

PARENTAL ALIENATION SYNDROME: A PARADIGM FOR CHILD ABUSE IN AUSTRALIAN FAMILY LAW

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This paper argues that the absence of a publicly funded investigative capacity in the Family Court of Australia when there are allegations of child abuse by a parent, creates the conditions for the de facto operating presumption of the Parental Alienation Syndrome paradigm in the courts. This paradigm, at its simplest, insists that claims of serious child abuse are invented and that children's statements and manifestations of fear are the outcome of parental coaching. Without a publicly funded professional child protection investigative service available to inform the family court, the private adversarial system of family law commonly fails to substantiate allegations of child abuse, thereby systematically producing the outcome that child abuse allegations will be deemed to be false. Safety for children in family law proceedings who are subject to abuse depends on access to a professional investigative service to inform the court, and a redefinition of a child's best interests in the Family Law Act to give safety the highest value.

Introduction

I want to begin by drawing attention to the public acknowledgement at the highest levels of Family Law reform and administration in Australia of a continuing systemic failure to protect children from serious abuse. Both the Family Law Council (2002) report titled 'Family Law and Child Protection' and the Family Court's Magellan Project (Brown *et al.* 1999, 2001) have recognised that children who are subject to serious abuse are not protected from continuing abuse in the current Family Court system.

Research into the impact of the 1996 family law changes has persistently identified that the child's 'right to contact' with both parents has come to over-ride children's right to safety from abuse in Family Law services and judicial decision-making. Under the 1996 changes, interim orders for no contact have declined sharply and evidence is emerging across Australia that children are not being protected from serious abuse (Dewar and Parker 1999; Rendell *et al.* 2000; Rhoades *et al.* 1999, 2001). Interim orders are made without reference to histories of domestic violence and allegations of abuse, which are treated as untested and therefore unreliable (Altobelli 2001). The trivialisation, disbelief and dismissal of child abuse allegations is underpinned by a presumptive paradigm that allegations of child abuse in divorce proceedings are the product of vengeful and vindictive mothers.

In cases involving allegations of child abuse a Children's Representative is assigned the case, with the primary role of commissioning a Family Report with recommendations to the court for final orders. These reports are commonly based on an interview with each parent and the child, by either a Family Court counsellor or a private firm recruited by the Children's Representative. These reports are of variable quality, often containing factual errors, unfounded speculations and false assumptions. Many protective parents say they have been told by Report writers that their role is to make contact occur, rather than ensuring the child is not at risk of harm. Evidence from police, doctors, child protection services, schools, childcare or social workers is not sought or considered by report writers, and when it is available and offered it is routinely excluded.

One example involved a mother and a three year old whose father had sexually abused her. The child's father was already under investigation by Police for sexually abusing a six year old girl but no prosecution had ensued because the child was too young to testify and the child's mother had suffered a mental breakdown following the abuse of her child and was not able to give evidence. Police offered to make available to the child's representative and Family Report writer the evidence gathered in their investigation of the sexual assaults on the two infants but the offer was refused. Unsupervised contact with the child is now proceeding, despite reports to the court from contact supervisors that the father had been observed to have an erection while spending time with the three year old. Professionals who have worked with abused children are excluded from informing the court process and court orders often constrain protective parents from seeking any therapeutic help for their children.

The Family Law Act also requires that disclosures of abuse be reported to state child protection authorities. The state services are however under serious pressure to respond to ever-increasing demand. Referrals from the Family Court take their place in the state's prioritising system which requires a risk of immediate harm to trigger an investigation (Hume 1996; Brown et al 1998). When the child is in the care of a non-abusing parent it does not meet this threshold test for a service and the summary report to the Family Court will show that the abuse is not substantiated without necessarily even specifying that nobody had ever interviewed the child or parent. A compounding factor is the limit on legal aid funding leaving many protective parents without a legal representative whilst seeking to protect their children and themselves from continuing abuse.

In the private adversarial legal system of the Family Court, the fact that the state child protection service has not substantiated the allegations of abuse, is translated into an apparent false allegation, which is explained by paradigms such as Parental Alienation Syndrome – invented by American psychologist Richard Gardner (1992).

I therefore argue in this paper that the system failure to protect children continually reinscribes the myth that child abuse allegations in the context of divorce are usually false (Brown et al 2001a).

The presumption that allegations of paternal child abuse in the context of family law proceedings are false products of a vindictive and vengeful mother is an approach which is common to followers of Parental Alienation Syndrome and fathers' rights groups. The absence of a specialist public professional child abuse investigative service for the Family Court means that allegations are normally doomed to be defined as unsubstantiated. With no way to prove them true, allegations of abuse are routinely argued to be false. This in turn reinscribes the PAS paradigm in the lived experiences of family law officers and ancillary service providers such as legal aid officers, counsellors, mediators and lawyers. The popularity of the PAS paradigm survives extensive empirical research findings showing that false allegations of child abuse are very much the exception rather than the rule (Brown et al 2001a; Humphreys 1999; McDonald 1998; Parkinson 1990, 1990a, 1998).

I want to make a distinction in this paper between some practices of 'parental alienation' and the content of the Parental Alienation Syndrome paradigm. Generally the term 'parental alienation' in the context of parental separation has come to refer to practices by a separated parent of disrupting and denigrating a child's relationship with their other parent to give expression to their own hostility towards the other parent. Such behaviours may include:

- denigrating the other parent in front of the child,
- condemning aspects of the child's appearance or conduct as being just like the other parent,
- expressing anger if the child speaks positively about the other parent
- preventing communication between the child and the other parent

These behaviours express adult-centred emotions with harmful effects for the children who are prevented from enjoying a relationship with their other parent without pressure and interference (Lodge 1998). Despite the 'alienating parent's reactions, many children maintain positive feelings for their other parent and may even resent the hostility of the alienating parent, specifically when they have not been exposed to any violence or abuse. In contrast, expressions of fear, disclosures of abuse, emphatic rejection of the abusing parent and a strong connection with the protective parent are consistent with exposure to abuse. Yet these are the main symptoms given for the PAS paradigm.

Parental Alienation Syndrome differs from the concept of 'parental alienation' by rescripting children's disclosures of abuse by a parent as false accusations coached by other parent. That is, PAS begins from the premise that children who allege serious abuse by a parent are lying and that they are made to lie by an apparently protective parent. PAS thus offers violent controlling ex-partners a pseudo-scientific set of 'symptoms' to deny allegations of child abuse and pathologize the alleging child and protective parent.

The outcomes of PAS assist child abuse. Indeed Gardner has published statements sympathetic to child sex abuse as a social practice. In 1992, in his book, *True and False Accusations of Child Sex Abuse*, Gardner argued that **pedophilia -- adults having sexual relations with children -- "is a widespread and accepted practice among literally billions of people."** While he states that sexual activity with children is "reprehensible" and exploitative, he noted in another book, *Sex Abuse Hysteria: Salem Witch Trials Revisited*, "What I am against is the excessively moralistic and punitive reaction that many members of our society have toward pedophiles ... (going) far beyond what I consider to be the gravity of the crime."

The impulse to normalise and support the activities of participants in child sex abuse is an integral component of the paradigm Gardner has created. PAS relies on denying the capacity of children to recognise and articulate their experiences and further denies the child's right to safety, whilst privileging the rights of the accused parent to enforce a relationship with the child. PAS is a winner with violent parents because (a) it enables the abuser to occupy the role of victim and (b) assists and legitimises their continuing access for abuse.

Gardner provides the following list of 'symptoms' of PAS:

- *The Campaign of Denigration*: the child has a campaign against the target parent
- *Weak, Frivolous, or Absurd Rationalizations for the Depreciation*: the problems the child quotes are absurd or inappropriate for the reaction, eg. target parent chews too loudly, target parent is the devil's spawn
- *Lack of Ambivalence*: no half-way mark to the animosity -- it is simply full bore
- *The "Independent-Thinker" Phenomenon*: the child feels that all this thought and emotion is their own idea and that no-one else had anything to do with their thoughts
- *Reflexive Support of the Alienating Parent in the Parental Conflict*: the alienating parent can do no wrong, and there is never a need to question that
- *Absence of Guilt Over Cruelty to and/or Exploitation of the Alienated Parent*: no feeling that abusing the target parent has any sort of wrongness to it
- *Presence of Borrowed Scenarios*: use of what are obviously other people's memories in creating the hateful thoughts, e.g. quoting instances that before the child was born or was very young, that the child never saw, or that never happened
- *Spread of the Animosity to the Extended Family and Friends of the Alienated Parent*: involvement of all of the target parent's family (Gardner 1998).

Children's complaints of harm by a parent are, within the logic of PAS, proof that the child is subject to PAS by the other parent. Gardner's recommended cures include a regime of fines and imprisonment for the 'recalcitrant' parent, as he calls mothers, through to removing the child and making it live with the parent the child states has harmed him/her, without contact with the protective parent.

In Australia, mothers who defy court orders to expose their children to further abuse by their father face escalating consequences of education courses, fines, imprisonment and reversal of custody, with restricted and supervised contact. The regime which has been operating in Australian courts mirrors Gardner's recommendations (Family Law Council 1998).

Paradoxically, the system failure to properly protect children from parental violence creates the circumstances where mothers have increasingly fled in preference to handing their children over for abuse during contact. This in turn is used to justify a reversal of custody. In one case a three year old child was taken from her mother – the only parent she had ever lived with, and who had successfully raised two other children from a previous relationship – and ordered by the court to live with her father who suffers from AIDS and has a long criminal record including sex offences. The mother was placed on supervised restricted contact for three days a month. This regime has remained unchanged for four years, despite the mother's attempts to increase time spent with her daughter and many reports by teachers and others to state child protection services based on the child's disclosures of abuse. At Easter this child, now aged 7, held her mother and the supervisor of contact at bay with a knife and begged her mother to kill her rather than take her back to her father. This father has accused the mother of Parental Alienation Syndrome. This outcome is a consequence of the mother running away with the child in preference to presenting her for contact with a person who the mother saw as dangerous to the child. Such outcomes reinforce the court's power to impose its decisions, and to punish those who disobey.

The court's emphasis on punishing mothers who flee with their children in preference to repeatedly exposing them to abuse replaces the paramountcy principle of the 'best interests of the child'. The rationale which justifies removing young children from the care of the only parent they have ever lived with and forcing them to reside with the parent they allege has abused them is the paradigm of Parental Alienation Syndrome. Without the circular incoherent logic of PAS that parents who allege abuse are abusers, the court's decisions to reverse residence cannot be made consistent with any notion of the child's best interests.

The Australian Family Court Magellan project (Brown *et al.* 1998, 2001) identified that child abuse issues in the Family Court were rarely without foundation, were often serious and complex and that many cases had not been investigated by the state child protection services. The Magellan project had three elements. The court dedicated specialist personnel who conducted cases according to a strict timeline. All parties in selected cases were provided with uncapped legal aid, and police and state child protection services worked in partnership and with specialist training in provide information to meet the Family Court's needs. State child protection services normally work to the Youth Court of the Children's Court and are oriented primarily towards short term interventions and family reunification. The Family Court is oriented to the long-term and must take into account the likely future needs of the child.

The Family Law Council last year recognised the serious current problems for children experiencing abuse in its call for the establishment of a National Child Protection Unit to investigate child abuse allegations in Family Court proceedings (Family Law Council 2002). The Family Law Council recommendations also called for greater co-operation between state and federal services around child protection issues and the establishment of a one-court principle such that proceedings involving child contact and residence and abuse issues would deal with all matters in whichever court was deemed most suitable to handle the matter.

Even if a professional accessible service to investigate child abuse allegations in the Family Court is established the court has considerable discretion over how such findings will be handled. The presiding judge may reject evidence and recommendations presented by the parents or the Children's Representative. Section 68F of the Family Law Act provides a list of factors which the

court must consider, but it does not give any one factor weighting ahead of another. The Family Law Reform Act 1996 emphasis on a child's right to continuing contact with both parents has been noted by family court researchers (Dewar and Parker 1999; Rhoades et al 1999, 2001) as having created a 'pro-contact' culture in the courts. The privileging of a child's right to contact with both parents over other factors such as protecting the child from exposure to violence means that better evidence will not necessarily produce better decisions for children's safety. This would require legislative change to the Family Law Act to require judges to make decisions privileging the child's safety ahead of all other considerations.

Such provisions have been successfully enacted in New Zealand following a case where a father had been awarded custody of his three children because the wife persistently alleged abuse. The father subsequently killed the three pre-schoolers – an event which a subsequent inquiry found could not have been predicted because no-one but the wife had ever alleged he was violent. Most children who are subject to abuse are not killed, however it is worth noting that the context of family separation is the most common scenario of child homicide in Australia, accounting for 35 percent of child killings (Strang 1996). The deaths of the three Bristol children led to amendments to the NZ Guardianship Act.

Section 16 (b) subsection 4 of the Guardianship Act provides for a rebuttable presumption of custody or unsupervised contact where a party to proceedings has been violent to a child or adult party to proceedings. If an allegation of violence is raised the court must first establish whether such allegations can be proved on the balance of probabilities. The definition of violence includes physical, sexual and psychological violence. A single act of abuse may establish violence, as can a pattern of conduct of events. Section 16 (b) 5 lists statutory criteria which judges must consider to determine a child's safety. These factors make risk assessment the central focus in children's matters where violence has been established as an issue (Busch 2002). The factors considered include the nature and seriousness of the violence, the history and frequency of violence, the harm to the child, the views of the child and the other parent and any steps the violent parent has taken to reduce the risk of future violence.

Legislative reform to the Family Law Act to privilege children's safety alongside the establishment of a national child protection service are two necessary steps in improving outcomes for children from separated families with histories of domestic violence and child abuse. Without an effective system to provide evidence on allegations of abuse and without a primary valuing of children's safety, the paradigm of PAS will continue to provide a justification framework for court-mandated child abuse.

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