

A Guide to Divorce and Child Custody

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Much has been written recently in both the popular and scholarly press about the social "problem" of divorce within American society, with some media outlets sensationalizing recent small reductions in reported divorce rates as a sign that our culture is returning to a more conservative view of the family (e.g., Fox News, 2007). Nevertheless, recent national statistics still show that for every 10 marriages recorded, there are about 5 divorces or annulments recorded across the United States (Munson & Sutton, 2006), resulting in estimates that each American heterosexual marriage has about a 50% chance of dissolving at some point in time. Thus, divorce still remains a common occurrence within our culture.

When divorcing adults without children come to an agreed-upon solution for dividing assets, they do not usually appear before family courts, but instead limit themselves to real estate or financial specialists, as well as lawyers, in order to draw up legal documents for the division of property and post them with the court. When they cannot come to an agreement, they will then often access the family court system, entering squarely into a highly adversarial interaction pattern. In divorcing couples with children, once again the ability of the adults to reach an agreement with little or no outside help keeps all involved, including children, out of an adversarial system. Unfortunately, it is precisely those divorcing parents who cannot reach an agreement who are seen in court, and custody arrangements are then largely determined by others. Thus, divorcing parents dealing with the least conflict tend not to appear before family courts, while those with the most conflict will. Sources of such conflict can include adultery, intimate partner violence and abuse, financial mismanagement, and substance abuse or other mental health problems, to name just a few.

With divorcing parents, such conflict often involves children and may include using the children as a negotiating tactic, as well as previous or ongoing abuse issues such as the child witnessing violence between parents or the direct presence of physical and/or sexual abuse of the child. Unfortunately, all too often the best interests of the children are lost in the shuffle within such an adversarial situation. This is a sad state of affairs and is the main reason for the present contribution, because unresolved parental conflicts during divorce often play out within therapy milieus where clinicians are involved. Indeed, given the high rate of divorce within North American culture, and that many clients presenting for mental health treatment are dealing with relationship problems, clinicians should expect to deal with client-related divorce and/or custody issues at some point in their careers. Thus, clinicians in general should educate themselves about the processes and issues relevant to divorce and child custody.

Furthermore, over time, changes in both the availability and perceptions of divorce have significantly altered the position of family courts regarding divorce and child custody. Not long ago, courts tended to provide rulings with consistency and no expectation of challenge.

Currently, however, it is difficult to predict what to expect from court rulings (Ellis, 2000). In the interest of promoting optimal freedom for parents to decide what is right for themselves and for their children, we have collectively and unwittingly opened a Pandora's Box of seemingly unending litigation of historic proportions within United States courts (Bryan, 2006; Ellis, 2000). This situation has seriously raised the bar for clinicians involved in such clinical cases. In order to work effectively with clients involved in divorce and/or custody proceedings, clinicians must possess "... a particular kind of intellectual slant, a tolerance for hostility, and a willingness to allow for ambiguity and uncertainty in the process of pursuing understanding..." (Schaul, 2005, p. 43).

There are very few actual training programs available for learning the necessary skills for providing effective and ethical interventions for clients involved in divorce or child custody disputes, and those that are available mostly take the form of conferences, workshops, and symposia (Schaul, 2005). Although the need for training may seem obvious, it is surprising how frequently some clinicians assume that they can intervene with clients "as usual" without fully understanding the professional issues involved in this work (Greenburg & Shuman, 1997, as cited in Wulach & Shapiro, 2005; Schaul, 2005; Simons & Meyer, 1986). Failure to recognize that this area of practice is both complex and unique could result in significant harm to those involved in the dispute, as well as the mental health professionals who intend to assist and serve (Ellis, 2000; Schaul, 2005).

The purpose of the present contribution is three-fold. First, clinicians should understand how the concepts of marriage, divorce, and child custody have changed over time in order to grasp both the moral underpinnings and fluidity of present-day norms. Hence, the next section consists of a short historical review of these issues. Second, clinicians should understand that contemporary divorce proceedings and the attendant custody disputes are a result of a complex interplay between the legal system and the individuals involved. Accordingly, the second section in this contribution provides a review of the types of divorce and custody arrangements that are commonly found today. Third, clinicians should also be aware of the psychological impact such proceedings can have on both adults and children. Thus, the final section will discuss both the trauma and resiliency inherent within these scenarios. Indeed, it is each clinician's professional duty to know and understand all of the complexities and skill requirements that are associated with this area (Bryan, 2006; Ellis, 2000).*

HISTORICAL BACKGROUND

Marriage and Divorce

The concepts and practices of marriage, divorce, and child custody in America have their roots in Roman-Greco law and later within English history. At first, Roman-Greco law reserved legal marriage for the ruling class in order to ensure paternity and consolidate power; only later was marriage as a legal status conferred upon citizens of lesser status (Holland, 2006).

Later, English ecclesiastical courts ruled in matrimonial cases for over 700 years without interference, having the last word about how marriage would be celebrated, the suitability of parties to marry, and the legitimacy of marriage dissolution (Einhorn, 1986). Marriage was as much a holy sacrament as it was a civil action (Day & Hook, 1987; Einhorn, 1986). Women were forbidden to divorce, and men could divorce only if it could be proved that the wife had

* Clinicians who are called to testify in court relative to divorce and/or custody must also possess an expertise over and above that presented here. A review of such expertise is clearly outside the scope of this contribution. Instead, the information provided here is intended only for the everyday clinician who provides individual, group, and/or family therapy with clients who are involved in divorce and/or custody proceedings.