

Assessment in child custody cases. Critical considerations about the role of the forensic psychologist

Luisa Puddu¹, Rosalba Raffagnino²

Abstract

This paper offers some critical reflections on the role of forensic psychologists in custody cases, and in particular on the content (*what*) and the process (*how*) of their assessment. These considerations lie in the “mild” law framework, that is, they are neither prescriptive nor proscriptive, but a forensic perspective oriented toward desirable actions. In this regard, the desirability of the actions is strictly linked to the main aim of child protection, which implies a focus on the relational, family and social contexts in which they live. When psychologists recognize a conflicting relationship between partners, it is appropriate not to limit their activity to merely evaluate; on the contrary, they should implement “psycho-forensic intervention” to support parenting, and to steer the partners toward proper clinical or psycho-educational paths. In this way, the assessment process becomes a dynamic process. The Authors offer some suggestions regarding the steps, methods and techniques of this dynamic process, to be activated and managed in custody cases by psychologists, when dealing with parents in persistent marital conflict, incapable of facing up to their crisis in a constructive way.

Keywords: custody cases, forensic psychology, psycho-educational intervention, psycho-forensic assessment, conflicting parenting.

Abstract

Questo contributo offre alcune riflessioni critiche sul ruolo degli psicologi forensi nei casi di custodia, e in particolare sul contenuto (*la cosa*) e il processo (*il come*) relativi alla loro valutazione. Queste considerazioni si inseriscono all'interno di una cornice normativa “*soft*”: ovvero, non sono né prescrittive né proscrittive; piuttosto, intendono delineare una prospettiva forense orientata verso azioni desiderabili. In questo senso, la desiderabilità delle azioni è strettamente legata all'obiettivo principale della tutela dell'infanzia, che implica una particolare attenzione ai contesti relazionali, familiari e sociali in cui i bambini vivono. Quando gli psicologi rilevano una relazione conflittuale tra i *partners*, è

¹ Associate Professor of Social Psychology in the Department of Education and Psychology – University of Florence.

² Researcher in Clinical Psychology in the Department of Health Sciences – University of Florence.

opportuno non limitare la loro attività alla mera valutazione; al contrario, è opportuno implementare un “intervento psico-legale” per supportare i genitori e orientare i *partners* verso percorsi clinici o psico-educativi appropriati. In questo modo, il processo di valutazione diventa un processo dinamico. Le Autrici offrono alcuni suggerimenti riguardanti le fasi, i metodi e le tecniche di questo processo dinamico, che devono essere attivati e gestiti in casi di affidamento da parte degli psicologi, quando si confrontano con genitori, coinvolti in conflitti coniugali persistenti, incapaci di affrontare la crisi in modo costruttivo.

Keywords: casi di custodia, psicologia forense, intervento psico-educativo, valutazione psico-forense, conflittualità genitoriale.

Introduction

In custody cases, parental cooperation and positive frequent relationships between children and parents are considered protective factors for children's mental health and well-being (Adamsons & Pasley, 2006; Sandler, Miles, Cookston & Braver, 2008). Conversely, many objective and subjective situations may prejudice this possibility: for instance, intercultural differences, parental relocation, incarcerated parents, domestic violence, and child abuse or neglect (Emery, Otto & O'Donohue, 2005). The persistence of a conflicting relationship between parents is one of various situations that interfere with the collaborative attitude, which is a fundamental requisite for what we termed a “good divorce” (Puddu & Raffagnino, 2015). This kind of divorce is desirable not only for parents, but also for children. In fact, the persistence of parental conflict may negatively affect the parent-child bond and interaction, and may create child behavioral and emotional problems (Stadelmann, Perren, Groeben, & Von Klitzing, 2010; Yu, Pettit, Lansford, Dodge, & Bates, 2010). Good divorce implies parents' ability to elaborate the conjugal crisis, and to distinguish the parental function from the conjugal one. When conflict is not addressed, and therefore persists even after divorce, it may make hard the maintenance of the children's relationship with their parents (Lamb & Kelly, 2009). Therefore, the clinician consulted in divorce situations has the task of promoting effective management of the marital crisis and possible conflicts between partners (Adamsons & Pasley, 2006; Anderson & Greene, 2011).

Some scholars recently proposed that also in the forensic context the assessment of the familial situation by the psychological expert appointed by the court is a first step for a transformative path to be carried out after the counseling (Consegnati, Macrì & Zoli, 2018; Macrì

& Zoli, 2011). In this frame, our paper offers some critical reflections on the possibility and desirability of the transformative praxis already within the forensic counseling process. Such approach involves a clear, complex and dynamic assessment of the familial situation, focused on the individuals, their relationships, the family and the social system. All these elements have to be evaluated in a *diachronic* (i.e. historical) and a *synchronic* (here and now) dimension. The proposed approach refers to the development of the family studies toward a complex and evolutive direction (Malagoli Togliatti, 1996).

In this paper, the complex and dynamic assessment regards in particular coniugal conflict situations in forensic custody cases. This assessment makes it possible to obtain a picture of the various elements (risk and protective factors) and levels (interpersonal, relational, familial and social, actual and historical) involved in the conflict. By including this complex approach in the forensic assessment, family history is integrated with deeper interpersonal and subjective dimensions. This overall view makes it possible to understand the system and its dynamic interrelations in various facets, surpassing the unilateral and deterministic visions suggested by limited interpretative schemes. Besides, if the assessment is a dynamic process, it offers a starting point to establish what paths to take with the couple, and at the same time, it permits an ongoing evaluation.

From our point of view, this complex dynamic assessment is particularly important, because in performing its function and for a “correct” decision, the court must take a broad and articulated view of the situation. The role of the psychologist is therefore to provide this view, in order to facilitate the court’s task through cognitive tools and interpretation. In fact, unlike lawyers, judges have to work *super partes*, so partial views are more likely to lead them to unbalanced decisions; an overall view allows judges to better ponder their decisions, in the child’s interests.

In the present contribution, we explore the possibility of a complex evolutionary assessment focusing on the specific topic of couples unable to reach an agreement about child custody due to ongoing conflict. In particular, we consider the assessment of divorce conflict situations in a forensic context, referring to parent-parent and parent-child dynamics. We therefore do not consider situations (such as domestic violence and parent or child psychopathology), in which other specific familial and personal conditions interfere with effective joint parenting in the best interests of the child. The aim of the paper is to offer some clinical suggestions about the steps, methods and techniques of divorce conflict

evaluation, irrespective of the use of psychometric tests, behavioral observations, and symptom and parenting questionnaires.

Our considerations lie in the so-called “mild” law framework, which is not prescriptive or proscriptive, but aimed at desirable and commendable actions (Lenti, Pazé & Zagrebelsky, 2015; Puddu & Raffagnino, 2015). In divorce situations, these actions regard the possibility of psycho-educational intervention (e.g. Lavadera, Laghi, & Malagodi Togliatti, 2011) linked to the assessment process and oriented toward parental responsibility and the capacity of both parents to coordinate mutually and to cooperate in the best interests of the child. Therefore, we think, the assessment is not – and should not risk being – a judgmental activity, as can easily happen if the forensic psychologist only uses current methods of evaluation. In psycho-forensic praxis, the exclusive use of these methods is generally linked to a merely evaluative conception of the psychologist’s role. In this view, any psychological intervention is typically done following the clinical pathway ordered by the court. Instead, if the psycho-educational intervention is part of the forensic custody assessment, we do not deny the evaluative nature and purpose of the forensic counseling but simply make it more *dynamic*, as certain scholars have been discussing for decades in western psychological research (Emery, 2012). Thus, it becomes an opportunity to promote the awareness, accountability and cooperation skills of the parental couple, and to help it to meet the growth, health and well-being needs of the child (Puddu & Raffagnino, 2015). As a consequence, the forensic context may become a co-constructive process for the psychological expert, with short, medium and long-term effects.

1. Assessment as complex process

According to the recent literature, the assessment of family functioning, including areas of conflict, has to be conducted with an integrated approach, combining mainly legal, psychological and forensic rules and suggestions (Rohrbaugh, 2008). From our perspective, the complexity of the assessment in the forensic context consists in putting together the various aspects and levels involved in conflicting situations. In custody cases, the overt conflict generally regards the parental couple, which mainly discusses custody matters, such as children’s education, rules, organization of time, and economics. However, these discussions often hide a deeper level, associated with conjugal/familial relations and personal

characteristics. Thus, the expert should not limit his/her analysis to the topics of conflict, but should also consider various other positive and negative psychological dimensions at different levels (personal, interpersonal, relational, familial and social). Knowledge of the specifics of the conjugal conflict makes it possible to adapt the intervention to the individual situation, as suggested by the systemic approach with regard to the equifinality/multifinality principle (Von Bertalanffy & Sutherland, 1974).

What should the expert assess? As parenting is the focus of forensic psychological counseling in divorce cases, the first assessment should concern how parents express and give meaning to their parenting, possible difficulties in their parenting role and how they interact with their children. This assessment takes place at *dyadic* and *triadic* levels. The first level regards the assessment of each parent; the second, concerns the assessment of the couple and family system and relationships between its components, according to the relational-systemic model (Malagoli Togliatti & Mazzoni, 2006). As the two levels are interrelated, the expert can explore them starting from parenting rather than from a conjugal topic. Since parenting is the focus of the partners' being there, they accept and at the same time are motivated to face it. The parenting assessment also permits the expert to know how each parent interacts with the children and how the conjugal dyad is weathering the divorce process. For instance, in our experience, a useful starting topic is the parents' communication of their divorce to their children. This is a crucial topic because clear and appropriate communication is determinant for how the children will face the changes and adapt to the situation after divorce (Neale & Flowerdew, 2007), as well as for their physical and mental welfare and for maintenance of a secure parent-child bond (Afifi, Schrodtt & McManus, 2009; Afifi, McManus, Hutchinson & Baker, 2007). If parents avoid addressing the topic, or provide information that is insufficient or inappropriate for the child's age or psychological maturity, they show lack of awareness of the importance of considering children active subjects with rights and specific needs in a situation of separation that involves them (van Nijnatten & Jongen, 2011). An example may clarify how by starting from a specific topic, the expert may catch many aspects of the conflicting dynamic.

Mary and Jacob are undergoing a conflicting divorce and their children received the information about their parents divorce only after it happened, and only from the mother. This different way of telling the children indicated how each parent was experiencing the divorce. According to Mary, it released her

her from an unsatisfactory and limiting relationship, while Jacob experienced it as failure of the family project. Interestingly, during the first interview of the couple, the father said that his children were ashamed to tell their peers, in particular, that their parents had divorced. These different partner experiences and meanings about divorce result in conflicting interpersonal dynamics, called in empirical literature *demand-withdraw communication pattern*, where one partner raises a relationship problem and the other avoids discussing it (Caughlin & Huston, 2002). In conflicting relationships, this pattern often implies provocative, aggressive and vengeful attitudes and behaviors in the demand partner, a form of emotional liberty, and a tendency to avoid discussion and interaction in the other (Kelly, 2007). In our couple, Jacob was more prone to demand behaviors, displaying an excessive, continuous and sometimes aggressive intrusiveness in the life of Mary, whereas she displayed defensive withdrawal and stonewalling behaviors and often did not involve him when making decisions about their children.

Focused on their conflict, as often happens, the partners forgot their children: their right to be informed, heard and considered active subjects in the divorce. This forgetfulness is not always associated with a parental inability but, as in our couple, with unresolved aspects of the conjugal relationship. A further example of how these aspects may impede authentic listening to the child, regards another couple met during forensic counseling.

Rosy and Charles reported a recent conflicting situation regarding their daughter's birthday party. Charles thinks the daughter wants a party with all the relatives, while Rosy sustains the possibility of a party, only with parents and children. Asked by the expert what their daughter wanted, the parents were unable to answer, because they had not asked their daughter what she wanted for her party. This omission was associated with fear that the daughter might share the point of view of the other.

Sometimes, the fear of the child's alliance with the other parent may hide triadic interpersonal dynamics involving one partner's tendency to depreciate the image of the other, and to obstruct a positive child-parent relationship. For harmonious and healthy development, children of course need both their reference figures, which should be positively connoted (Affi & McManus, 2010). Meeting this double need is also a key demand for coparenting – i.e. the physical and psychological presence of both caring figures in children's life (Adamsons & Pasley, 2006; Martone, 2018) – and shared custody. In fact, positive coparenting should be a prerequisite for psychologically functional parenting, which primar-

ily involves recognition that the child continues to be the child of both parents, even after marital separation. So the expert should focus on the parent's awareness of: children's need to have a positive image of the other parent; their own critical and discreditable behavior and attitude towards the other; the effects of their relational dynamics and emotionality on children's needs.

Often many of these dysfunctional dynamics hide pathological relational situations – such as triangulation, disqualifications, coalition, claims by one parent that the child refuses the other – which jeopardize effective psychological coparenting and the child's welfare (Baker & Ben-Ami, 2011; Malagoli Togliatti & Mazzoni, 2006). In these situations, children experience a conflict of loyalty if they want to stay close to both parents (Hoffman, 1981), and they may be burdened with expectations and responsibility for the welfare and happiness of their parents, taking the parental role upon themselves (*parentification*): an inappropriate role for their age (Garber, 2011).

With regard to triadic dysfunctional situations, the expert should assess how they happen, considering the perspectives and awareness of the parents and the children, by observing them during interactive tasks and by asking them questions about their role and feelings regarding parenting in the divorce situation (Malagoli Togliatti & Mazzoni, 2006). The expert must in any case take into account children's possible distrust of professional figures and their reluctance to talk about the parenting situation. Their distrust may be more evident when they are experiencing difficulties or do not understand the reason for the interview or are afraid of the conversation's consequences (van Nijnatten & Jongen, 2011). In these cases, children may offer information that they think acceptable to the adults or satisfactory for the interviewer (Geldard & Geldard, 2008; Lamb, Orbach, Warren, Esplin & Hershkowitz, 2007).

In cases of further deepening of couple conflict, the partners' risk of symmetrical escalation should be assessed. In this interpersonal dynamic, each partner tends to react to the other with increasing aggressiveness. The expert not only needs to assess behaviors that activate escalations, but also the possibility of emotional dysregulation, and whether or not it is associated with partners' difficulty in identifying and using effective coping strategies (Robertson, Daffern & Bucks, 2011).

In conducting consultation for complex assessments, besides analysis of the current conflicting dynamic (*synchronic level*), the expert psychologist regards the family life trajectory (*diachronic level*) as central to a cohesive plot of meanings and identifies family resources for future

change and growth. This seems to be in tune with scholars who consider the family a system arising from the construction and integration of personal and relational histories (Fruggeri, 2005; Mazzoni & Tafà, 2007). Some key assessment topics include the start of the couple's crisis and conflict, the phase of the couple's history in which they occurred and the couple's life before the crisis phase. A useful question may be: "now you have conflicting communication, but in the happy past, what enabled you to have effective communication without engaging in destructive interactions?".

During a forensic consultancy, Anne and David complained that they do not listen or understand each other, and that they never agreed on questions regarding their children. This made cooperative parenting difficult if not impossible, and they were aware of their children's discomfort. The expert analyzed their difficulty through couple history. They reported that in the past they listened to each other because they were not angry and disappointed with each other, and their positive feeling also permitted them to understand the other's different point of view.

In this case, the answer to the previous question permitted the partners to recognize their own anger and its role in creating communication problems. So, from an attitude of not being responsible, they became able to recognize their own emotion (*I'm angry*) and how it influenced the current interpersonal dynamic. The expert worked on this element, going back into the past: "When and how did this anger arise?". This focus is important because it enables the expert to discover how the partners tell their history, as a couple, and how they explain the current crisis. Through the narrative, the psychologist may also identify a possibility of changing their story-telling in a functional way. In this regard, more questions about the future may be important. For instance: "How do you image yourself and your life in the next five years?".

2. Assessment as dynamic process

From our theoretical and methodological perspective, it is limiting if the psychologist simply takes note of a couple's conflict, even accurately describing their terms, dynamics and effects, and reports the dysfunctions of family communication to the judge. By thus restricting his/her role to diagnosis-evaluation, the psychologist on one hand labels the family interactive disorder, providing a static image of it, and at the same

time misses a possibly unique opportunity for a functional change in the family evolutionary cycle after divorce. As already mentioned, Consegna *et al.* (2018) proposed an overcoming of the merely evaluative-diagnostic approach of the forensic psychological counseling toward a transformative direction carried out after the counseling.

From our point of view, in line with the Authors sustaining the possibility and desirability a more dynamic approach to the forensic psychological counseling (Emery, 2012), this transformative capacity should start within this counseling and not only after it. So taking into account our clinical-forensic experience, the forensic context should be considered neither strictly judgmental nor psychotherapeutic, but, as Lavadera *et al.* (2011) suggested, *psycho-educational*, that is, a context in which the evaluative aspect functions to promote the growth of the family system towards a joint and effective undertaking of the respective parental roles in a divorce situation. In general, psycho-educational intervention aims to support parenting, seeking to facilitate awareness and personal responsibility, also through attention and recognition of one's experiences, needs, individual weaknesses and resources. It does not have clinical objectives (to be implemented in appropriate contexts), but it is instead a chance to identify obstacles and the need to remove them, in relation to the objectives of the forensic consultation, promoting opportunities for change. Intervention should be built on what emerges progressively from the assessment procedure, which in turn helps to define it. Therefore, the expert can use the information to stimulate partner learning of new knowledge and abilities useful for coping with their conflict. Recursively, the forensic technical assessment is enriched by acquisitions resulting from the psycho-educational path, which gradually develops thanks to and through these acquisitions. In this process, we think it is advisable that the expert observes some useful expedients with regard to the working steps of his/her intervention. The expert has to prepare and then accompany the couple along a psycho-educational path, which implies a progressive learning of knowledge, abilities and competence regarding the self, the other and the relationship. Of course, the forensic psychologist should bear in mind that not all parents involved in custody battles are equally healthy and deserving of collaborative parenting. Therefore, he/she has to modulate the intervention on the basis of the progressive and ongoing assessment of these requirements.

The working steps of the psycho-forensic intervention take place during the period assigned by the judge to the expert (generally between three and six months). Frequency, duration and (individual and/or cou-

ple) context of psychological interviews depend on both the severity of the familial situation (conflict level, systemic pervasiveness of it, the presence of psychopathology, children's age and weakness...) and the reactive skills shown by parents to the psychologist's requests. The psychologist may start with weekly meetings and eventually proceed with three-monthly, or bi-monthly meetings.

In a dynamic approach to the forensic assessment, the psychological expert cannot follow a rigid methodological frame. On the contrary, he/she should catch the various possibilities of intervention, suggested by the here and now information, always keeping in mind the direction of the path. This must comprehend some key steps. The preliminary step of the proposed dynamic assessment regards the meaning assigned by the members of the couple to the forensic counseling context. It is common for them not to have an entirely clear understanding of the purpose of the meetings with the psychologist, which they may interpret as being purely judgmental, or an opportunity for psychotherapeutic help. Since bias regarding the forensic setting may induce a defensive attitude toward the expert, the psychologist should immediately explain that the main goal of this counseling is to help parents face their crisis and obtain a better level of family well-being. This explanation should be expressed in a supportive way (through verbal and non-verbal communication) to facilitate truth and openness, so that the couple can feel at ease. The psychologist should also clarify that this goal may only be reached if the couple collaborates with him/her, so that the dynamic assessment becomes a co-constructive process, as happens in a clinical context.

A further element to assess in this preliminary step is the parents' motivation and willingness to collaborate with each other. This assessment involves the identification and the analysis of the obstacles to parents' collaboration. In fact, unresolved aspects of conjugal relationship and/or fears about divorce consequences (like in the two following examples) often interfere with the parents' attitude to collaborate in the best interests of the child.

During a forensic consulting, Anne and David complained about the difficulties to be listened and understood by the other, and they did not agree on any decision to be made for the children. That impaired the possibility of co-parenting and they were aware of the discomfort for their children. So, the expert analysed this their difficulty through couple history. They referred that in the past they listen the other because they were not angry and disappointed toward him/her, and their positive feeling permitted them also to understand the other's different point of view.

Rosy and Charles referred a recent conflict situation about their daughter's birthday party. In fact, Charles thinks that the daughter wants a party with all relatives, while Rosy sustains the possibility of a party only with parents and children. The expert asked them: "What does your daughter want?". The two parents were not able to answer, because they did not ask her daughter what she wanted for her party. This lack was associated to fear of each of them that the daughter might share the point of view of the other.

Such obstacles may become key aspect on which to intervene, if necessary. In that case, the expert should work from the beginning to facilitate the effective collaboration. The psychological counselor may use both verbal and non-verbal techniques during the psychological interview and prescription of "homework". For instance in the example of Rosy and Charles, the expert instructed them to reach an agreement about time, space and ways to ask the daughter which party she wishes for her birthday.

The aim of the various clinical interventions is to give children the chance of a positive and balanced relationship with each parent, and to have parents who will coordinate and compare choices (*cooperative parenting*).

After this preliminary step, the psychologist should focus on a sequence of matters (usually starting from the problem), always looking for every opportunity to continue the activation of the psycho-educational intervention, so avoiding a static and merely judgmental assessment. These opportunities consist in specific requests and suggestions that enable new scripts, which should have different rules from the dysfunctional ones that the expert observes in the couple. The way the couple deals with the proposed new experience becomes a source of important information for the assessment.

In our experience with custody cases, the critical key elements often regard *dysfunctional partners*, *communication between partners*, *difficulty in distinguishing parental and conjugal relationships* and *dysfunctional family interactions*. In psycho-educational paths, these three elements are progressive working steps, which help the process to flow.

Regarding the *first step*, during the interview the expert starts from evidence of current dysfunctional communication between the partners and may use it to promote a more effective interaction. The psychologist may work on this problem by focusing on what is happening during the interview (how partners interact here and now) and by analyzing their communication in their daily life (what they report about it). Here is an example of the first kind of intervention.

During forensic counseling, partners often do not take turns in speaking, impeding a correct and fluid exchange. Observing this, the expert may propose a new interaction with different conversational rules. For instance, taking a psycho-educational perspective rather than an evaluative one, he/she may say to the partner: "Stop! Now repeat your point of view on this topic, but this time each of you has to listen without interrupting, and before answering has to sum up what the other just said".

Therefore, the partners can try an unusual (for them) way of communicating, and the expert obtains useful information about their difficulties or resources, to include in the forensic assessment.

Communication may also be a specific topic in the interview. As already mentioned, how the partners communicate their divorce to their child is an important evaluation topic. This is an aspect the expert should consider and use in a psycho-educational path to parenting, helping both parents to implement open and clear communication to children about what is happening to them.

In the example of Mary and Jacob, when the father mentioned children's shame about speaking of their parents' divorce, the expert suggested they imagine how they could together communicate their divorce situation to the children. During the interview, the partners discussed it, proposed some solutions, imagined their possible effects on the children, and expressed possible doubts, difficulties and discomforts. By promoting self-observation, mutual listening, self-awareness, self-disclosure and partner interaction, the psychologist helped them reach a shared solution. Then, she asked them to implement the solution. At the next meeting, they reported the positive outcome of the communication to the children.

Again, the couple may try a different way of coping, both at decisional (the partners agree on a solution) and operational level (the partners implement the solution together). The experience of the interview permitted the partners to elaborate their emotional states, feelings, thoughts and behaviors, which had previously prevented the possibility of a shared solution.

The *second working step* regards the assessment of the partners' difficulty in separating the parental and conjugal levels, and discovering the causes as well as the dysfunctional homeostatic dynamics of the couple. This difficulty in separating the two levels usually has to do with the fact that the partners are embroiled in a destructive conflict, which monopolizes interaction space, and with the distance and detachment between

them, as if separation endorsed the loss of both parental and conjugal interactions. In both cases, they are unable to handle negative emotions, or to constructively reformulate attributions of guilt and responsibility for the crisis and the current situation. So the partners can be helped to understand the negative effects of their behaviors and attributions on their children and parenting, and to express and recognize that they are imprisoned in a spiral of anger, guilt, disappointment and rancor, which is making them lose sight of their co-parenting functions, which in divorce should instead be safeguarded (Adamsons & Pasley, 2006). An example regards couples in which, at least one partner presents saying that no longer wants any kind of communicative exchange with the other.

In one of this case, psycho-education was primarily aimed at steering both partners to recognize the value of serving the parental function in a coordinated manner. After assessing that both partners had achieved this awareness, the expert asked them about the difficulties they experienced in reaching this outcome. When the message of both partners remained: "I do not want to have anything to do with you", the psychologist helped them realize how this attitude prevented them from achieving their parenting objectives, motivating them to work on their conjugal difficulties before facing parenting problems.

This psycho-educational intervention aimed not so much at reconstituting the marital bond, but at constructing a new parental alliance that could cooperate to the child's advantage and towards constructive conflict management (Verde, 2007).

The *third step*, regarding the assessment of dysfunctional family interactions, may imply the presence of the children at the psycho-forensic counseling. Their presence must be properly prepared for, because as already mentioned, children can be distrustful of such situations. The expert discusses with the parents how to prepare the children for the meeting, identifies and analyses their possible difficulties and uneasiness, and facilitates shared solutions. This work concurs to achieve a good divorce, by creating an opportunity for partners to experience the parental role, separating it from the conjugal level and cooperating in the children's interest. During meetings that include children, beyond interviews with children alone and with children and parents, the expert can assign structured tasks. This enables family interactions to be observed and assessed during performance of the tasks. Malagoli Togliatti and Mazzoni (2006) argue that these tasks may facilitate parent involvement in a process of change; a path that may be guided in the right direction by the expert's intervening in a targeted manner with the objective of

effective co-parenting, provided the intervention is anchored in what emerges during the interaction.

For example, when the previous two parents, who claimed that constructive dialogue between them was impossible, were in the meeting with their child, they played with him, doing the joint drawing of the family test. In this case, the parents effectively interacted towards a result that was built together. Then, focusing on what happened during the interactive exchange, the expert promoted the parents' awareness of their behavior.

In this third step, the promotion of parental awareness is a key moment of the psycho-educational path. It should not be limited to times when the expert assigns specific tasks, but should be a constant in the conduction of interviews. It is important that the consultant seize all opportunities arising during the interview with parents to draw their attention to things that permit them to develop awareness and mutual opening. This is possible if the expert does not stop at assessment or at a personal interpretation of the experience. His/her intervention is *maieutic* to the couple's understanding of what emerges in its interactions concerning the role and functions of parenting. This happens through urging them to dwell on their emotional states and implications regarding underlying disappointed expectations and unmet needs. The expert's intervention can also help them to act on identified aspects and problems, in the here and now of the forensic setting, to be addressed in appropriate clinical context.

Conclusions

The reflection proposed in this paper starts from the assumption that in the main interests of children, co-parenting must not only be legal but also psychological, and in order to be effective must therefore involve collaboration between the parents. In cases of marital conflict during divorce, this assumption entails the forensic psychologist using the assessment process also as a chance for psycho-educational intervention with the couple. For us, this intervention is compatible with the aim of a good divorce (Puddu & Raffagnino, 2015), as it promotes awareness in the couple that they have to face their conjugal conflict and ensure it does not overwhelm them, whatever their good parenting purpose; moreover, the assessment process implies a complex-evolutionary approach.

In this paper, we focused specifically on parent-parent and parent-child dynamics, but our proposal may be usefully integrated with methods of assessing child psychology and child interactions with parents. In fact, by direct evaluation of children, we can obtain crucial information about their best interests and needs. For instance, certain developmental delays and behavioral difficulties may be aggravated by parental conflict.

We also outlined a type of psycho-forensic intervention and how to use it for assessment purposes. Our proposal arises from the consideration that the context of current forensic custody evaluation hardly envisages an interventional component. In our experience, the application of such a component enabled a change from destructive conflicting dynamics toward a more constructive attitude, promoting a real change of behavior in many couples. Indeed, this psycho-forensic path does not have psychotherapeutic objectives, which can only be pursued in extra-forensic intervention, such as family mediation, couple and individual psychotherapy, group counseling, mutual help groups and parenting educational programs (Kelly, 2007; Malagoli Togliatti & Tafà, 2005; Marzotto, 2011). In any case, during forensic intervention it is possible to motivate couples to seek such external clinical measures that might help them elaborate and cope with their conflict. Of course, in conflicting divorce assessment, psycho-forensic intervention does not exclude integration of this clinical approach with more traditional evaluation methods, such as psychometric tests, behavioral observation and symptom and parenting questionnaires.

Since our proposal arises from a combination of clinical/forensic experience, analysis of the literature and reflections about current practice, as a further step it could be important to verify our theoretical and clinical assumptions by empirical research and clinical observations. It may then also be interesting to observe how to adapt the complex-dynamic assessment process to problematic issues, such as unmarried parents, parental relocation, incarcerated parents, domestic violence, and child abuse or neglect.

References

- Adamsons K., Pasley K. (2006): Coparenting Following Divorce and Relationship Dissolution. In M.A. Fine, J.H. Harvey (Eds.). *Handbook of divorce and relationship dissolution*. Mahwah (NJ): Lawrence Erlbaum Associates, pp. 241-261.

- Afifi T.D., McManus T. (2010): Divorce disclosures and adolescents' physical and mental health and parental relationship quality. *Journal of Divorce & Remarriage*, 51(2), pp. 83-107. doi: <https://doi.org/10.1080/10502550903455141>.
- Afifi T.D., Schrodt P., McManus T. (2009): The Divorce Disclosure Model (DDM): Why parents disclose negative information about the divorce to their children and its effects. In T.D. Afifi (Ed.). *Uncertainty, information management, and disclosure decisions: Theories and applications*. New York: Routledge/Taylor & Francis Group, pp. 403-425.
- Afifi T.D., McManus T., Hutchinson S., Baker B. (2007): Inappropriate parental divorce disclosures. The factors that prompt them, and their impact on parents' and adolescents' well-being. *Communication Monographs*, 74(1), pp. 78-102. doi: <https://doi.org/10.1080/03637750701196870>.
- Anderson E.R., Greene S.M. (2011): "My child and I are a package deal": Balancing adult and child concerns in re-partnering after divorce. *Journal of Family Psychology*, 25(5), pp. 741-750. doi: <http://dx.doi.org/10.1037/a0024620>.
- Baker A.J.L., Ben-Ami N. (2011): To turn a child against a parent is to turn a child against himself: The direct and indirect effects of exposure to parental alienation strategies on self-esteem and well-being. *Journal of Divorce & Remarriage*, 52(7), pp. 472-489. doi: <https://doi.org/10.1080/10502556.2011.609424>.
- Bertalanffy, von, L., Sutherland J.W. (1974): General systems theory: Foundations, developments, applications. *IEEE Transactions on Systems, Man, and Cybernetics*, 4(6), pp. 592-592.
- Caughlin J.P. & Huston T.L. (2002): A contextual analysis of the association between demand/withdraw and marital satisfaction. *Personal Relationships*, 9(1), pp. 95-119.
- Emery R.E. (2012): *Renegotiating Family Relationships. Divorce, Child Custody, and Mediation* (2nd ed.). New York-London: The Guilford Press.
- Emery R.E., Otto R.K., O'Donohue W.T. (2005): A critical assessment of child custody evaluations. Limited science and a flawed system. *Psychological Science in the Public Interest*, 6(1), pp. 1-29. doi: <https://doi.org/10.1111/j.1529-1006.2005.00020.x>.
- Fruggeri L. (2005): *Diverse normalità. Psicologia sociale delle relazioni familiari*. Roma: Carocci.
- Garber B.D. (2011): Parental alienation and the dynamics of the enmeshed parent-child dyad: Adultification, parentification, and infantilization. *Family Court Review*, 49(2), pp. 322-335. <http://dx.doi.org/10.1111/j.1744-1617.2011.01374.x>.
- Geldard K., Geldard D. (2008): *Counselling Children: A Practical Introduction*. London: Sage.
- Hoffman L. (1981): *Foundations of Family Therapy. A Conceptual Framework for Systems Therapy*. New York: Basic Books. It. Transl. Rome: Astrolabio, 1984.

- Kelly J.B. (2007): Children's living arrangements following separation and divorce: Insights from empirical and clinical research. *Family Process*, 46(1), pp. 35-52. doi: <http://psycnet.apa.org/doi/10.1111/j.1545-5300.2006.00190.x>.
- Lamb M.E., Kelly J.B. (2009): Improving the Quality of Parent-Child Contact in Separating Families with Infant and Young Children: Empirical Research Foundations. In R.M. Galatzer-Levy, J. Kraus, J. Galatzer-Levy (Eds.): *The scientific basis of child custody decisions* (pp. 187-214). (2nd ed.). Hoboken (NJ): Wiley.
- Lamb M.E., Orbach Y., Warren A.R., Esplin P.W., Hershkowitz I. (2007): Getting the most out of children: Factors affecting the informativeness of young witnesses. In M.P. Toglia, J.D. Read, D. Ross, R. Lindsay (Eds.): *Handbook of Eyewitness Psychology*. Vol. 1: *Memory for Events*. Mahwah (NJ): Lawrence Erlbaum, pp. 423-446.
- Lavadera A.L., Laghi F., Malagoli Togliatti M. (2011): Assessing Family Coordination in Divorced Families. *American Journal of Family Therapy*, 39(4), pp. 277-291. doi: <http://dx.doi.org/10.1080/1926187.2010.539479>.
- Lenti L., Pazé P., Zagrebelsky G. (2015): La mitezza del diritto e delle istituzioni negli interventi e nei procedimenti per le persone, la famiglia e i minori. *MinoriGiustizia*, n. 1, pp. 237-245. doi: <https://doi.org/10.3280/MG2015-001028>.
- Macrì C., Zoli B. (2011). *L'affido condiviso nella separazione e nel divorzio. Manuale pratico per consulenti tecnici. Cosa fare e cosa non fare*. Milano: FrancoAngeli.
- Malagoli Togliatti, M. (a cura di) (1996): *La psicologia della famiglia. Sviluppi e tendenze*. Milano: FrancoAngeli.
- Malagoli Togliatti M., Mazzoni S. (a cura di) (2006): *Osservare, valutare e sostenere la relazione genitori-figli. Il Lausanne Trilogue Play clinico*. Milano: Raffaello Cortina.
- Malagoli Togliatti M., Tafà M. (2005): *Gli interventi sulla genitorialità nei nuovi centri per le famiglie*. Milano: FrancoAngeli.
- Martone M. (2018). From *machismo* to co-parenting: Changing Italy's mindset. *International Labour Review*. doi: <https://doi.org/10.1111/ilr.12087>.
- Marzotto C. (2011): *I gruppi di parola per i figli di genitori separati*. Milano: Vita e Pensiero.
- Mazzoni S., Tafà M. (2007): La complessità nello studio delle relazioni familiari. In S. Tafà (a cura di): *L'intersoggettività nella famiglia*. Milano: FrancoAngeli.
- Neale B., Flowerdew J. (2007): New structures, new agency: The dynamics of child-parent relationships after divorce. *International Journal of Children's Rights*, 15(1), pp. 25-42. doi: <https://doi.org/10.1163/092755607X185546>
- Nijnatten, van, C., Jongen E. (2011): Professional conversations with children in divorce-related child welfare inquiries. *Childhood*, 18(4), pp. 540-555. doi: <https://doi.org/10.1177/0907568211398157>.

- Puddu L., Raffagnino R. (2015): Verso una buona separazione: Gli interventi miti sulle relazioni genitoriali problematiche. *MinoriGiustizia*, n. 1, pp. 115-123. doi: <https://doi.org/10.3280/MG2015-001013>.
- Roberton T., Daffern M., Bucks R.S. (2011): Emotion regulation and aggression. *Aggression and Violent Behavior*, 17(1), pp. 72-82. doi: <https://doi.org/10.1016/j.avb.2011.09.006>.
- Rohrbaugh J.B. (2008): *A Comprehensive Guide to Child Custody Evaluations: Mental Health and Legal Perspective*. New York: Springer.
- Sandler I., Miles J., Cookston J.T., Braver S.L (2008): Effects of father and mother parenting on children's mental health in high- and low-conflict divorces. *Family Court Review*, 46(2), pp. 282-296. doi: <https://doi.org/10.1111/j.1744-1617.2008.00201.x>.
- Stadelmann S., Perren S., Groeben M., Klitzing, von, K. (2010): Parental separation and children's behavioral/emotional problems: The impact of parental representations and family conflict. *Family Process*, 49(1), pp. 92-108. doi: <https://doi.org/10.1111/j.1545-5300.2010.01310.x>.
- Verde A. (2007): La battaglia sulla separazione coniugale e la consulenza tecnica sull'affidamento dei figli minori in un'ottica psicosociologica. *Materiali per una storia della cultura giuridica*, 37(2), pp. 525-542. doi: <https://doi.org/10.1436/25510>.
- Yu T., Pettit G.S., Lansford J.E., Dodge K.A., Bates J.E. (2010): The interactive effects of marital conflict and divorce on parent-adult children's relationships. *Journal of Marriage and Family*, 72(2), pp. 282-292. doi: <https://doi.org/10.1111/j.1741-3737.2010.00699>.