

WALLET and WOMB

(What is the relationship between the Family Court (FCA) and its male clients?)

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The paper identifies and describes factors in the FCA system relevant to men's experience of bias. Literary analysis relevant to gender difference, gender differences in relationships and in relationship breakdown is undertaken to differentiate between male and female separation adjustments. Pivotal writings are identified and their themes discussed, while the views of experienced counsellors and solicitors are described. A focus is upon what assumptions the FCA seems to hold in relation to gender uniformity in separation experiences and follows a hermeneutic approach to the examination of being a male client of the FCA.

Introduction: My purpose is to consider whether men are less prepared for, and capable of, managing separation and whether current FCA counselling provides an equitable experience for both genders. It is shaped and driven by 14 years experience as a counsellor working with these issues and by Plato who, in the 'Analogy', states 'the unexamined life is not worth living'. The paper examines the institution responsible for examining many lives.

Focus on men: Biddulph proposes, "The women's movement has been the most significant event of the Twentieth Century" (1994: 22), where Germaine Greer, Virginia Wolfe, Gloria Steinam and Betty Friedan and others represent political, academic and literary feminism. The 1970's 'Life Be In It' campaign focused on physical 'Norm', while the 80's and 90's saw an emerging holistic focus on men, represented by the 1998 Australian 'National Forum on Men and Family Relationships'. This built upon the works of Australian authors such as Biddulph, "Raising Boys" and "Manhood", West, "Fathers, Sons and Lovers", Townsend, "Real Men" and others.

Family Court (FCA): Legal & Social Change: The creation of ‘Norm’ (Life Be In It) occurred around the same time as the creation of the Family Court of Australia. The Family Law Act (FLA) introduced no-fault, gender-neutral, ‘best interests’ custody and access decisions and ‘equitable’ property decisions accounting for parties’ contributions, earning capacities, health, age and child care responsibilities. Innovation included in-house counselling propagating negotiation but it remained, post-separation, that children usually resided with mothers (Gibson, Harrison and Brown, 1996: 6). Loss of both child and adult relationships meant fathers, usually, experienced more post-separation losses. Young claims that judicial decisions see fathers lose “...joint residence in approx. 99% of cases...” (1998: 123).

A generation of clients and practitioners has experienced the FLA so I look to re-examine the contract between Court and clients. The Family Law Reform Act (FLRA 1995) terms, (residence, contact and specific issues), may replace the semantic branding irons of ‘custody, guardianship and access’, or reform may be cybernetic. Scrutiny is also encouraged by changes to financial matters. The Mitchell case saw adjustments to property division because the female partner was subject to domestic violence and might be viewed as a reversion to ‘fault’ reinforcing perceptions that the Court defines men as fiscal (wallets) and women as feeling (wombs). Without scrutiny the Court risks the entropy that results from the tendency of a closed system to deteriorate. This paper examines whether males “find...Courts which believe fathers are second-rate parents...” (Vogel, 1998: 117). In my experience better understanding masculine relationship and separation experiences would assist the FCA with clients it perceives as difficult. Young views the Court as ignoring factors that might explain men’s reactions at separation. “To paraphrase (Judge) Nicholson, ‘these men are angry...not interested in their children...’” (Young, 1998: 123).

Parallel process: Blaming Courts or men reinforces the dynamic of fault finding in which system and client exchange blame and parallel the Court’s own process of judging two adversaries. This paper speaks about rather than speaks for males, excluding specific cases because of

confidentiality rules and because the focus is upon systemic factors. Fox and Kelly view family law as a dichotomy of ‘written’ and ‘living’ law in that while legislation prescribes no-fault’, ‘best interests’, gender-neutral principles, individual practitioners may retain ‘old standards’ such as the ‘tender years maternal preference’, perhaps explaining why ‘mothers continue to be the custodians following divorce’ (1995: 693-694).

Social control or social change: Tension between written and living law is also found where counsellors are engaged by statutory agencies. Deputy-Registrars (solicitors) and Judges promulgate decisions as part of legal process. A counselling arm in the FCA legal body creates a marriage of the (doing to) legal professionals and the (being with) welfare professionals. A metaphorical marriage of ‘men’s and women’s work’, replicating traditional gender roles. A ‘professional legitimates a rationale for social control’, asserts Atkinson (1983: 225-230), and is someone asking Haley’s (1963) question, “What is the function of the symptom?” in pursuing ‘single truth’ answers (Relph, 1998: 137).

Do FCA Counsellors act for clients upon the system or act for the Court upon clients?

Dewar and Parker propose that experienced surveyed counsellors described their role as devolving, “...devoting less time to each case and becoming case-managers rather than case workers” (1999: 38). I am aware that in Brisbane FCA (1999) counsellors were instructed to see clients once only prior to Court regarding all separation and children’s issues with follow-up appointments being management, not clinical, decisions. A Dewar and Parker counsellor reports that the role was “...less as agents of social change...” (1999: 38), supporting the view that counselling impacts upon clients rather than undertakes advocacy. In my clinical experience lack of counselling forces clients, in crisis, to be self reliant, while those trained to help are marginalized by a Court that devolves its relationship with counsellors and clients.

The effects of unresolved reactions: My experience informs me that the most prescriptive influences on children’s negative adjustment to parental separation are conflict where children are

not being insulated from or are enlisted into disputes, and lack of parental adjustment. The Court acknowledges the importance of parental adjustments in compulsory ‘Information Sessions’ for mediation and Court ordered counselling clients presenting the “**Stages of Separation**” as being-

SHOCK * denial and disbelief. *confusion. *no acceptance of loss.

ANGER * ourselves. * our partner. * someone else.

SADNESS * low self -esteem. * loss of trust.

MOVING ON * gradual acceptance of loss. * coming to terms. * reorganizing life.

Clients are invited to consider how their emotional states inhibit their functioning and negotiation. While ‘written law’ prescribes ‘no fault’, ‘gender neutral’ decisions most clients experience a powerful need for attributions. Internalization may be represented as guilt and externalization as blame. With recognition of unresolved feelings as seminal it is surprising there is no assessment of clients prior to joint FCA counselling. Unless clients report violence or fears joint appointments stand. Many attend counselling feeling individually powerless, unresolved about separation, concerned about children and distressed about conflict. For the more often rejected male partner powerlessness can be reinforced by participation in post-separation decision making. A review of 247 Brisbane FCA cases established that 55% of sampled Court applications were initiated by males. A 20 day survey (1999) showed the Brisbane FCA ‘Duty Counsellor’ took 533 client calls. 42.776% from males and 57.223% females. Calls resulting in counselling being offered were 53% for male and 43% for female callers, indicating that males call counselling less, are assessed as needing counselling more and initiate Court proceedings more often than females.

METHODOLOGY

My research for this paper employed an in-depth qualitative approach to the ‘problem’ that male FCA clients perceive it to be biased and it focused upon discriminatory institutional bias using some of the ‘conflict theory paradigm’ to support the hypothesis (Babbie, 1992: 56). It took a universalistic approach rather than case study appraisal of men and employed a semiotic theme

analysis. Babbie (1992: 60) describes discriminatory bias as operationalized as powerlessness through isolation and non-participation. Miles and Huberman provide definitions of holistic research examining real life situation systems and their implicit logic in order to illuminate incongruities in explicit logic (1994: 5-6). The approach was also hermeneutic and semiotic given that the content is predominantly literary with a foci on how to “interpret meaning” from themes (Kellehear, 1993: 420). Semiotic content included considerations of power and patriarchy and the discovery of explicit and implicit bias in a culture to deconstruct the ‘appearance of truth’ (Kellehear, 1993: 43-44).

Data included sociological and psychological literature, academic works relating to masculinity and gender relationships, and studies of the impact of separation upon men. A Parliamentary report and the views of the FCA Chief Justice were considered as this research took a deductive approach to the multiple narratives of practitioners and others. McLeod describes this as ‘drawing upon already completed studies’ (1994: 31-32).

The solicitor and counsellor responses provided pivotal information from experts in contact with clients and institution, offering opinions as to client perceptions of Court processes. The experts’ views were parallel to and comparative with the literature. 8 experts were selected on the basis that 4 are male, 4 are female with the 4 Counsellors having spent an average of 13.75 years with the FCA. The 4 Solicitors had been engaged in Family Law practice an average of 20.25 years.

FINDINGS -In relation to Practitioner responses

- Males are, generally, less resolved about separation when they enter FCA.
- There is a difference in how men and women experience FCA Counselling.
- Men present as less able or skilled in counselling (talking out) processes.
- Gender difference is not well acknowledged or responded to by counselling or Court.
- Men are “right in suspecting” bias as the Court values mothering over fathering and fails to uphold the tenets of gender-neutral, no-fault principles.

- Counselling does not empower clients.

FINDINGS -Regarding gender difference revealed in analysis of literature

- There are organic and biological differences between the genders.
- Males are more kinesthetic, confrontative, and act out rather than talk out.
- Boys are socialized to be competitive, defining self through action, sport and work.
- Males' hormonal, early attachment, separation experiences or socialization, 'splits' them from gender traits perceived to be feminine.
- Males avoid intimacy by participation in roles external to family function.
- Masculinity is an incomplete gender that pursues results to reconfirm itself.

FINDINGS- revealed by literature re gender experience of separation

- Females reject males and achieve more post-separation care of children.
- Women, generally, enter grief adjustments and emotionally separate earlier than men.
- Lack of self and relationship awareness compounds men's separation difficulties.
- Men react to separation. Women react to relationship difficulties.
- Men more often threaten or act out violence to selves, partners and children.

DISCUSSION

Inner and Outer: The surveyed professionals speak to tensions between the internal experiences of clients and the external body of the Court. This nexus between institutional order and individual experience, the outer and the inner, is addressed by Gibney, (1996), Relph, (1998), and others. Sociological writings offer macro examination of relationships between institutions, professionals and clients. Sociological schools reflect core political positions including those who defend institutional order as being functional and occurring naturally and those who espouse the view that it is an artificial construct designed to protect the hegemony of social stratification and power (Berger, 1984). Counselling theories view the individual from definable positions

reflecting assumptions as to what extent individuals are externally prescribed bio-organisms responding to stimuli and early experiences or are pro-active beings making sense of selves and experiences. Some view gender identity as pre-determined and others view it as mutable.

Organic gender difference: Money focuses on chemical masculinity through hormones such as testosterone. With Maccoby and Jacklin (1974) he concludes that boys display more kinesthetic energy, assertiveness and competitiveness, with testosterone as a precursor rather than determinant. Miedzian concurs that hormones contribute, but do not prescribe, gender differences and cites Maccoby and Olweiss' studies where boys were more likely to use 'physical activity to express...internal emotional states' (1992: 45-47). Moir and Jessel concisely offer, "The sexes are different because their brains are different" (1994: 5). These authors focus on the chromosomal brain template as the foundation of gender thinking and experiencing. They challenge, "Free will may exist ...but is it enough to free us from...our biology?" (1994: 34).

Analytic gender difference: Chodorow provides the perspective that, "...a mother is of ...different gender to her son" (1978: 98) creating, says Deutsch, 'negative splitting'. This could be interpreted as a developmental task and an antecedent for future separations essential for masculine construction. That is, boys undertake gender identity rejection of mothers in order to pursue gender and other identifications with fathers, and this rejection of mothers includes rejecting traits perceived to be feminine.

Social Learning: Formani (1990) offers a parallel observation of "...the psychic split (with which) many men live ... until it is recognized and steps are taken to deal with it ..." (1990: 3) as might be provoked by separation. Crago postulates that it may be possible to understand men's use of action responses in both war and families as an extension of their rejection of feminine traits and their embracing of masculinity. (1997:3-4).

PIVOTAL LITERATURE

The seminal authors studied are West (1996), Townsend (1994), Biddulph (1994), Barbeau (1982) and Formani (1990). Writers such as Gibney (1996) and Jordan (1985 and 1996) are acknowledged. West's "Fathers, Sons and Lovers" deconstructs maleness. Townsend's, "Real Men" offers 350 men's insights, while Biddulph's, "Manhood" proposes changes to internal masculinity and external gender relations. Formani, considers "Men: The Darker Continent" and, as for West and Townsend, asks, "What's the story here?" (Relph, 1998). There are parallel themes in the literature identifying and describing men's internal and relationship tensions shaped in the nexus between ascribed traditional roles and existential experience and interpretation.

Action man: Goldberg views "The Hazards of Being Male" as being 'repressed, alienated, isolated, fearing failure and afraid to ask for help' (in Barbeau, 1982: 26). According to Barbeau, this implosion, causes men to suffer and make others suffer, with which Formani agrees. "Men's problems trouble us all" (1990: 1). Miezdian offers, "He learns...that being a man means working outside the home, being...tough...and willing to fight or go to war" (1992: 81). Australian men show this learning; "I will take someone on if they offend me, or come into my territory. A man that can't isn't a man. It's part of me and I'm not ashamed of it", (Townsend, 1994: 150), and, "You have to be tough about everything" (West, 1996: 53). Within the pivotal writings is the theme that masculinity is incomplete, to be proven and defended. "The worst thing you can be is a woman or a poofter" in 'the challenge to be masculine' West (1996: 54).

Reject feelings: Central to masculinity, say Barbeau (1982) and Formani (1990), is the rejection of traits perceived to be feminine with 'men having become half-human: women...the feminine part and men the masculine' (Formani 1990:19). Masculinity scripts separateness from self and others "...to the extent where (men) are split from themselves"(1990: 18). Boys are taught "A man doesn't ask for sympathy or help. A man takes care of himself" (Barbeau, 1982: 14). Being a man, according to these and other authors, prescribes defining self- image and self-esteem in the

world external to familial relationships and ignoring physical and emotional pain in order to pursue outcomes. Masculinity is, to misquote the philosopher, 'I do therefore I am'.

Traditional roles: Respondent fathers and children surveyed by this practitioner describe fathers as 'protector-providers responsible for family financial and safety needs' (Sedgman, 1998: 149). Barbeau also states that men 'too often define' self in work (1982: 5). Biddulph describes this as "Fathers work, mothers raise children..."(1994: 98). Within traditional roles, "Inside, it's hers. Outside, it's mine" (Townsend, 1994: 167), "We raise males to confront and demand" so that many males are 'poorly prepared for dealing with a relationship' (West, 1996: 139).

Relationship breakdown: "Men...place responsibility for...the relationship onto their wife..." (Jordan, 1996: 50), and wives initiate separation. In 2/3 of separations women leave men (Jordan, 1996: 9). I agree with West (1996), Townsend (1994) and Biddulph (1994) in proposing that women are generally more in touch with relationship health and pathology, earlier recognize and act on problems and, usually, achieve the greater proportion of post-separation care of children.

Gender impairment: Within the contexts of gender difference and gender differences in relationships men might be regarded as impaired and challenged requiring greater assistance from FCA services. As Gibson et al. state clients attend counselling 'at different stages of separation', (1996: 2), and males are more often "...affected to a significant degree at the time of the actual separation" (Jordan, 1996: 55). Cogan (1998) offers a 'profile' where the rejected party is male, has engaged in or threatened harm to self or others and presents as a "trauma victim" (1998: 202-204). Narcissistically wounded men might consider the "Samson solution" (Crago, 1997: 4) in destroying themselves, partners or children to avoid the existential vacuum of non-action. Some authors identify sub-groups of violent men but it remains, overall, valid that, "Girls ask for help, but boys often just act for help"(Biddulph, 1997: 129). Jordan reinforces the point that many men in emotional pain are reluctant to accept "professional assistance"(1988: 60).

Blame: Court or Man: Young opposes focusing upon clients, challenging, "... Of course, we could always look at the real problem of our abusive Family Court system" (1998: 123-126) while Pershouse proposes there to be a 'significant gap' in FCA services with men seeing themselves as "marginalised" (1998:127). While Young invites a focus on the Court, Justice Nicholson follow a similarly one-dimensional problem definition. In espousing the efficacy of the Court's management of violence he states women are "...frequently the less powerful partner in the relationship" and male perpetrators demonstrate attitudes of 'jealousy' and 'ownership' so that separation is "...a high period of risk for spousal homicides" (1996: 207). This diagnoses domestic violence as a criminal not relationship problem without acknowledging why some men may hold such relationship attitudes, act out feelings, and experience multiple disempowerments at separation. The act is criminal but the emotional and psychological deficits of many men prescribe that they have insufficient insight and personal and relationship skill to offer more acceptable means to express hurt and confusion. The Judge acknowledges "It is a more difficult task to identify and then take appropriate measures to ensure that power imbalances between partners are identified and taken account of in conciliation and mediation" (1996: 207-208). He is correct in saying the task is difficult but surely it must be undertaken rather than the Court limit its understanding of, and inhibit its relationship with, male clients. This paper suggests that while the act of violence should be condemned, and victims should have the right to be safe, the problem is not resolved by judicial power being more potent than individual men's physical power. The punished man is no further advanced to personal and relationship empowerment and hence remains his and others' problem. Given the strong and congruent thematic trends revealed in the literature in relation to gender, relationships and separation, Judge Nicholson's view that 'It is difficult to identify power imbalances' might be modified. This paper identifies males as, generally, relationship challenged, more often rejected, less adjusted to separation, and more often experiencing multiple relationship losses. The Court's shortcomings are in not recognizing the dynamics of the male experience of

separation and participation in FCA processes and not ‘taking appropriate measures’.

Justice Nicholson demonstrates the Court’s use of parallel process thinking and intervention and the Court’s intervention in relationship breakdown without the contextual recognition of relationship and gender formation. This is what Relph referred to as ‘single truth’. Separation is, therefore, ‘the problem’ for men and Courts while relationships are ‘the problem’ for women. This is the systemic pathologizing identified as institutional hegemony.

The 1998 Parliamentary Report, “To Have and To Hold”, identifies “...special needs of men in family relationships (in that) special initiatives are needed to address the particular problems facing men in maintaining healthy relationships”. There is evidence for the view that men have unique needs at separation and, consequently, the Court could initiate further assistance to men in their participation in FCA processes. There is an apparent juxtaposition between the congruent assessments of the experienced solicitors and counsellors and the insights of the seminal authors and those of Justice Nicholson, the senior judicial and administrative officer of the FCA. There is support found for the contention that men, with validity, experience the Family Court as biased. Not biased on the basis of quantifiable trends in relation to judicial decisions. Not biased on the basis of individual Court matters. The qualitative experience of male clients whose perception is “Blokes can’t get a fair go in Court. Courts are biased!” (Sedgman, 1997, p.143) is supported in the recognition that the Court is unaware and unresponsive to the gender constraints of men in relationships and the emotional needs of men at separation.

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