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Stages of separation

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Stages of Separation

Dr Mary Power

While family lawyers dealing with personal traumas of separation have developed an intuitive understanding of human nature, the transformation of this understanding into effective client management can be significantly enhanced by better familiarity with the nature and process of separation through divorce. Furthermore, as much of the behaviour of separating couples can be understood in bereavement terms, a familiarity with these concepts can assist in understanding events occurring after separation. Similarly, the separation experienced in divorce bears a close relationship to other separations in people's lives so that seeing it in a "life stage" framework can help lawyers place client behaviour in perspective. In helping people through the process of separation, family lawyers may benefit from a consideration of the origin and dynamics of the conflicting and ambivalent emotions experienced by some of their clients. Understanding these change processes can help lawyers allow clients to take control of their lives as they choose among options for the future with the support of a competent professional who is safeguarding their interests.

Interview with a family lawyer

MP. In my reading I've come across the idea that divorcing couples go through stages in their separation from each other. Some people say that these stages are a bit like a process of mourning in that at first people get angry.

FL. Yes, I'd say that would be so. They say some pretty nasty things and they get pretty violent.

MP: Do you mean, to you?

FL: No, about the other party.

MP. Does everyone do this?

FL: No, not everyone.

MP. And what about getting depressed?

FL. Oh, they sure do. In fact I had one woman have a nervous breakdown right in front of me.

MP: What did she do?

FL: Well, she just started to rock backwards and forwards and bang herself against the wall saying "I can't stand it any more. I can't stand it any more" and she just wasn't functioning.

MP: Where did it happen? What did you do?

FL: Right outside the court. We were waiting to go into a seven day trial. We had to postpone it and she spent quite a long time in hospital.

MP: What was the precipitating event?

FL: I'd just handed her a late affidavit that had just come in from her husband.

MP: How old were you then? What did it feel like?

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FL: I guess I was about 22 and I felt as though I should have seen it coming because when I looked back I could see lots of little signs I missed that she was very stressed. Mind you, if I was married to him I’d have been stressed too.

MP: What did he do?

FL: Well besides this late affidavit he would arrange all the due dates to fall on significant dates like family birthdays or anniversaries so that she would realise the significance of the date. He did lots of things like that to make it harder for her and to remind her of the past. Now I’m aware of how easily people get stressed.

MP: What would you do differently now?

FL: Well, I realise now that to us an affidavit is another document, but to a client it’s sometimes really hard to take, so I’d be aware of that and not just hand it to her to read, especially if it came in at the last minute like that. And I’d be watching for signs of stress and I’d be seeking to explain things in simple terms so that she didn’t get a whole lot of information at once so that she could learn to cope and to feel a bit as though she was in charge.

MP: You know how some women get to really rely on their doctor when they are pregnant and feel betrayed if he or she is not there for the birth but goes on holidays? Well, in my reading I saw one article that said that people feel like that about their family lawyer when they are going through divorce.

FL: Yes, that’s true. I’ve had people that say when you tell them you’re going away “Well, change the date of the hearing. I’m not going to court without you. I’ll wait until you come back”.

This short interview illustrates the main themes of this paper in showing a lawyer’s need to understand the anger, grief, denial, retaliation and depression involved in the process of separation from a marriage. It refers to the dependent relationship that can develop between a lawyer and client when the client is at a low ebb due to the emotions which accompany the process of separation. The paper goes on to suggest ways of lessening this dependence through specific ways of relating with clients. Adjustment to separation depends on the influence of a great many factors, among which each person’s life history of prior attachment experiences and their interaction with present financial and situational factors are major. A family lawyer deals with clients who have significantly “greater depression and hopelessness, fewer feelings of emotional and behaviour control, less satisfying and interesting lives, and significantly lower overall feelings of well-being” than equivalent samples of people in intact marriages. This paper examines some of the contributing factors to these states of mind as theorists have attempted to classify and categorise them. The aim is not to suggest that the lawyer should become a therapist, but to make it easier to adapt legal behaviour and attitudes to suit the needs of clients under stress through an examination of the process of separation.

Over the years practitioners form a bank of experiences that help them forecast how clients will cope with separation. Those who are beginning to build a store of theories can benefit from insights obtained from others’

attempts to classify and categorise experience. Theoretical analysis of practitioner experience provides insights family lawyers can draw on in understanding the dynamics of clients' feelings during divorce proceedings. This experience can also be informed and guided by consideration of developmental theories derived from psychology. This paper presents some key notions from the social sciences which may assist family lawyers working with separating individuals.

Separation, like death, is accepted in stages

In the late twentieth century one of the major separations of many people's adult lives is that of divorce. Because in fewer than twenty per cent of cases an evolutionary and mutual decision is made to part, for many people parting has the unexpected traumatic nature of the involuntary partings that are forced upon us by death\(^2\). Jordan, for example, found that one quarter of his sample of divorced men still did not know what caused their wives to consider separation\(^3\).

Writers on marriage separation such as Irving and Benjamin\(^4\) Kaslow and Schwartz\(^5\) and McNamara and Morrison\(^6\) draw parallels between the emotions experienced in bereavement and those experienced after separation. The last two writers say about unresolved separation, “It is not unlike losing someone through death in terms of the grief or loss”. However, they also comment that (unlike when someone dies) the community may not be as supportive of divorcing individuals because “friends may find it difficult to understand that a person can grieve for a long time over the loss of a spouse through separation”\(^7\). It is reasonable to expect that the process of separation from a life-long partner might follow somewhat similar stages to that of the death of someone close.

It is useful here to refer to the work of Kübler-Ross\(^8\) who developed a stage theory of the process of acceptance of death by those who are dying and by those who grieve for their passing. In the following paragraphs Kübler-Ross's description of the process of acceptance of death or dying as it develops through a series of five stages is compared with the process of separation through which divorcing couples go.

Initially, in order to protect themselves from the emotions associated with loss by death many people react by denial. Similarly, in marriage separations


one partner may not listen to what is said about separation because he or she is denying its possibility. This may well have been a factor in Jordan’s sample of men quoted above who had no idea that their wives were considering separation.

Next in Kübler-Ross’s view of the process of acceptance of death comes a general feeling of anger against oneself or others when blame for what is happening is attached to oneself or others. The parallel in marriage separation is that some partners are abusive in person or in letters to the other or may rail against their former partners to anyone who listens.

Then comes the bargaining phase when promises to change are made and new regimens set. For a person with a diagnosis of cancer or heart disease this may take the form of a kind of compact such as, “If I give up smoking and eat healthy foods I deserve more time”. For separating couples it may take the form of, “I’ll be more emotionally responsive”, or “I’ll come home early from work and spend more time with the children”. This is common among couples when one partner is reluctant to accept that for the other partner the dream is over and the marriage is no longer satisfying emotionally. Sometimes this bargaining leads to a temporary reconciliation. In commenting about this stage in relation to approaching death Peterson9 says, “The promises usually are not kept if a miracle does happen and the threat of imminent death is lifted”. Perhaps because of this tendency to break such bargains made under threat of divorce, some couples attempting reconciliation do not stay together.

Following this bargaining phase, according to Kübler-Ross, the dying or grieving person experiences depression, sadness or mourning both for what they have already lost and what they will miss in the future. Undoubtedly there are losses for the separating couple. The loss of the ideal relationship that they planned when they married has to be accommodated and as they look ahead they perhaps fear a future without intimacy. They mourn the loss of the shared pleasures of parenting and even the loss of a familiar place they used to call home. Depression-like symptoms are common10 among separating couples and especially among those partners with relatively less power who have fewer options for achieving a satisfactory future life.

Finally, Kübler-Ross felt that some dying people and those around them reach the stage of accepting death. They could say their last goodbyes and make the most of their last days without bitterness. In the early stages nothing can comfort a bereaved person who has lost a loved one and the very thought that “time will heal” seems a betrayal and is resisted passionately. Eventually, however, other interests and responsibilities take over unless one freezes one’s life in the past, as Dickens’ Miss Havisham did. Moving on, however, does not mean that the past is forgotten. Lawyers with an understanding of the complexities of separation can help clients through the process of coming to terms with the past, thus enabling movement into a satisfactory future.

Kübler-Ross’s categorisation fulfils our need to order complexity and to find explanations for the highly emotional reactions of those experiencing

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loss. However, the criticisms of Kübler-Ross’s work ought to be attended to by anyone who seeks to unravel the complexity of the relationships of separating couples. Peterson\(^{11}\) found that even Kübler-Ross herself felt that her work was too rigidly interpreted and that she did not mean to imply that there was only one way of death and even that acceptance of death was not necessarily “good”. If someone had been angry and rebellious all their lives Kübler-Ross felt it would be wrong to sedate that person into a “nice, quiet and peaceful death”.\(^{12}\) The parallel for the divorce lawyer might be an acceptance of the variety of ways that people deal with separation. Some may happily and immediately celebrate their divorce; others will need longer to adjust.

Other critics like Kastenbaum\(^{13}\) feel that there is a degree of artificiality in any theory suggesting that we develop through a series of stages and that a range of broader factors ought to be considered instead of opting for a simple “stage” approach. Kastenbaum’s research showed that reactions to death depended on a combination of the cause of death, upon its relative suddenness, upon the person’s sex and socialisation, upon cultural, racial and socioeconomic differences, upon the person’s usual ways of coping with crisis situations, upon their age, goals and aspirations, and upon the social and physical surroundings of the event. Thus, it is difficult to predict how any individual will react to a traumatic event without a close knowledge of their previous experience and behaviour as well as the present circumstances of the event and even, perhaps, their cultural background.

According to Kastenbaum the value of Kübler-Ross’s stage approach was as a general orientation in that it showed that it was “not abnormal to have strong emotional reactions to loss”.\(^{14}\) However, such emotions are not always so neatly confined to stages. Supporting Kastenbaum’s view, Littlewood suggested that “experiences associated with grief are probably better characterised in terms of wave after wave of violently contradictory emotional impulses”.\(^{15}\)

McNamara and Morrison, a psychologist and a social worker who worked for a number of years as court counsellors in Australia, describe a series of emotions experienced by divorcing couples: they see these states—shock and disbelief, distress, fear, failure, anger, guilt, grief and finally acceptance—as not happening to all people in the same sequence but, nevertheless, being common.\(^{16}\) McNamara and Morrison also suggest that the mourning process for divorce is more difficult than for death “because there is no service or ritual to help people mourn the loss of a marriage”.\(^{17}\) This comment supports views that a more formal ritual of legal divorce proceedings may have a role to play

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12 Peterson, above, at n 11.
17 Above at n 16.
in the resolution of mourning for a lost marriage. Indeed, some marriage celebrants now offer divorcing couples such a ritual.

However, marriage separations, while similar to the separation of death in some respects, unlike death, are not inevitable. Relationships, by their very nature, need to be actively maintained, and when they "die" those involved can feel not only a sense of loss, but also a sense of responsibility. Because of the intimate nature of the marriage relationship there is some ambivalence about every breakup.\textsuperscript{18} It is not uncommon for older women to say later that perhaps if they had had counselling or there had not been such pressures at the time they might not have divorced.\textsuperscript{19} Jordan's\textsuperscript{20} study of divorced Australians (to be discussed later in more detail) clearly supports this for men. That such regrets can be voiced even twenty years or so after a divorce is an indication that a lawyer should learn to see the crises he or she is asked to deal with as a part of a whole life-span and as something that will be reflected on for decades.

Despite the separation of divorce, the former partner still exists. And while the actual divorce might be quick, for most people "uncoupling" takes longer. The responsibility and caring for the other that marked early stages of the marriage is "not easily dispelled" and persists "throughout the uncoupling process and afterwards".\textsuperscript{21} Vaughan reports that at times of great joy or sadness because of their shared history and still shared responsibilities, some partners continue to interact, sometimes helping one another through emotional crises such as the death of a parent. This interaction seems to diminish over time, however, as other relationships form.

Experienced family lawyers are familiar with what they see as ambivalent behaviour. On one occasion the client will demand vengeance and on another will be sympathetic towards the former partner. Recognition of this ambivalence as being a due to the residual care partners have for one another is helpful to the lawyer who, understanding the reason behind such apparently contradictory behaviour, can assure the client that efforts are to being made to be fair and reasonable, while yet ensuring that legal rights are safeguarded.

Ambivalence about loss occurs not only because the former partner has contributed to the identity of the uncoupling person but, McNamara and Morrison\textsuperscript{22} suggest, because the other continues to be a part of the person's life. People may continue to fight as they did in marriage because they are loath to let go of the relationship. To an outsider like a lawyer it may be difficult to understand these continued interactions, especially when some seem to continue an abusive pattern which was the impetus for the breakup of the marriage. Perhaps, Vaughan suggests, it is because, however flawed, the abusive relationship is still some form of connection which the partner unable to come to terms with the loss is unable to do without. McNamara and Morrison urge people to seek psychological help if they are unable to express

\textsuperscript{18} Vaughan, D (1986) Uncoupling: Turning points in intimate relationships, New York, Oxford University Press.
\textsuperscript{19} Fisher, S (1993, March 24) "Divorce regrets prompt help program", The Australian, p 2.
\textsuperscript{21} Vaughan, op cit, p192.
\textsuperscript{22} McNamara, LJ & Morrison, op cit.
their feelings so they can be free to move on in their lives.

Theories of separation: Stage models of marital breakdown

Kübler-Ross’s ideas about there being recognisable stages in the process of accepting the process of dying or death can be seen as influences in descriptions of the process of divorce by several theorists attempting to explain the changes in client behaviour as they come to terms with separation. Turner, for example, (quoted in Kaslow and Schwartz\(^23\)) devised a five stage theory of separation which emphasised the tasks to be achieved.

1. Disenchantment;
2. Decision-making;
3. Social transition;
4. Re-stabilisation and growth;
5. Post divorce adjustment;

Kessler’s model, which also had five stages, emphasised emotions over tasks. These (quoted in Kaslow and Schwartz\(^24\)) were:

1. Disillusionment;
2. Erosion;
3. Detachment;
4. Physical separation;
5. Mourning.

Although these stages have specific accompanying descriptors, for our purposes here the terms used are sufficiently commonly understood not to need elaboration. However, it is perhaps worthwhile examining the first stage in both of these schemes to indicate the detail available and to show how important theorists regarded earlier life experiences as influences on later actions. Turner’s “disenchantment” is based on the “psychological violation of largely known, but unverbalized contract”\(^25\). “Disenchantment” is a result of growth or change in oneself or spouse, major life events (illness, changes in values, death of a parent), comparison with other marriages or intrapsychic conflict represented by tension between “Should I go? Should I decide at all? Should I wait?” Examples of this stage given by Kaslow and Schwartz are “demanding spouses with unmet childhood needs” who “may be expecting their mate to be not only a parent but also their best friend, lover, confidante, helpmate, playmate, limit setter, mentor, and protector all rolled into one, and capable of discerning which role to assume to harmonise with their mood of the hour”\(^26\)

Similarly, Institute of Family Studies researcher Wolcott felt that very often the reason for disillusionment was that many people have unrealistic expectations of marriage and are unprepared for the “welter of trivia” in daily life and have a reduced tolerance for the “inevitable conflicts and

\(^{24}\) Kaslow and Schwartz, op cit, p 35.
\(^{25}\) Kaslow and Schwartz, op cit, p 153.
\(^{26}\) Kaslow and Schwartz, op cit, p 25.
compromises that occur in routine married life".27 Also tracing the seeds of disillusionment in the unrealistic demands made by partners of each other, Hartin’s book Why did I marry you? echoes the importance currently placed on emotions in marriage. “Whereas formerly marriages were held together by external pressures, economic necessity, and fear of social disapproval, now marriages stand or fall according to the strength of the emotional bonds between the partners”.28

Kaslow and Schwartz agreed that observers can recognise “stages” in marriage separation but suggested that the impact of the divorce process will vary somewhat, “depending on the point at which it intersects not only the adult’s individual life cycles but also the family’s as a unit and each child individually”.29 Thus stages have different outcomes depending on the prior experiences and expectations of the individuals involved.

Accordingly Kaslow and Schwartz developed a “dialectic” (a neologism combining eclectic and dialectic) model of stages of the divorce process, which serves as the framework incorporating “knowledge about the individual’s growth and development” through the life stage phases of infancy, childhood, adolescence and adulthood described by Erikson30 and a comprehension of “marital dynamics and conflicts which may lead to disenchantment and eventually dissolution”, together with an understanding of family systems (ie the idea that what one member of a family does affects other members because they interact like an interlocking system).31

Kaslow and Schwartz32 used Bohannon’s “six station divorce process” as a basis for their scheme but borrowed ideas from other theorists as well. Outlining the “tasks” that a divorcing couple needs to complete, Bohannon’s stations were:

(1) Emotional divorce;
(2) Legal divorce;
(3) Economic divorce;
(4) Coparental divorce and the problems of custody;
(5) Community divorce and the problems of loneliness; and
(6) Psychic divorce.

Kaslow and Schwartz’s “systems theory” approach strives to elucidate the connections between aspects of an individual’s life and the lives of others in broader social systems. For example, in using Bohannon’s six stations they stress the interconnections between economic problems and achieving a clear resolution of problems of custody (stations (3) and (4)). Kaslow and Schwartz’s scheme recognises that the divorce process occurs on six inter-linked fronts and allows that divorcing couples may set achievable short term goals in some areas while in others the process might take longer. Therapists like Kaslow and Schwartz are reluctant to assume control of the process, preferring that each marriage partner take “responsibility for his or

29 Kaslow and Schwartz, op cit, p 36.
31 Kaslow and Schwartz, op cit, p 132.
32 Ibid.
her own change process". They aim to make clients "become more focussed and learn techniques for problem resolution and decision making" for themselves.

A client who had been through such a process of therapy might seem to be well prepared for the "stations" of legal and economic divorce which, together with problems of custody, most concern the family lawyer. However, in the absence of such an ideal state of affairs the family lawyer needs to be aware that the individual consulting him or her also has other tasks to achieve, such as overcoming loneliness and coming to terms with the emotions generated by separation (stations (5) and (6)), which may interfere with his or her ability to focus on some of the more straightforward tasks (stations (2) and (3)).

The suggestions in this paper for lawyers to relate to clients in ways that lessen their dependence on the lawyer are based on a similar approach to that used by Kaslow and Schwartz and by many counsellors. In this approach the professional functions as a source of information and as a person who suggests options from which the client can choose, rather than one who charts a precise course of action as if there is only one solution to the problem. There are sound reasons for enlisting the client as problem-solver apart from the fact that it lessens his or her emotional dependence on the professional, and reduces the period of adjustment to separation by encouraging self-confidence and self-esteem. Such an approach also reduces the negative views of the lawyer that the client may construct in order to explain his or her uncharacteristic actions and decisions taken during the period of separation. Wade warns of this when he points out that the process of coming to terms with the grief of separation may take up to two years, by which time property settlements may have been made in a way that the person might later regret.

**Attachment and lifespan perspectives**

Not only do the clients change their views over time as they work through these stages, their view of their former partner and the process of separation are coloured by their earlier experiences. Several scholars link the stress of marital breakup with the loss of an attachment figure. The theme of attachment was obvious in Spanier and Thompson's interviews with separated men and women. Researchers studying attachment, particularly Weiss, stress that it is "the persistence of attachment in contradiction to eroded love that makes marital separation so ambivalent and painful". Spanier and Thompson found that "love or the combination of love and hate characterised men and women who were more highly attached to their partner, while indifference, liking or hate characterised the less attached". They say,

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33 Kaslow and Schwartz, op cit, p 28.
37 Weiss, quoted in Spanier and Thompson, op cit, p 142.
38 Spanier and Thompson, op cit, p 140.
"it is the persistence of love, even if love is tinged with hate, that sustains preoccupation with and pining for the partner of old". Their research shows that the future relationship of the partners is connected with "recollections of the final months of marriage and circumstances of the breakup. Overall, the desire for contact, personal conversation, affection and attachment after separation are related positively to memories of marital quality".

In the period between the two great separations — birth and death — other separations: the forming and breaking of attachments to others, the bindings and separations of life give meaning to and create the dramatic highlights of a person's existence. Prototypical of all attachments is the bonding between parents and a baby, just as the early separations of an infant from its caregivers suggest the trauma of later partings. Studies by Bowlby alerted psychologists to the crucial nature of early experiences in forming enduring ways of reacting to the separations of life. From Bowlby's work and from the insights of Erikson who emphasised the overcoming of inner and outer conflicts throughout the lifespan we would expect that in the absence of later extensive trust-building a person who had been deprived of attachment opportunities in infancy would both fear and experience separation more often in adult life. Their ability to love trustingly would be impaired and they would be the suspicious and jealous persons who figure so highly in the complaints of divorcing spouses. Depending on the extent of their neglect, they might become angry and aggressive or lapse into unresponsive depression.

Perhaps these references to early childhood might seem to a lawyer to be irrelevant to those clients who constantly pen abusive, aggressive letters or who, on the other hand, appear unresponsive. However, an understanding that responses to loss and separation may be influenced by earlier life history helps a lawyer to accept that clients bring not just the experience of this separation but all their prior experiences into the lawyer's office. Those who "cope", who resolve the separations of the past, almost always do so with the help of another person. In the case of divorce it is often the lawyer who helps the client through the crisis by providing a model of calm rationality. However, the lawyer is not expected to function as a therapist. Some people are so damaged by early experiences that they require extensive help from psychologically trained professionals in order to cope adequately with what is a distressing and unhappy period in their adjustment to unmarried life. As White and Bloom point out "marital disruption (separation or divorce) constitutes a severe life stress for many individuals and ... that stress can precipitate a variety of physical or psychiatric difficulties in vulnerable individuals otherwise not afflicted".

It can help to see the disruption to the pattern of adult life wrought by separation as a part of the whole developmental pattern of a person's life. One of Erikson's focusses in his theory about how people develop through life is

39 Spanier and Thompson, op cit, p 143.
40 Spanier and Thompson, op cit, p 159.
on a “trust vs mistrust” stage. In this stage, if an infant’s needs were met, if cries or whimpers brought action and relief of pain or hunger then trust in a safe responsive world developed. As a result the child was able to work through the next crisis in the life cycle, that of achieving “Autonomy” rather than giving in to “self-doubt” and “shame”. It was Erikson’s belief that when a stage was not satisfactorily resolved its effects would linger throughout life to resurface later when similar conflicts arrived. Trusting another is a great achievement, but so is the next stage — becoming autonomous and overcoming dependency. The successful determination of a marriage breakup depends partly on how a person experienced such earlier stages in his or her life. Thus a family lawyer faced with dealing with similar situations in the “here and now” with different clients ought not to be surprised to find that some resist independence. It can be flattering to find that clients are willing to follow suggestions exactly, offering no opposition to a rearrangement of their life styles. However, it is not necessarily a good thing if clients want to push away all decisions and allow the lawyer to control painful or confusing situations. As time passes clients might lament the loss of autonomy and blame the lawyer for regretted decisions. Thus the “efficient” lawyer who does not take the time to hear and understand what the client is saying or to explain possible options may become, by reputation, the “restrictor of choice”.

Understanding individual differences in separating behaviour

Whatever the psychological condition of the client, the lawyer is expected to provide a professional service. This may be difficult when clients are disturbed and distressed and the lawyer untrained in distinguishing symptoms of depression or guilt. The Australian Institute of Family Studies44 and Wallerstein and Kelly’s longitudinal studies of families involved in divorce are valuable in pointing out how common these symptoms are with divorcing couples and helpful for practitioners in making them aware of the impact of disturbance on the divorce process.

Wallerstein and Kelly divide decisions to divorce into a number of categories, such as “divorce as a rational solution”, divorce as “a stress related response”, as “impulsive”, or as “a decision encouraged by others” (such as psychiatrists). However, whether the decision to divorce is made to escape a marital relationship which “exploited or abused” an individual or to express “outrage and jealousy” or one made by an emotionally disturbed or stressed person or to escape from such a person the results generally are loss, upheaval and change. As well as “abrupt alterations in financial and economic stability” there were “problems created by the parents’ moods and attitudes” after separation for “in the majority of families conflict and bitterness between the parents escalated following the divorce”.47

In an Australian Institute of Family Studies follow-up of divorcing couples Funder reports that “though some found separation shattering, not everyone

44 Funder, K, Harrison, M, Weston, R, op cit, p 212.
46 Ibid.
experienced it the same way”. There were some people who appeared to take it in their stride. This is what would expect given that the circumstances surrounding divorce and its outcomes can be very different. However, Funder et al’s study found that most people experienced “overall misery”. They found that “relative to the general population and to themselves two to five years later men and women were very unhappy indeed about their personal lives both before and after separation”.\(^{48}\)

A recent general text in psychology says about depressive disorders “The line between normal dejection and unhappiness and abnormal depression can be very difficult to draw”\(^{49}\) and goes on to say “When a depression significantly impairs everyday adaptive behaviour for more than a few weeks, there is reason for concern”. The common symptoms of depression are characterized by “gloomy, hopeless, socially withdrawn and irritable” behaviour and by “slowness of thought processes, obsessive worrying, inability to make decisions, negative self-image, self-blame, and delusions of guilt”. The depressed person is “less active, tired, experiencing difficulty in sleeping”.\(^{50}\) These terms seem to summarise pretty well the “overall misery” of “men and women who were very unhappy indeed about their personal lives before and after separation” that Funder and her colleagues found “more extreme in the early months of separation” but which showed a substantial improvement two to five years later in most of their subjects.

It can help to understand that depression is almost always associated with a feeling of helplessness and lack of control. Seligman\(^{51}\), seeking to understand how some people reacted to traumatic events with depression-like symptoms as described above while others appeared unaffected, found that the former group suffered from “learned helplessness” or a kind of passive behaviour “produced by exposure to unavoidable aversive events”. When Seligman investigated this learned helplessness he found that it depended upon how the person interpreted the events; that is, if they interpreted them as something within themselves, such as a personality flaw, or something outside themselves that they could not see a way to change, they reacted with depressive-like symptoms.

Wallerstein and Kelly found that among those women who cared for children full time after divorce there was a group who “suffered moderate or serious depression or other serious mental illnesses”. “A few women spent most of their days in bed; several were alcoholics; some were intermittently preoccupied with suicidal thoughts”.\(^{52}\)

These are symptoms of people who feel that they are powerless to change the situation they are in. In Seligman’s view\(^{53}\) what explains how some people cope better with grief, separation or any other traumatic event is their

\(^{48}\) Funder, K, Harrison, M, Weston, R, op cit, p 212.


\(^{50}\) Ibid.


\(^{52}\) Wallerstein & Kelly, op cit, p 24.

cognitive interpretation of what is happening to them. Seligman found that helplessness, which he sees as central to depression, occurs when people believe that events are beyond their control. For example, a person who has learned to be helpless in the face of traumatic events will say, "I just can't understand all these figures. Tell me what to do!", thus demonstrating dependency on a professional. In contrast a person who, in Seligman's terms, makes positive attributions about themselves will say "I'm going to have to manage my own finances so I want to know why you are telling me to do this and this so that I can learn to control my own life. In the past I relied too much on other people but I want to change that now".

Seligman's analysis fits Funder's observation that "being active was a positive". That is, active participation in the decision to separate which involved 69% of women and only 33% of men led to a lessening of the adverse emotional effects of divorce. Arditti and Kelly reinforce this idea that it is important for individuals to feel a sense of power. They summarise research establishing that if divorce initiation was not mutual, or was initiated by the woman, or was accompanied by hostile proceedings or could be blamed on outsiders, men directed more post-divorce anger at their wives. Arditti and Kelly's own study found that the responsibility the man assumed for the dissolution of his marriage and his satisfaction with legal custody and property settlements were indicators of the quality of relations with his former wife.

Funder observed, too, that despite the generally negative effect of divorce in the early months of separation what impressed was the "overall resilience" of people in that at the end of the study — after five years — the divorcing couples "were no less content than Australians in general".

However, rather than wait the average of two years or so that depressive episodes take to clear, Seligman and his colleagues began to teach people to interpret events in such a way as to give them the feeling that they could do something to change their lives; that they were not powerless. Cognitive therapists such as Seligman treat people not as "depressed" patients but as people who can learn to see themselves as in charge of events.

Techniques such as those used by Seligman and his colleagues can be used by lawyers dealing with separating people who they recognize as behaving in a dependent "learned helpless" way. It is possible that the lawyer can prolong this behaviour by "taking over" and providing clear direct advice. However, an alternative way of "giving advice" is to offer this in such a way that clients are encouraged to explore options and come to feel that they are in control of their own lives.

The difficulty then for lawyers is, as Ingleby points out in his analysis of the interactions between solicitors and clients, that "clients' needs are not constants. Needs and perceptions of needs change over the processing of a dispute". Ingleby argues that the degree to which actions that are taken can be labelled as due to "client decisions" or "solicitor decisions" depends upon

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55 Funder, K, Harrison, M, Weston, R, op cit, p 234.
the input of both parties. Presumably with input equal from both it will be possible for the solicitor to “translate” the law so that an accommodation “between what the client wants and what the client is entitled to” is achieved. However, the client may be in a state of “trauma, anxiety, depression and lowered self-esteem” which Irving and Benjamin found dissipates at different rates:

Typically the initial sense of trauma disappears first, within five to eight weeks. The anxiety and identity changes go next, declining gradually over a year or so. Feelings of depression endure the longest, fading away rapidly over the first five to eight months and then more slowly for the next year.57

In the face of debilitating emotional states it may be difficult to engage the client sufficiently for them to express their wishes. In addition, during a period of crisis the individual’s desire for help and direction is increased, rendering the individual more open to outside influence and change. However, in these circumstances care needs to be taken in giving advice however much clients might want to push away decisions and allow the lawyer to control a confusing and painful situation. Ultimately the solicitor’s help will be assessed from the viewpoint of a person who has passed through the valley of grief over the parting and who sees being dependent upon others — the solicitor included — as negative. As Seligman has pointed out, interventions with such people which encourage them to feel as if they can influence situations will speed up the process of adjusting to trauma. Clearly then, the lawyer can contribute to this process by structuring what he or she says to the client in such a way as to encourage input and to facilitate decisionmaking while communicating “the rules of the legal system” and yet, guarding “against future allegations of negligence”58 by seeking to prevent the client from pursuing a course of action which is against his or her self interest.

Taking control is more difficult for some clients than for others. For some individuals separation signals the loss of an identity not easily replaced. These people are “not only unable but also unwilling to see themselves in new roles and will not begin to actively pursue life on their own until it is clear that the [former] relationship is unsaveable”.59 For some, this loss of identity leads to withdrawal into disintegration and they “find comfort and identity in the role of victim; their lives organised around the rejection”. An American writer, Vaughan,60 sees their preoccupation with the initiator of the separation as a testimony of “the strength of the connection”. She suggests that the option often favoured by lawyers that wives should retain the family home may prevent a new and separate identity being formed because such wives in “prolonging the coupled identity” are inhibited from “creating new lives distinct from the past”61. However, although wanting to stay in safe and familiar territory may be an initial urge, and even in some cases may be a sensible thing to do, many clients do try to come to terms with the loss; to understand themselves. “They may read books on parenting, sexual

57 Irving & Benjamin, op cit, p 17.
58 Ingleby, op cit, p 135-7.
59 Vaughan, op cit, p 160.
60 Vaughan, op cit, p 163.
61 Ibid.
techniques, the art of communication, relationships and self-improvement to learn what went wrong and do better in the future."62 As a part of this information search they seek the expertise of others, including their lawyer.

Puzzling for those who observe couples at various stages of what Vaughan calls "uncoupling", is how at first the negative attributes of the other are foregrounded, while those who have completed the process are able to recognise the positive features of the relationship and even to achieve a mutually satisfying interdependence signalling "more harmonious copartner relationships."63 Vaughan explains how the initiator is wary of acknowledging anything positive about the other lest the person still dependent on the relationship interprets this as meaning that it still exists in its previous form. When both are "well along in their transitions" former partners can acknowledge the positive in the other and can resume social relations with the former partner's friends and family where once it was hurtful to see them. As Vaughan expresses it, "Negative definitions are essential to transition, but they are often temporary".64 Knowing that negativity towards the other partner can be temporary can help the lawyer both understand these shifts and refrain from agreeing with negative comments about the other spouse. Arditti & Kelly also suggest that the desirability of divorcing couples achieving a "clean break" is now questioned, especially where continued cooperation about the lives of children is anticipated, although they quote Ambert as warning that "dependency on the other ex-spouse whether for childrearing, money, or social considerations is not conducive to peace after divorce".65 For the lawyer involved, walking the tightrope between achieving what the client wants now and might want at some later time and achieving a realistic economic settlement requires careful consultation and negotiation.

Sometimes it is difficult for the lawyer to establish the "facts of the case" or even to obtain a consistent account of the client's wishes. In some part this instability is because the perception or view of the other changes according to the needs of the person viewing. Thus Vaughan points out, "the partner will define the relationship as unsavable in ways that reduce both the personal sense of failure and the possibility of social stigma".66 Weiss echoes and develops Vaughan's view of how perceptions alter the "reality" of events.

An account is not the same as an objective and impartial description, assuming that any such thing could be constructed. The accounts of a failed marriage offered by a husband and by a wife are likely to disagree, not only in that they report different versions of the same event, but even more in that they report different events. A listener who heard first the husband's account and then heard the wife's might not realise he had been told about the same marriage.67

Similarly, Spanier and Thompson talk about how the separated person constructs an "account" or explanation of what went wrong and concentrates

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62 Vaughan, op cit, p 165.
63 Arditti & Kelly, p 61.
64 Vaughan, op cit, p177.
66 Vaughan, op cit, p 175.
on certain weaknesses in the marriage or in the partner, allocates blame, and imposes sense on an otherwise inexplicable experience. After separation, the person worries over the account, weaving the tale together with new insights.

Understanding that perceptions of the separation can vary a great deal can help the lawyer who is acting only for one side. The lawyer needs to avoid becoming a part of the problem by identifying too strongly with one side of the story. In the transcript that began this paper there appears to be some loss of objectivity in, “If I was married to him, I’d have been stressed too”, which might hinder effective negotiations with the husband’s lawyer who may have been told a very different story of the relationship. Ingleby reports that his investigations of the formal communications between parties to a divorce conducted through their solicitors showed that the very formality of these communications sometimes had the effect of changing “confrontation to co-operation” as soon as the formalities had provided both solicitors with a fuller picture.

Experiencing separation differently

Australian researcher Jordan found support for comments made by Kressel based on clinical experience that men were untrained in the capacity to “experience and express the emotional and interpersonal side of life”. However, men clearly find divorce a highly emotional experience. Jordan reported that one or two years after separating men had continuing attachments to their marriage and family and that “65% of respondents felt dumped, 55% still spent a lot of time thinking of their wives and 45% still had angry feelings towards their wives... 36% felt the separation and divorce was a horrible mistake, while 39% said they would never get over the divorce.”

Jordan’s research supports the views of a mediator who mainly works with divorcing couples making arrangements about property and custody of children:

Women tend to be given the task of caring for emotions in a marriage and consequently they are more aware earlier of the emotional climate of the marriage. They try to alert the spouse but when their suggestions are dismissed they begin to make plans to end the marriage. Consequently they are often further along the path of separation by the time they approach a lawyer than the man is.

Supporting this view an Australian study found that twice the percentage of women (44.7%) compared with men (22.6%) had thought first of separating.

Jordan’s research showed that men who were “unaware” that there was a problem in their marriage experienced more problems for a longer period than those who had discussed the problem previously. Sixty to eighty percent of men “experienced stress-related symptoms such as sleeplessness, crying,
reduced energy, poor appetite and excessive tiredness.""74 Jordan comments that "these are classical clinical symptoms in bereavement and loss". In the areas of doing chores, social initiatives, and financial management most men had recovered to the levels of their performance before separation or better by 1-2 years after separation.75 Jordan suggests that courts be organised to allow men who have not yet come to terms with their "sense of loss" to undergo "bereavement/loss counselling" before meeting for "conciliation conferences relating to property matters".

However, cases will differ. For some the sense of loss might be experienced as "wave after wave of violently contradictory emotional impulses"76 while for others "bereavement/loss counselling" which focused on the process of separation as having definable stages might help.

Jordan identified a profile of the one third of his male sample who were in chronic distress. These men were of low occupational level and did not want the separation; they did not recall conflict before the separation and had attempted reconciliation. According to Jordan, a lawyer should expect difficulty in dealing with men who fit this profile because their degree of objectivity and rationality is very low.

Vaughan and Kaslow and Schwartz see the phenomenon of separation as a complexity of interacting variables which need to be taken into account by those who work with separating individuals. In other words, movement along the track is dependent on how subjects' needs are met at each stage, allowing them to make the transition to the next phase of life. However, partially resolved experiences in the past may result in an individual carrying baggage that impedes progress through any of life's difficulties.

Managing family disputes: Lessons from mediation

Two contributors to an Australian Broadcasting Commission radio program77 on successful divorce recommended seeing a mediator instead of a lawyer. In their view lawyers tended to exacerbate or prolong disputes. Two people said that they had changed solicitors several times before they found one sympathetic to their need to achieve a settlement both parties could agree to. While acknowledging that lawyers worked in an adversarial system where their responsibility to get the best for their client could be misinterpreted, a solicitor on the program suggested that solicitors could offer suggestions framed in terms such as, "What if . . ." or "Would you consider . . ." in order to encourage a problem-solving kind of approach. If a lawyer used his or her knowledge of the law and past practice in this way clients would be helped make decisions they are less likely to regret than those decisions not involving opportunities for exploring options. Ultimately, of course, clients expect to be guided by the lawyers' experience and knowledge. One woman on the program indicated that her solicitor functioned as the "voice of reality" in

74 Jordan, op cit, p 44.
75 Jordan, op cit, p 44.
76 Littlewood, op cit.
77 Australian Broadcasting Commission radio broadcast "Life Matters" 30 September 1995, 9 am.
advising her that her husband’s offer in relation to property was fair and reasonable when other non-professional acquaintances were suggesting that she could do better.

Given the primacy of emotions in the divorce process, lawyers trained in mediation and alternative dispute resolution techniques can help people behave more effectively by using more adaptive ways of relating to others and by confronting problems as they arise rather than leaving them to fester and erupt in the future. Such lawyers not only deal with the legal issues but also model more effective ways of handling conflict and, it seems, may gain respect and recommendations from clients. Wade suggests that changes to society “demand that lawyers as conflict managers develop sophisticated knowledge, skill and processes relating to the causes of conflict, the education of clients and other professionals and knowledge of multiple new and old forms of conflict intervention”.

Wade’s model of the lawyer as conflict manager and “diagnostic problem solver” goes some way to helping clients avoid litigation. Kaslow and Schwartz report that when divorce proceedings are adversarial the litigants are more likely to feel helpless, pessimistic, detached, and depressed as described above because decisions are in the hands of lawyers and judges. The client may experience confusion, loneliness, sadness and grief over losses. As well, retribution may become a dominant aim in adversarial settings.

In this context Kaslow and Schwartz see litigation battles in family law as “hostile and demeaning” and the prolonged bitterness and anguish that the process can produce as leading to people being “traumatised by continuing strife” and “long-term loss of self-esteem and confidence” for everyone involved in the process. Instead of the adversarial system they advocate mediation as an alternative to litigation, saying that mediation enables a couple to reach a cooperative agreement in the process of which they can “learn to trust their own independent judgements, to negotiate assertively, to compromise effectively, and to take charge of redirecting and refashioning their own lives” while maintaining “each party’s integrity and self-esteem” and avoiding “fault-finding and attribution of blame”. However, mediation requires that “individuals must be able to trust each other, to communicate reasonably and calmly; and to be willing to actually participate in formulating an agreement which becomes a map for the next years of their and their children’s lives”.

Whether the lawyer functions as a mediator or in the more traditional role of a solicitor acting for a client, an understanding of the emotions involved in loss through separation can enhance his or her professional conduct.

Ideally, as Kaslow and Schwartz recognise, a family lawyer does a better job if he or she is able to use some of the techniques of mediation in encouraging clients to listen to the expressed needs and wants of the other and to attempt to encourage accommodation between them where possible and let

78 Wade, op cit.
79 Kaslow and Schwartz, op cit, p121.
80 Kaslow and Schwartz, op cit, p 123.
81 Kaslow and Schwartz, op cit, p 125.
82 Kaslow and Schwartz, op cit, p 125.
83 Ibid.
the parties reach mutually satisfactory solutions. Often this can be achieved. Certainly, too, there are cases where there seems no alternative but litigation and the lawyer is forced into being “for” his or her client and “against” the other party. Although in this case it is tempting to exploit the weaknesses and vulnerabilities of the other party and to take on the single-minded advocacy of one’s own party that is expected of a lawyer, it is as well to remember that the parties who are fighting a battle in court are inextricably bound together both by a shared past and very possibly by a shared future as parents and grandparents. At the moment they feel like hiring a gladiator, but a study of the research available on separation shows that such a passionate antagonism is unlikely to last forever in the absence of a deep-rooted psychopathology (which is rare) and it is quite likely that as time passes clients may attempt to assuage their guilt by blaming aggressive lawyers for destroying any hope of a satisfactory continuing relationship with their ex-spouse.

Conclusion

Familiarity with the work of researchers and theorists discussed above who have attempted to describe how individuals cope with the separation process and an understanding of the processes of psychological development across the life span together with an understanding of interpersonal relationships will help the lawyer who works with separating couples. Practising lawyers have to help people with a wide range of needs, backgrounds, emotions, and motivations to come to terms with the meaning of the law in their individual lives. Lawyers are certainly hired “for” separating individuals, but that does not mean that they should be acting “against” others. Trained in an adversarial system where attributing fault to the other side is one way to gain advantage, some lawyers bring that mind-set to the practice of family law. These lawyers undermine what Dickey sees as “the basic philosophy” for the Family Law Act and as providing the “framework for the establishment of the new Family Court” expressed in the English Law Commission’s Report, “Reform of the Grounds of Divorce: The Field of Choice”: “When regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation”.

That most divorces do not involve litigation is evidence that this aim is being achieved for a large number of people. This is due in part to family lawyers’ skills in listening to the needs of their clients and understanding the psychological processes at work and, no doubt, to existing sources of psychological support available to separating couples. As well as taking the expressed immediate needs of their clients into account lawyers can consider how a client’s background and previous experience may make it difficult to behave in what the lawyer sees as a “reasonable” fashion in a time of stress. Over time clients may come to regret behaviour which led to a complete and bitter severance with their former partner and may come to believe that the family lawyer was an accomplice in creating this bitterness. Family law is a highly emotionally charged field, but, with support, people will manage to

devise fair outcomes with “minimum bitterness, distress and humiliation”\textsuperscript{85}. As people generally die as they have lived; so they are likely to divorce with the same amount of anxiety and fuss as they do other things in their lives. Accordingly it behoves the lawyer to understand more about such individual differences in dealing with the process of separation. People who have a long history of litigation relating to other areas of their lives may need a family lawyer who is able to acknowledge the emotions which drive them while modelling effective ways of dealing with these emotions in order to resolve the problems created by separation and loss.

This paper has argued that divorce arouses emotions akin to those experienced in grief and depression. Theories which propose that there are stages of bereavement and adjustment to the thought of one’s own death offer a broad framework through which the process of divorce can be understood. In addition the paper shows that clinicians working with depressed patients recognise a kind of learned helplessness which prolongs states of depression. They suggest that traumatic events are best handled by individuals who believe that they can find a way to control situations rather than becoming their passive victims. Research\textsuperscript{86} shows that separated individuals who feel in control more readily overcome negative emotions which are similar to those of depression. Therefore, it is suggested that lawyers behave towards their clients in ways that discourage dependency and encourage clients to see themselves as effective decision makers and problem solvers using the advice, experience and knowledge of their lawyers as resources. This kind of relationship should have the effect of making clients more satisfied with the legal process and reducing the time spent in experiencing negative emotions. It is clear, however, that every client brings to the consultation room a history of past ways of solving problems. A lawyer, therefore, must be aware that there is no one rule of interpersonal interaction that will predict how clients will react to a given approach. However, lawyers who understand the emotions and beliefs that can be involved in the process of separation will be better placed to deal effectively with clients in family law. Clients, too, in the long term will be happier with lawyers who understand the complexity of their responses to the separation of divorce.

\textsuperscript{85} Ibid.
\textsuperscript{86} Seligman, op cit.