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When courts accept what science rejects: Custody issues concerning the alleged “parental alienation syndrome”

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ABSTRACT

“Parental alienation syndrome” (PAS) is unscientific and is an affront to children, women who hold the custody of children of separated couples, science, human rights, and the justice system itself. Justice, to be just, should be based on scientifically proven theories and evidence. This article describes investigations carried out to show that two of the principles that underpin PAS are false: That children lie when pressed (alienated in the terminology of PAS), and that the principle that should guide judges’ actions for the good of the child should be that for the child to always be in contact with both parents. The results of these investigations show that these two principles are false and advocates the use of truly scientific proceedings for judges to grant custody in case of dispute between parents, as well as for determining the visitation for the noncustodial parent.

KEYWORDS

Child protection; custody; forensic psychology; legal psychology; parental alienation; parental alienation syndrome

Introduction

We do not intend in this commentary to review the concept of what science is but we consider it pertinent to recall that since Galileo, through Newton and up to today, scientific theories are derived from experienced facts gained through observation and experimentation. In fact some sciences have advanced more through observation, opting for an inductive methodology, while others have progressed more through experimentation, following the hypothetical-deductive method. Of course, when a scientist, even though s/he may later use the hypothetical-deductive methodology, seeks to create a scientific theory, it stems from the real world, usually from an observation.

Perhaps that was the starting point of the American psychiatrist Richard Gardner (1992), when in the 1980s, he thought he would classify and coin a term for something that, to his knowledge, no one had named so far, to try to explain the rejection that the child exhibits when communicating with one of his parents during family breakdown. The author created the concept of “parental alienation syndrome” (PAS), giving preference to the syndrome’s name, most likely because of its medical origin.

PAS tries to explain a child's rejection of one of his or her parents, and to do so, it follows a scheme opposite to the one well-known within science as "Ockham's razor," also called the principle of parsimony, which states that all things being equal, the simplest explanation is usually the most likely. No doubt Ockham, a Franciscan friar, would have thought Gardner's explanation about how a child might reject a parent was not the best, simply because it is not the simplest. The simplest thing would have been (and is) to think that the rejected parent has taken some action that caused the child's rejection, usually abuse, sometimes of a sexual nature. Instead, Gardner laid out something diametrically opposed, stating that this refusal occurs as a result of the manipulation the other parent (who is worshiped by the child) exercises over the child, rejecting the idea that there may be other causes that justify the rejection.

Acceptance of the diagnosis of PAS by the court systems, not by science, automatically implements the treatment prescribed by Gardner, known as threat therapy. This therapy aims to correct behavior, in this case the child's and the parent's with whom s/he lives, so that regardless of the root causes of the child's rejection to visit the parent with whom s/he is not living, the child is forced to form a relationship with the latter. To achieve this, the courts takes a series of measures, all of which are based on threat and coercion. Even when PAS is not used as a label in the courts cases, this same type of intervention is recommended by to many attorneys and evaluators.

The use of PAS would possibly have more relevance if it were not for the treatment Gardner inevitably associated thereto, which is applied coercively through the courts of many countries. However, it has been found that this treatment, far from solving the child's rejection to interact with the other parent, has undesirable consequences for the children (Bruch, 2002).

It should be noted that within the terminology used in PAS's construction, the parent who holds custody of the child and with whom he or she lives will be called the "alienator" and the parent whose company the child rejects, the "alienated." The child, in turn, is also referred to as "alienated."

When the breakdown of couples with children occurs, in the absence of consensus between the two parents, it is the court that has to establish custody, as well as the system of communication between the children and the noncustodial parent. To this end, the child's testimony, declared directly by him/her before the judge or through the reports of the technical bodies that assist it, sometimes is the only evidence provided in the procedure. Therefore, the testimony acquires great importance, especially when there is suspicion of mistreatment or abuse by a parent regarding the children. However, the child's testimony as such, its relevance, connotations and consequences are secondary; it simply disappears from the scene or is interpreted opposite to what the child expresses when ideas that underlie the PAS nomenclature are present during the trial.

Diagnosis of PAS

The differential diagnosis of PAS is constructed *ad hoc* to attribute a pathogenic condition to the mother's (usually) manipulation, and to interpret any act or omission of the child in consistency with this harmful influence of the mother on him. Custody of children is still held by mothers to a greater extent and what's more, abuse and mistreatment of children that lead to divorces and child custody cases are committed to a greater extent by male parents (Clemente & Padilla-Racero, 2015b). Gardner, when identifying the manipulating or alienating parent who has custody and the alienated or rejected parent who does not, mothers are almost automatically assigned the role of alienators and the role of the alienated is assigned to the rejected father. The manipulated child would also have the condition of being alienated by the mother.

The parent who is assigned the role of manipulator comes to be seen by the court system as a harmful, toxic influence on the child, and therefore the measures taken in the Courts will be in line with taking the child away from the mother, to safeguard the child from dangers to his/her mental health. Diagnosis of PAS is carried out based on the appearance of eight symptoms that Gardner determined children to have, and treatment (threat therapy) is set based on 10 symptoms supposedly present in the mother (usually the alienating parent) and only secondarily depending on the child's symptoms (Padilla-Racero, 2013). The response or treatment is simple (and the true purpose of the PAS diagnosis): The change of custody in favor of the father, a victim of unfounded rejection by the child, a rejection that is presumed to be induced by the manipulative mother.

That PAS is an ideological rather than scientific instrument is easily detectable in many of its approaches. For example, according to this false syndrome, the child makes a campaign of denigration on the noncustodial parent, which is symptom 1 of PAS in the child (Padilla-Racero, 2013). This campaign of denigration against the father of the child is induced by the mother and the product of her manipulation of the child. On the other hand, the phenomenon of the independent thinker, which corresponds to symptom 4 of the diagnosis of PAS in children (Padilla-Racero, 2013), refers to the role of the child in his/her personal campaign of denigration. This personal contribution of the child (independent of the mother's manipulation) is what PAS advocates argue to label the syndrome as a childhood disorder. PAS, through the rhetorical use of language, seeks to justify hypotheses that cannot be supported scientifically, incurring numerous contradictions, such as the one just pointed out.

Nichols (2014) explains that mental health professionals have published dozens of reports of clinical studies purporting to support the diagnosis of PAS during the past 20 years. All these reports, however, are based on clinical observations and ideology rather than empirical data or peer reviewed research. As Emery (2005) explains, authors should recognize and assume that

clinical experience, including case studies, prove nothing; case studies are valuable for generating hypotheses, but not for confirming them.

PAS interprets the child as lying when s/he vilifies one parent (usually the noncustodial parent is male), and in psychoanalytic theory, the child fantasizes (lies) when s/he recounts memories of sexual abuse during childhood (Clemente, 2010). In short, both PAS and psychoanalysis are ascribed to the field of ideology, abandoning science in these situations. PAS has not been scientifically validated because it originates from an invalid theoretical model (Clemente, 2013).

Among the ideas on which PAS is built, two stand out: the “inherent falsity in children,” because of which they should not be believed if they accuse their parent of mistreatment, abuse or neglect; and the idea that a parent uses the legal system to separate the children from the other parent, using manipulative, vicious, and vindictive nature. It was assumed that the manipulator would be a female in general, which was the gender-biased view of Gardner. However, it is more likely that such manipulation would be a symptom of control; issues which tends to be more similar to a parent who commits domestic violence or child abuse. Therefore, Gardner’s theories soon found themselves opposed by movements in defense of children and women, in addition to the scientific community.

Acceptance of the diagnosis of PAS or its theories by the courts means the immediate application of the Threat Therapy, which is intended to dissuade the children and the mother from breach of visitation. This is a coercive intervention, which aims to correct the behavior of the child and the parent with whom s/he lives, using the tools of threat and judicial coercion. Such threats are supposedly intended to be therapeutic and are implemented by the court on the grounds that they are the most suitable for the child, from an interpretation of the same interests that coincide exclusively with the interests of the manipulator. These threats consist of a range of coercive measures ranging from fines, house arrest or imprisonment of the parent diagnosed as manipulative and harmful to the child, until the change of the child’s custody in the favor of the rejected parent. Sometimes, this change of custody is carried out after a period of detaining the child in a juvenile facility or “deprogramming camp” until s/he does not go back on the accusations regarding the rejected parent and accept the situation. Contradictorily, the court record will become almost a clinical record. An alleged syndrome that has no place in the area of public or mental health where it has been continually rejected is used to diagnose and intervene by the courts and those who promote it in the legal system.

As Gardner himself acknowledged, the differential diagnosis of PAS is not capable of determining whether the child has been mistreated or abused by the parent that is rejected or if it is an invention of the minor, or a product of manipulation on the part of the alienating parent (which is attributed to the manipulation). PAS’s lack of scientific grounding, the high probability of misdiagnosis recognized by its creator and subsequent defenders, as well

as the legitimization of the use of coercion by the State through the courts to impose affection are some of the ethical considerations that should prevent the application of such threat therapy.

The consequences of treatment involving PAS diagnosis for children are dramatic. As Nichols (2014) states, survivors of domestic violence and child advocates argue that Gardner's theory overshadows the legitimate causes of estrangement between parents and children, such as abuse, neglect, or the feeling of abandonment in the child caused by the divorce itself. Bruch (2001) states that Gardner confounds a child's reaction to the divorce and the high level of parental conflict (including violence) with his approach. The authors who devote their efforts to the defense of children fear that the "diagnosis" of PAS within the resolution of cases of custody disputes can result in the courts handing children over to their abusers (Dallam, 2008).

Discrediting PAS

Clemente (2013), Padilla-Racero (2013), and Rozanski (2013), among other authors, have devoted their efforts to studying and explaining the phenomenon called PAS. Examples are the works of Meier (2009), Nichols (2014), Pepiton, Alvis, Allen, and Logid (2012), and Pignotti (2013). Paradoxically, this issue that initially does not have by itself any scientific interest has come to draw in many authors to contest it, knowing that it is highly topical because of its application in the Courts of many countries and the certainty that this real action leaves children in a more than regrettable situation of risk and vulnerability.

The main idea on which PAS is based, as previously noted, is that when a minor expresses his suffering of mistreatment or abuse by one parent (usually the father) during a separation or divorce process, this statement is false and induced by the other parent (usually the mother). An empirical study showing that children generally do not lie about these types of situations and that they are also not easily manipulated has been conducted (Clemente & Padilla-Racero, 2015a). The ideas raised by Gardner are not supported by the data. It is rare for a child to lie about what s/he has seen or experienced. Our research raised the ire of supporters of PAS, who even demanded its withdrawal from publication, showing their ways of acting to be inquisitorial (Bernet, Verrocchio, & Korosi, 2015), and was contested by the authors who carried out this work (Clemente & Padilla-Racero, 2015b).

Another important aspect to investigate was to determine the importance of PAS ideas given by judges to the various reports submitted as evidence in family courts. Clemente, Padilla-Racero, Gandoy, Reig-Botella, and Gonzalez-Rodriguez (2015) tried to verify what weight the different pieces of evidence have in court decisions regarding the determination of custody and visitation. In some countries, as is the case of Spain, teams of psychologists working for the Administration of Justice often produce reports that are

clearly pro-PAS, which requires custodial parents to resort to psychologists outside the Administration of Justice to determine whether the child's testimony is true. Pro-PAS mental health professionals systematically start with the idea that the child is lying. The testimonies of the parties involved (both parents) are part of the evidence in these trials. Given these various reports and testimonies, combined with the principle that the judge understands to be taken as a guide for the decision for the welfare of the child, there may be very different decisions about the types of communication of the child with each of his parents in the cases that concern us.

This line of research was intended to highlight the importance of child sexual abuse from a different point of view, which is the way to treat it from a judicial perspective. Clemente (2013) and Padilla-Racero (2013, 2015, 2016) sought to verify how important the different professional testimonies and reports are to judges according to how they understand that they must act for the good of the child and based on the existence of statements in the reports. It has been found that the reports of the teams assigned to the courts are second in terms of credibility given to them, which makes us reflect on the importance of their development; professionals have to be guided by knowledge and techniques that have a scientific backing, abandoning unscientific constructs, such as PAS. Data from this study show how effective different judicial behavior is depending on the variables analyzed, and how the reports of the psychosocial teams are specifically second in being taken into account to support court decisions on children.

The main conclusion is that faced with the event itself, which would be the story or account presented, judges make a decision that is influenced by variables that are manipulated, with the professional evaluations embodied in the Administration of Justice's technicians' psychosocial report being of great relevance among such variables. Unfortunately, in most cases, these reports state that there is PAS or follow the same principles even if they do not use the label.

Conclusion

PAS advocates, to this day, have not produced any evidence or empirical data demonstrating its existence. What they mean by scientific evidence is bound solely to the merely theoretical circulation of Gardner's work, the creator of the PAS concept. The authors cited by proponents of PAS as alleged researchers are mere disseminators of PAS, not actual researchers who have published in peer reviewed research journals.

The data obtained in our research allow us to affirm that in general, children do not lie about abuse they have experienced, and they are not easily manipulated. These data refute, therefore, one of the main ideas on which PAS is based. By not being based on sound theoretical principles and not being able to be verified, PAS and its framework cannot generate a diagnostic

tool. Consequently, you cannot establish an intervention program for a suspected syndrome that cannot be diagnosed, because it is impossible for a diagnostic tool to be derived from it, with it not being supported in a valid theoretical model. Without a solid theoretical model, one cannot make a diagnosis and possible treatment for it. In short, you cannot measure what does not exist and that is what is happening with PAS.

The social utility of science is to deliver justice between individuals, which is why when scientific instruments or techniques such as PAS are used, it constitutes social injustice (Clemente, 2013). The followers and believers of PAS promote threat or coercive treatment/intervention, and removal of the child from the person who may have been the primary caretaker. It is not possible to derive a treatment from a theory that is not falsifiable, and even less, if an instrument that meets the appropriate psychometric requirements is not derived, for without such an instrument, it is impossible to verify whether the treatment produces improvement in children. PAS is ideology, not science. It is a whole system of ideas based on a mirage of equality, which does not stand up to any scientific, legal, or social analysis.

PAS projects on the women the suffering of mental disorders, and on children the presumption of being liars and easily manipulated; and quite unfortunately, because of the undeniable weight of these two pseudosciences in our society, both theories correspond to subjective approaches of interpreting reality and of undeniable gender bias.

The testimony of minors must be duly taken into account in these proceedings, since it is empirically verified that children tend to tell the truth and that furthermore they are not easily influenced or manipulated to give a false testimony, but quite the opposite. Therefore, if you want to ensure the good of the child, you cannot do it without their testimony being heard and duly taken into account in judicial decisions that concern them.

PAS is a false attribution, a cause–effect relationship that does not exist, unprovable, unscientific, but generates three types of victims, two of them custodial parents (usually mothers) and children. The latter, who sometimes suffer abuse, including sexual abuse, sometimes only find a single solution in their lives, suicide. The third victim is society, which instead of defending the existence of a more just society for all, allows the opposite to occur. For the sake of the child, we must struggle to conceive PAS and those who follow and promote its principles as what it is: False.

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