no Diagnostic and Statistical Manual (“DSM”) of relationships. The DSM and the ICD are catalogs of individual pathologies. Applying those nosologies to family law matters is a bit like trying to measure time with a tape measure. This is at the core of my argument against the use of standardized adult psychometric instruments in the context of CCEs (Garber & Simon, 2018; cf.,

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Rappaport, Gould, & Dale, 2018). The leap from diagnosis to dynamic — from mom’s or dad’s testing results to inferences about parenting and how best to serve Billy’s and Sally’s unique needs — is entirely untenable.

I believe that our shared focus as professionals concerned with family dispute resolution must be on the development of a vocabulary that reliably and validly describes family system dynamics. Milchman et al.’s point about discriminant validity is just the beginning. We need to build tools that reliably assess dynamics and develop corresponding, evidence-based, child-centered family system interventions.

Attachment theory (Ainsworth, Blehar, Waters, & Wall, 1978; Bowlby, 1969) presents a model we might emulate. Many of attachment theory’s associated measures are empirically sound and demonstrably reliable with not only excellent discriminant validity, but also impressive predictive validity (Sroufe, Egeland, Carlson, & Collins, 2005). Although the specific tools and methods developed for use in attachment studies may not yet be ready to be deployed for forensic application (Garber, 2009; cf., Main, Hesse, & Hesse, 2011), they do offer the family law community an alternative to the individual-focused, diagnosis-driven model that currently constrains us. This idea has motivated much of my writing and thinking (e.g., Garber, 2004, 2012), in particular, my recommendation that custody evaluators adopt a process oriented observational protocol as part of every CCE (Garber, 2016).

Why is Billy resisting or refusing contact with Dad? In the conventional paradigm, we might talk about mom’s personality disorder, dad’s history of intimate partner violence, and Billy’s Attention Deficit Hyperactivity Disorder (“ADHD”). We are likely then to collapse these individual descriptors into ill-defined, subjective, and pejorative labels like “enmeshment,” “alienation,” and/or “estrangement.” However, by doing so, we must admit that the whole is inevitably greater than the sum of its parts. I hope to see the day when we have the tools to capture that complexity objectively and recommend corresponding, reliable child-centered remedies.

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