

## PARENTAL ALIENATION SYNDROME: Proponents Bear the Burden of Proof

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Richard Gardner claimed to be able to diagnose parental alienation among contentious parents disputing custody, and asserted that his “syndrome” is supported by scientific and legal authority. Despite influencing many custody proceedings, Gardner’s ideas fail to meet even minimal scientific standards. The burden of proving any new hypothesis falls on its proponents, and given the complete absence of objective replication, parental alienation syndrome (PAS) must be viewed as nothing more than a hypothesis. The lack of clear guidance in the law allows concepts like PAS to gain temporary credibility, as judges look to mental health professionals for help in making decisions under the vague best interests standard.

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Richard Gardner’s response to Kelly and Johnston’s (2001) critique of so-called “parental alienation syndrome” (PAS) provokes two strong reactions: sympathy and frustration. On the one hand, I am sympathetic to authors who wish to write rejoinders to critiques of their ideas, and I am particularly sympathetic since Gardner’s paper was submitted post-humously. On the other hand, Gardner makes sweeping and misguided claims about PAS and about science. As a scientist, I am outraged by the misunderstandings, errors in logic, and sweeping assertions in his article. Gardner writes forcefully and with conviction, and I worry that the unwary will be more persuaded by the tone than the substance of his arguments. Rhetoric is a tool for pursuing truth in the courtroom. Rhetoric is not a tool of truth in science.<sup>1</sup> If it were, scientific journals would be perpetually filled with arguments about, for example, evolution versus creationism or the psychological parent versus the alienating parent.

Differences between the methods of the scientific and the legal pursuit of truth are fascinating, but the two systems share one essential commonality: both take strong stands about the burden of proof. The burden of proof in the law is clearly articulated, although it varies across different substantive topics and may be changed over time. For example, many states shifted the burden of proof from the prosecution to the defense following John Hinckley’s successful use of the insanity defense in his trial for shooting Ronald Reagan (ABA, 1995). In science, the burden of proof is inviolable: scientists are free to offer any hypothesis that catches their fancy, but in so doing, they assume the burden of proving the truth of their hypotheses beyond a reasonable doubt. Until proven true, the scientific community assumes the hypothesis is false.<sup>2</sup>

According to the rules of science, Gardner is free to offer his hypothesis about alienating parents. But his hypothesis should not be believed, especially in public forums like the courtroom, until proven true by scientific research. As Gardner notes in his article, only one study (his own) has even attempted a statistical analysis of PAS. Objective, public replication by independent investigators is another basic rule of establishing truth in science. By his own admission, there have been no independent, objective, or

public replications of Gardner's assertions. Thus, while scientists hold that it is possible that his ideas may, one day, be proven true, the rules of science dictate that in the meantime we must view PAS as unsubstantiated. Anyone who presents PAS as supported by science either misunderstands the rules of science or the nature of scientific evidence.

### CLINICAL PRACTICE, SCIENCE, AND ASSERTIONS OF AUTHORITY

Let me be clear: I value the insights and experiences of clinicians, including those of Dr. Gardner. In addition to my research, I have conducted individual and family therapy and mediation with separated and divorced families for twenty-five years. My experience tells me that some extremely angry parents alienate children from their other parent. My experience also tells me that some self-absorbed parents use accusations of alienation to blame their former partner and excuse their selfish disregard of their children. Mostly my clinical experience tells me how polarized former partners become into "his divorce" and "her divorce," particularly in high conflict cases (Emery, 1994, 2004). I do not have confidence in my own, or anyone else's, ability to discern truth in divisive divorces (and I generally believe such attempts are counterproductive), and I would be greatly impressed if some investigator could punch a hole in my skepticism with research demonstrating reliable and valid discriminations between accurate and inaccurate accounts of his and her divorce. To date, no one has done this, including Dr. Richard Gardner. My skepticism remains intact.

Despite my inner voice of inquiring skepticism, I do find clinical experience enriching and rewarding in numerous ways. As I tell my graduate students, clinical work can be the best place to develop creative hypotheses. Still, we all have to recognize and admit that clinical experience, including case studies, *prove nothing*. (Recall that case studies once "proved" that witchcraft causes mental illness [Neugebauer, 1979].) To put the point more formally, case studies are valuable for generating hypotheses but not for confirming hypotheses. A hypothesis is just that, and as I also tell my students (and myself), "[i]f your clinical insight is so good, find a way to devise empirical research to prove your hypothesis to the world—so you can change the world." The same admonition applies to the proponents of PAS.

Cases can be rhetorically persuasive. They can convey the sense that professionals have special knowledge, insights, and powers that extend beyond the bounds of logic, evidence, or science. (Professionals often wish we had those superhuman powers, and we sometimes wrongly believe that we do possess them.) We believe a stockbroker's hot tip, especially if she can tell us a story about a killing she just made in the market, even though all the evidence shows that, at best, professional stock pickers produce random results (Malkiel, 1999). Back on topic, some members of the public (and some judges) believe that psychologists and psychiatrists can read a person's inner thoughts and feelings, including the true motivations and abilities of parents involved in a custody dispute—no matter how complicated the case or how much parents (understandably) try to project an impossibly positive image. When I was an undergraduate, I fidgeted all through my first meeting with my academic advisor, a clinical psychologist, believing that he somehow could read my mind. Throughout my graduate training, I waited and waited for someone to teach me how to read minds. As a professor for over twenty years, I have failed miserably in teaching mind reading to my students.

So what is my point? A title, clinical experience, even consistent and keen insights are not sufficient grounds for claiming scientific authority for our hypotheses. We rightly value professionals who are well educated, experienced, and insightful, and we should listen more intently to the hypotheses of these seasoned experts. Yet, we cannot throw out the rules of science just because a respected authority makes assertions about the truth of his or her ideas. While reading Dr. Gardner's defense of PAS, I jotted down these notes and counterexamples in frustration, as I read his repeated and logically inconsistent assertions that PAS is a scientifically established concept, one worthy of inclusion in the DSM:

- Naming something does not make it true, otherwise we would have emptied mental hospitals using labeling theory in reverse ("You're cured!"). (One study published in 1973 claimed that labels were the cause of insanity, because people who faked symptoms were admitted to mental hospitals [Rosenhan, 1973]. For two decades subsequently, psychology textbooks touted the "labeling" account of mental illness—psychological disorders are not real but self-fulfilling prophecies.)
- Wanting an answer does not give us one, otherwise we would have a cure for cancer and could talk to autistic children using facilitated communication. (In the 1980s and early 1990s, facilitated communication was touted widely in the popular media and among some professionals as a breakthrough treatment for the severe communication deficits in autism. Subsequent research showed that the technique, where a facilitator moves the hand of a noncommunicative autistic, has nothing more than a Ouija Board effect [Jacobson, Mulick, & Schwartz, 1995].)
- Calling something a syndrome does not make it scientific, otherwise Down Syndrome (which Dr. Gardner uses as an example justifying his use of the term *syndrome*) would be caused by having an Asian ancestry. (In 1866, British physician John Langdon Down, after whom Down syndrome is named, called the subjects of his clinical observations "mongoloids" because of their characteristic facial appearance and his racist belief that Mongolians were genetically inferior. Decades later scientists discovered that, despite his offensive notions about mongoloids, Down had indeed identified a syndrome, a form of mental retardation that is almost always caused by an extra chromosome on the twenty-first pair [Oltmanns & Emery, 2004].)
- Case studies are of value for generating hypotheses but of no value for confirming hypotheses, otherwise we would have established that masturbation causes insanity. (In the 19th century, medical professionals practiced and wrote treatises about the dangers masturbation posed for mental health. Their logic was based on cultural beliefs [sex is for procreation alone], bogus science [patients sometimes masturbated openly in crowded asylums], and case studies [some mentally disturbed patients confessed to committing the act and others denied masturbating—both the admission and the denial "proved" that masturbation causes insanity] [Hare, 1962].)
- Asserting scientific authority, even with the concurrence of the courts, does not make a hypothesis scientific, otherwise eugenics would remain a fair and intact American policy. (In the 1927 case of *Buck v. Bell*, the United States Supreme Court upheld Virginia's involuntary sterilization laws for "mental defectives" based on expert testimony and the logic of paranoia, prejudice, and genetic superiority, logic that was directly exported to Nazi Germany [Lombardo, 2001].)
- Allowing mental health professionals to testify as expert witnesses does not give them special powers to discern the truth, otherwise expert witnesses always would agree and could serve as lie detectors in all kinds of trials.

I could expand on other reactions to Dr. Gardner's comments: The contrast between Kelly and Johnston's (2001) focus on description, consistent with current diagnostic

practice, versus Gardner's (2004) claims of being able to discern etiology (a particularly bold assertion, especially when the specific etiology remains unknown for almost all psychological problems [Oltmanns & Emery, 2004]). My worries are about the limited recourse for parents accused of alienation and the terrible scientific status of *all* assessment constructs and instruments developed specifically for custody evaluations (Emery, Otto, & O'Donohue, in press). The clinical and conceptual appeal of various family-level diagnoses, for example, "scapegoated child" or "coercive parent-child interaction," and the great effort—and failure—of various attempts to establish minimally adequate reliability (let alone validity) for *any* family diagnosis (Committee on the Family, Group for the Advancement of Psychiatry, 1995).

Rather than expanding further on my critique designed to illustrate Dr. Gardner's errors in logic by analogy rather than by analysis, I turn to an entirely different issue.

### **THE ELEPHANT IN THE ROOM: THE DILEMMA OF DECIDING DISPUTED CUSTODY**

I am deeply concerned about children who are alienated from their parents in separation or divorce, in married or remarried families, in families where parents are depressed or abuse substances, in families where parents bitterly undermine the children's relationship with the other parent, and in families where parents undermine their own relationship with their children because they are obsessed with their work, their own pleasures, or simply with themselves. But I am more concerned with two broad issues. First, how can mental health and legal professionals best help children and families through separation and divorce, particularly through legal decision making? Second, how can family law be reformed to minimize divisive custody battles and sharply limit mental health expert testimony, far too much of which is based on principles that, at best, are scientifically and ethically shaky?

This is not the forum for me to elaborate on my best answers to these searching questions. Elsewhere, I have compiled clinical insights, legal analysis, and research evidence, including my own research on parent conflict, children's pain, and the long-term outcomes of mediation and litigation, to argue for promoting alternative dispute resolution, parent self-determination, and businesslike co-parenting as the best solutions for helping children through the legal and associated family conflicts found so commonly in separation and divorce (Emery, 1999, 2004, in press). I also have argued elsewhere for limiting expert testimony by encouraging the private settlement of divorce disputes, enacting clear and determinative custody rules (e.g., the approximation rule [Scott, 1992]), and limiting expert testimony in divorce and custody disputes to conform with the high scientific standards applied to expert testimony in other legal arenas (Emery et al., in press; Shuman, 2003).

In this brief space, what I want to emphasize is this: if we truly encouraged parental self-determination and made custody rules more determinative, two goals also advocated by the American Law Institute (2002), PAS would become less controversial, because PAS would be asserted far less frequently, if at all, in the courtroom. (Proponents of PAS then would be free to devote their time to studying the concept.)

The elephant in the room is this: Family court judges have been put in a terrible position by the extremely vague "best interests" test, the dramatic rise in divorce, high levels of custody conflict, and knowledge that conflict between their parents is

perhaps the worst aspect of divorce for children. From my vantage point, we ask judges to make decisions in children's best interests (whatever that means) based on legal guidelines that are vague at best, and to do this in the face of ever-increasing numbers of disputes; dwindling resources; and high-stake, acrimonious conflicts. Judges know that all of this must be damaging to the children, *because custody disputes are so daunting for judges themselves.*

Put in an impossible circumstance without clear guidance from the law, judges understandably have turned to experts for advice and guidance in making decisions that do not require the wisdom of Solomon, but the revamping of the legal system, and probably of cultural views about separation and divorce involving children. As judges cast about for solutions to their dilemma, unsurprisingly some experts will answer the call, even if they possess no real answer, even if there *is* no answer. The concept of parental alienation (or the alienated child) poses a reasonable enough question, a hypothesis probably worthy of investigation. But no matter how strongly experts like Dr. Gardner assert otherwise, PAS is not an answer until demonstrated to be one in objective, public, and independent scientific investigations—investigations based on replicable data gathering, not case studies. Until then, I suppose expert witnesses are free to testify, “in my opinion, this child is a victim of deliberate alienation on the part of the custodial parent”—provided that they add, “but I do not have a shred of scientific evidence to back up my clinical impressions.”

## NOTES

1. I am aware that I fight rhetoric with rhetoric in this article. This is not the forum for a dusty treatise on science, and as the rules of science make absolutely clear, the burden of proving the validity of PAS lies with its proponents. It is not my burden to disprove the hypothesis, because doing so is an impossible task. The reader who objects to this basic rule of science can assume the burden of proving that this article was *not* dictated to me by a blue Martian sitting on my shoulder.

2. Scientists use different terms—the null hypothesis and statistical significance—to refer to concepts that hold essentially the same meaning as the legal concepts of burden of proof and beyond a reasonable doubt.

## REFERENCES

- American Bar Association. (1995). *Mental disability law* (5th ed.). Washington, DC: Author.
- American Law Institute. (2002). *Principles of the law of family dissolution: Analysis and recommendations*. Newark, NJ: LexisNexis.
- Group for the Advancement of Psychiatry, Committee on the Family. (1995). A model for the classification and diagnosis of relational disorders. *Psychiatric Services, 46*, 926–931.
- Emery, R. E. (1994). *Renegotiating family relationships: Divorce, child custody, and mediation*. New York: Guilford.
- Emery, R. E. (1999). *Marriage, divorce, and children's adjustment* (2nd ed.). Thousand Oaks, CA: Sage.
- Emery, R. E. (2004). *The truth about children and divorce: Dealing with the emotions so you and your children can thrive*. New York: Viking/Penguin.
- Emery, R. E., Otto, R. K., & O'Donohue, W. (in press). Child custody evaluations in scientific, legal, and societal context: Improving the science and the system. *Psychological Science in the Public Interest*.
- Gardner, R. (2004). Commentary on Kelly and Johnston's "The alienated child: A reformulation of Parental Alienation Syndrome." *Family Court Review, 42*, 622–628.
- Hare, E. H. (1962). Masturbatory insanity: The history of an idea. *Journal of Mental Science, 108*, 2–25.
- Jacobson, J. W., Mulick, J. A., & Schwartz, A. A. (1995). A history of facilitated communication: Science, pseudoscience, and antiscience. *American Psychologist, 50*, 750–765.
- Kelly, J. B., & Johnston, J. R. (2001). The alienated child: A reformulation of Parental Alienation Syndrome. *Family Court Review, 39*, 249–266.

- Lombardo, P. A. (2001). Carrie Buck's pedigree. *Journal of Laboratory and Clinical Medicine*, *138*, 278–282.
- Malkiel, B. G. (1999). *A random walk down Wall Street*. New York: Norton.
- Neugebauer, R. (1979). Medieval and early modern theories of mental illness. *Archives of General Psychiatry*, *36*, 477–483.
- Oltmanns, T. F., & Emery, R. E. (2004). *Abnormal psychology* (4th ed.). Upper Saddle River, NJ: Prentice-Hall.
- Rosenhan, D. L. (1973). On being sane in insane places. *Science*, *179*, 250–258.
- Scott, E. S. (1992). Pluralism, parental preference, and child custody. *California Law Review*, *80*, 615–672.
- Shuman, D. W. (2002). The role of mental health experts in custody decisions: Science, psychological tests, and clinical judgment. *Family Law Quarterly*, *36*, 135–162.

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