



[Tikkun Magazine, March/April 2010](#)

## A Spiritual Perspective on Family Courts

by Bruce Peterson

Spiritual progressives believe that practical public policies flow from the application of spiritual principles to national problems. Our spiritual consciousness isn't just some warm glow—rather, it provides practical guidance in a complicated world. This magazine often thoughtfully advocates very specific, spiritually grounded responses to pressing issues such as terrorism, financial collapse, a sick health care system, and global warming. Equally urgent is the need for a better family policy, but the components of a coherent spiritual progressive approach tend to get lost in the furor over abortion, gay marriage, and marriage promotion programs.

Over the last seven years I have observed thousands of families in crisis while serving as a family court judge in Hennepin County, Minnesota, which includes Minneapolis. I have watched how cases of divorce, parenting disputes between unmarried parents, domestic abuse, and child support enforcement regularly generate gut-wrenching anger, pain, anxiety, and grief.

I have also seen how children, who at times can reduce adults to their most fearful, narrow-minded selves, also have the capacity to bring out the most noble, selfless, loving aspects of our character. Children can transform us. No one but a dedicated parent as readily gives up drugs, or abandons a high-level job with too much travel and evening work, or takes two buses to a day care, works long hours, and then goes to night school. Given the raw emotional power generated in family court and the sheer number of Americans experiencing this public institution firsthand, I have become convinced that it is a logical place to start building a workable spiritual agenda for families.

These days about half of all marriages end in divorce, and many children endure the trauma and sadness of their parents' hate-filled court battles. In this article, speaking only for myself and definitely not as a representative of the judiciary, I will offer a spiritual perspective on family conflict and make some practical suggestions for how to reorient our country's institutions to promote healing and support for families of all kinds.

I have been proud to serve in one of the best family courts, one that has continuously improved its legal dispute resolution services. But we need to move beyond the dispute resolution paradigm. We need to get the courts out of the divorce business by instituting a simple system of administrative divorce and thereby moving toward a public understanding of divorce not as a fight, but as a difficult yet growth-enhancing life passage. We need to explore reconciliation and restorative justice processes that could help some parents heal their relationships with or without divorce. And, now that nearly 40 percent of children are born to unmarried parents (as opposed to 6 percent in 1960), we need new institutions such as "Co-Parent Courts" to support unmarried parents.

### A Spiritual Perspective on Family Conflict

According to the egocentric consciousness now prevailing on the planet, conflict between people is inevitable. The purpose of life is fulfillment in the material world by amassing money, power, acclaim, or psychological gratification. People often choose romantic and sexual partners to accomplish these goals, and the relationships usually work only so long as each party sees the other as the best way to get his or her needs met. As soon as someone strays from the program of serving the other's goals, problems arise. The typical egocentric spouse responds—and we all do

it—by trying to push the other person back into line through persuasion or manipulation (I've seen a lot of jewelry bought in the years before a divorce), nagging, anger, intimidation, or other forms of coercion. If that fails, the dissatisfied spouse disengages and looks for a better alternative.

A spiritual approach to relationships is quite different. As spiritual beings struggling to make our way through—and ultimately out of—a bruising material world, we all develop wounds, repressed emotions, and trigger points that render us incapable of perfect love and patience in all situations. Our goal in life is to experience the divine within and around us, which requires working through these limitations. Intimate partners present us with an ideal opportunity to find our sore spots, and plenty of chances to work on healing them. We recognize that a strong negative reaction to something about another person is a sure sign that the same quality lurks inside us. In my Unity Church congregation we are fond of the phrase, "If you spot it, you got it." Seeing partners as mirrors and relationships as spiritual training camps means conflict is still inevitable, but instead of leading to anger and blame, it is an opportunity for growth and healing. And if either party's wounds are simply too deep to allow a relationship to continue, the parting of ways, while sad, need not be bitter, and it can be accompanied by a healthy dose of self-examination and acceptance of responsibility.

Based on the many families I have seen in court and some of the things we have been trying in Minnesota, I believe legal institutions can help people act from their highest selves, rather than bring out the worst in our egocentric natures. What's needed is to do away with the adversary nature of family proceedings and instead offer opportunities for deeper communication.

### **Get Divorces Out of Court**

Divorce is tearing apart families throughout the country, with a disproportionate effect on poor and working-class people and children. Couples with incomes over \$50,000 are 30 percent less likely to get divorced than couples with less money, and children living with unmarried or divorced parents are statistically much more likely than children of continuously married parents to become pregnant as teens or to drop out of school. Even if the correlation is not entirely causal, it is clear that divorce introduces yet another strain into the lives of children who are already struggling, making them vulnerable to a host of cognitive, emotional, and social problems.

Perched right at the epicenter of this crisis are the nation's family courts, where judges, guardians *ad litem* (people appointed to represent the child's interests in a court case), custody evaluators, parenting consultants, and an array of related professionals struggle to manage anger and conflict while guiding families through orderly transitions. The system "works"—people get divorced, and custody disputes between unmarried parents are decided. But virtually none of these hardworking professionals I know are very happy with it. Neither are the parties going through it—in one survey, 71 percent of family court litigants said the legal process pushed their feelings of anger and hostility to a further extreme. Add to that heightened conflict the legal fees that can consume all of a family's assets and the emotional stress caused by uncertainty and loss of control, and the picture is one of a misdesigned system that may have sufficed for the scattered cases in the 1960s but is now inadequate for addressing the intense family problems of a large percentage of the population.

The most pressing step is to get divorces out of the courts. In our culture, courts mean a fight, a chance to attack another person's position and exaggerate your own righteousness. They also mean coercion—the idea is to get the authority figure, the judge, whose orders will be enforced by men with guns, to see things your way. It's the perfect culmination of an ego-centered family dispute, which starts with trying to force someone else to comply with your wishes. Getting the judge on your side now gives you the ultimate coercive power.

The problem, of course, is that if the litigants are parents, for the next fifty years they will still be interacting and making decisions about their children. Courtroom combat may be fine for people who never have to see each other again, but for families, destroying whatever remains of a parenting relationship is the worst possible outcome. After seeing what some people do to each other in court, I am amazed they can bear to lay eyes on each other again, much less cooperate in parenting.

The intensified fighting perpetuated by family courts may be unpleasant for the parents, but it is the children who suffer the most: research demonstrates that conflict makes divorce especially damaging to children, and cooperative parenting after the divorce is one way to minimize the harm.

Family courts are also often inefficient and not necessarily the best way to make good decisions. The adversary system works fine for deciding a historical fact like who pulled the trigger or ran the red light: put the two best re-creations of the event in front of a fact finder and get a decision. But family court decisions involve not historical facts but future predictions—what arrangements will be best for the children? And the target is a moving one—the answer today may be very different from the answer next month or next year. Unfortunately, most of us legally trained judges are only superficially knowledgeable about the complicated issues of family dynamics and child development raised by parenting cases, and rarely are the resources and time available to get us the comprehensive,

sophisticated evidence needed to reach the best result. Add the complicated procedural rules the adversary system needs to make sure the fight is fair, and staff the system with lawyers who are trained in legal combat and paid by the hour, and you have a system that makes the health care establishment look positively streamlined.

Back when getting a divorce required proving the other party was at fault in some way, a court proceeding was necessary to establish fault. But with the advent of no-fault divorce, the rationale for forcing people through a conflict-enhancing, emotionally and financially exhausting court proceeding where they can fight over all the details of their marriage, down to the pots and pans, has disappeared. (I remember a fight over who got the pizza stone, and we once spent a fair amount of time deciding visitation rights regarding a parrot.)

So what is the alternative? The best and simplest solution is for courts to get out of the divorce business in favor of a system of administrative divorce. Just like getting a marriage license in the first place, let people sign a form in some county office. If there is a practical problem that the parties need help to work out, let them file a simplified civil lawsuit over that particular issue—who gets the house, or what the parenting schedule should be, for example. Limit the court fights to specific issues and avoid the emotion of suing or being sued "for divorce."

Getting divorces out of court would be the first step toward a new view of divorce as a painful but growth-enhancing life passage that a large share of the population goes through. If we can reframe divorce, we can then expect that our celebrated private enterprise system will start offering more sophisticated "family transition" services or "family resource and recovery" centers rather than high-priced legal services. I know the legal fees in divorce cases with any contested issues regularly exceed \$10,000 per party. There is a lot of money out there that could fund a better system. It could not make matters much worse.

### **Replace Adversary Proceedings with Healing Processes**

So what about disputes? Even with an out-of-court divorce process emphasizing personal growth, many couples will have issues they can't agree upon. There are private dispute resolution services, of course, and with an administrative divorce system there would be many more, but courts will still need to be available as the backstop.

The basic judicial dispute resolution system, we all realize, is just a sophisticated version of the tactic every kid knows—get the powerful person on your side ("Mo-om, tell Jeffery to give me my video game ..."). Acquire the power to coerce the offender into line. Now, in recent decades, an extensive machinery called "ADR," alternative dispute resolution, has developed. Involving primarily mediation, but also including arbitration and other techniques like neutral evaluation, ADR provides services to litigating parties to help them settle a dispute before a judge has to. We love it, of course, and it is a big improvement. But most ADR processes essentially add another layer to the calculus of "how can I get the powerful person on my side?" Now the question is "how likely is it that I can get the powerful person on my side?" If I feel confident, I can hold out for a settlement closer to what I want. This ADR calculus is a more structured version of the analysis most litigants go through. The vast majority of court cases are not decided by a judge, of course: the parties work them out (sometimes on the proverbial courthouse steps). These settlements typically are highly influenced by the impending judicial decision and the party's view of how likely he or she is to get a good deal from the judge.

The premise of both judicial decision making and ADR is that the problem is a dispute, so the focus of the analysis is on the outside person who will coerce a resolution to the dispute. The other party in the dispute is seen not as a soulful human being, but as an obstacle. To ease the way for parents who must continue to work together, we must first redefine the problem as one involving hurt people in a wounded relationship. The process needs to recognize both parties' wounds and prioritize the entire family's well-being. The specific issues laid before judges are usually just symptoms of the deeper pain the parties are suffering.

Is it possible for a court system to promote healing as a way of resolving surface disputes? Some forms of mediation get close (see <http://www.transformativemediation.org/>), and a growing movement called "collaborative practice" tries to factor out the coercive outsider by having both lawyers and the parties commit to never going to court (<http://www.collaborativepractice.com/>). But some especially direct techniques warrant further exploration. For example, Marshall Rosenberg, the originator of what he calls "nonviolent communication" (sometimes called "compassionate communication") has developed a powerful system that relies on identifying the underlying needs and feelings of both parties and then recognizing that conflict arises over strategies to get those needs met ([www.cnvc.org](http://www.cnvc.org)). Dominic Barter, a talented English social worker who has been working in Brazil for many years, has married the concept of nonviolent communication with the age-old community circle processes used in traditional cultures throughout the world to develop a very structured process to heal conflicts. He is using "restorative circles" in the slums, where people have to work out their problems together because there is literally no government authority to appeal to. The beauty of Barter's work is that he has honed the process down to the point where he has been able to facilitate the resolution of most conflicts with a minutes-long "pre-circle" discussion with each participant followed

by an actual circle process of a couple of hours. Usually there is also a follow-up circle to see if all parties have kept their commitments.

In Minneapolis we have experimented with Barter's restorative circles in a few intractable cases where the adversary system has repeatedly failed to produce lasting peace. There have been notable successes, and any failures have generally resulted from parties' failure to show up after having initially volunteered to do so. Clearly the mechanics of how restorative circles can be incorporated into a court system need to be carefully considered. It is too early to draw general conclusions, but at this point I can say this with confidence: in every family court there is a subset of cases for which the adversary system is a total failure. The parties come back again and again, locked in endless conflict. There is absolutely no downside in trying to replace coercion with healing in these cases.

Even in cases with significant, practical conflicts about children or finances, I am always optimistic about a decent process and outcome if I hear a party express some concern that the other person also have as rich a relationship with the children and as much freedom from anxiety about money as possible. Such concern sets a tone that invites reciprocity, and the process becomes about people rather than bargaining positions. By replacing adversary proceedings with processes that encourage mutual concern, healing can become an increasingly important function of the courts. And, although it may seem counterintuitive, I know many family lawyers who would welcome such a change.

### **Offer Reconciliation Services**

Right now starting a divorce is like entering a freeway with no exits. People have a marriage problem, they know divorce is a solution, and the route to their goal is open and well-traveled. Lawyers will usually be more than willing to get the journey started, and courts, which have a hard time assessing the quality of their work, are very good at establishing time standards and pushing cases along. There is also a social pressure for divorce in our egocentric culture. When somebody has problems with a spouse, it can be most gratifying and ego-enhancing for friends and family to trash the offender and support the friend in "sticking up for herself/himself." The same tendency holds true in the therapeutic community, which can be individualistic and undermine commitment.

Forty years ago, family courts were often called "conciliation courts" and they had statutory authority to try to save marriages. The name of the premier national association for divorce professionals is still the "Association of Family and Conciliation Courts." Maybe the time has come to make the courts fit the name.

Now, let me be clear that many divorces are absolutely necessary. Indeed, one of a cluster of "hard" reasons for divorce—addiction, domestic abuse, chronic infidelity, or mental illness—has been present in a large percentage of the divorces I have seen. And many divorces are necessary for "softer" reasons, like incompatibility, especially because there is a point at which the level of hostility is so bad that the children would be better off if the parties split up.

The picture can be more complex, however. Over the years I have sometimes seen people deliberately choose to sit near each other in my office, laugh easily together, or respectfully work out complex problems. I began to wonder if some of them might not need a divorce to solve their problems, so a few years ago I asked Dr. William Doherty, director of the Marriage and Family Therapy Program at the University of Minnesota, for help. Dr. Doherty conducted survey research and learned that, not surprisingly, in nearly half of our cases at least one party is interested in working on reconciliation—divorces often involve a "leaver" and a "leavee." More surprising is that in about 10 percent of our divorce cases with minor children, both spouses express interest in pursuing reconciliation services. And these results are from active divorce cases, where the parties have had time to harden their positions and soak up the adversarial atmosphere. What would the percentage be at the point a party first enters a lawyer's office or talks to a friend or counselor about divorce?

As a result of this research, Dr. Doherty has designed a university project to offer reconciliation services in divorce cases, the Minnesota Reconciliation Project (<http://www.mnreconciliation.org/>). The essential component, of course, is to offer effective services. Since marriage counseling has often been tried without success, the project also features more intense interventions like weekend retreats and mentoring by couples who have restored their marriages to health after teetering on the brink of divorce. Mailings to parties who have recently filed for divorce have just gone out, and work with the first interested couples has begun. We will know more in the coming months about who seeks help and what works.

The Minnesota Reconciliation Project has also begun to develop specialized services for the "leavee" spouse, whose pain and anger can be expressed, sometimes for years, in conflict and efforts to sabotage a peaceful divorce process. The reconciliation project serves people with active divorce cases, and I have high hopes that a private sector, non-adversarial divorce process would be much more sophisticated about recognizing the opportunity in family strife for healing and reconciliation long before the courts get involved. Dr. Doherty has already begun working with a creative group of collaborative lawyers to develop protocols and language for lawyers to use to open up the

sensitive topic of reconciliation as an option for clients who come seeking a divorce. Eventually the entire divorce system might start asking who is healing rather than who is winning.

### **Help Unmarried Parents Build Families**

I am contending that the court system's adversary processes are counterproductive for resolving divorces. But the surge in unmarried parenting has thrust the courts into a relatively new field where formal legal arrangements do have an important role. Unmarried parents lack the legal ties and history of a marriage, and sometimes have only a tenuous relationship on which to build a cooperative parenting partnership. The court system is about the only venue presently available to build a family out of these components.

There is another factor that makes the role of the courts in unmarried parent cases so important—most of the parties are poor. Part of that is due to the demographics of single parenting—poor people are the most likely to have children outside of marriage. But the bigger reason for the profile of the unmarried cases the courts see is the extensive, federally funded child support enforcement system. All over the country, every day, government lawyers are tracking down the partners—usually fathers—of parents receiving public assistance and hauling them into court to confirm their parentage and establish child support obligations to recoup the government's public assistance outlays. The irony is that many of these fathers are poor themselves and have little money to contribute to child support.

The sophisticated research on unmarried parents coming from the Fragile Families and Child Wellbeing Study at Princeton (<http://www.fragilefamilies.princeton.edu/>) confirms that a large percentage of unmarried parents are closely connected with each other and their child around the time of the birth. But without the legal structure, social support, and cultural expectations of a marriage, these relationships often drift apart. She gets a new boyfriend, he gets a new girlfriend, and life moves on. By the time the children of unmarried parents reach age five, over 60 percent of their parents are living apart, and nearly 40 percent of the nonresident parents have not seen the child in the last two years. This is a big loss—the research is increasingly clear that high-quality involvement by the noncustodial parent can go a long way to improving the prospects of these children. And yet when the parents of these at-risk children stand together in a courtroom in the official procedure addressing their parenting connection, the discussion will likely be just about money, the noncustodial parent will feel his or her primary value is as a cash machine, and a prime opportunity to support these people as parents will be lost.

If our society is going to weather an unmarried parent rate of 40 percent, concentrated in the lowest socioeconomic groups, we need to develop institutions and cultural expectations to support unmarried co-parenting. In our court we are about to begin a grant-funded pilot project we call "Co-Parent Court," a problem-solving court for unmarried parents. In partnership with community and government agencies, including both our state and local child support agencies, Co-Parent Court will soon add co-parent education, domestic abuse screening and programming, family group conferencing, and parenting support services (like employment and housing assistance) to the current focus on collecting child support. The goal is for parents to graduate from the program committed to a lasting parenting plan tailored to their circumstances. We believe we can show that investing in the parents will bring a far larger return in child well-being.

Projects like Co-Parent Court could start to provide the legal framework unmarried parents need. A deeper understanding of the significance of being an unmarried parent in our society is also needed. Some advocates for families and I have started talking about a "Commitment to Parenting" ceremony. What if unmarried parents had the chance to stand up in their place of worship (or in a park or a living room) in front of their loved ones and affirm their commitment to their new child and their commitment to treat each other with respect and cooperation? Spiritual folks know that heartfelt intention is worth more than any public program.

### **The Route to Reform**

The ideas I have outlined are all practical steps, grounded in spiritual truths, all imminently doable. We've already made progress in this direction: the use of nonlegal professionals to assist parties and advise judges, an emphasis on alternative dispute resolution techniques, better recognition of the important roles played by both parents, and the use of more sophisticated education programs have already made family courts more humane. But the deeper changes that I have proposed will not be easy to implement. The professional skills and instincts of lawyers and judges perfectly mirror the initial impulse of many people in our egocentric, competitive culture to win disputes, not heal them. Legal training and years of courtroom practice hone the ability to deliver the zinging retort intended to demolish an adversary's position. What Marshall Rosenberg calls "giraffe ears"—ears that can hear behind the critical words of another to identify the needs and feelings expressed so tragically—are not standard courthouse attire. A skilled hired gun is exactly what some people seeking divorce want, out of either a desire to punish a hurtful spouse or out of fear of an intimidating partner. Moreover, the legal profession venerates precedent and looks to past practice for stability and wisdom, so our combat skills can be readily deployed against new ideas. Our chief judge once sent around a thoughtful article about why lawyers and judges tend to behave more like mules kicking down barn doors than like carpenters building them. And on top of these aspects of legal culture, add the fact that ever since the Constitution

was written, the focus of American law has been on preserving individual rights—protecting us from each other. The law has few tools to affirmatively foster human connections. Respect and compassion cannot be court ordered.

The route to reform is clear, however. I once taught a course on law and social policy issues at a local Catholic law school. Looking for a robust discussion, we scheduled a class on the topic of gay marriage. No fireworks—to most of the students it was a no-brainer, only a matter of time. Wise people have said that we rarely convince intellectual critics of anything. The better course is to seed the public discourse with creative ideas and innovative experiments. Let the future leaders absorb these into their professional DNA. I have seen that with the way younger lawyers in our court so naturally embrace the cooperative practices and alternative dispute procedures we have already instituted. I foresee a time in the not-so-distant future when a young lawyer will ask, "What was this thing called a divorce trial?"

*Bruce Peterson is a judge in Minneapolis, Minnesota. From 2006 to 2008 he was the presiding judge of the Hennepin County Family Court. He was the first chair of the Minnesota Chapter of the Network of Spiritual Progressives.*

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Peterson, Bruce. 2010. A spiritual perspective on family courts. *Tikkun* 25(2):23.