

The psychological assessment of the conflict family in the forensic setting: food for thought

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Abstract

The possibility of adopting an evaluative approach towards psychological assessment, aimed at promoting the best interests of the child in custody cases, is proposed for the attention of forensic practitioners. The authors present this perspective through theoretical and methodological considerations gained from literature and experience.

Beginning with the identification of the epistemological, theoretical and methodological limitations of the 'photographic' assessment, which is currently widely used in the forensic field, the authors propose the possibility of shifting towards an *evolutionary assessment*. Considering the centrality of parental conflict with respect to the negative psychological experiences of children in family separation cases, the advantages of this proposal are illustrated.

Within the limits of the nonclinical context and the specific demands of the judge, the goal of this approach is to evaluate the potential for changing the combative dynamic that exists within families involved in this intervention, taking into account their limitations and resources. After a brief discussion of the operational procedures that could be used in practice, this approach is then assessed with regard to the *Cartabia reform* recently enacted in the Italian legal system. The conclusions are reassuring and point towards constructive reflection among various forensic professionals involved in the process.

Keywords: psychological assessment, court-appointed expert witness, *Cartabia reform*, parental conflict, child custody.

The psychological assessment of the conflict family in the forensic setting: food for thought

Introduction

Psychological assessment in cases of separation and child custody agreements deserves continuous study in light of applied and theoretical scientific knowledge to reevaluate its purpose and effects. This assessment should remain open to possible evolutionary changes in the objectives of forensic psychological counselling and the modes of operation adopted by the expert.

It seems natural that the inevitable socio-cultural and epistemological transformations that occur over time should prompt correlated processes of reflection and change in the various cognitive, existential and organisational contexts, just as the legal field must adapt to the recurrent legislative updates. From our point of view, the recently enacted Cartabia reform acts as a significant testament to this idea, urging us to participate in an evolutionary rethinking of the forensic psychological assessment.

This contribution stems precisely from the desire to verify the compatibility of the objectives posed by the Cartabia law, strengthened by the study, reflection and experience we have gained over the years. Therefore, we will first proceed to illustrate our thoughts on the potential to modify the psychological assessment towards an evolutionary perspective, beginning with the processes, attitudes and methods that can be adopted in the context of the assessment. This will be followed by the legal perspective of a lawyer evaluating the viability of the proposed ideas with respect to the latest legislative developments, rectius *Cartabia Reform*, and the intention of better clarifying the relevant legislation. Indeed, we have turned to an expert in family law because enacting change within the intersection between psychology and law – known as *forensic psychology* – requires suggestions and critical perspectives from both disciplines.

Our hope is that the ideas outlined here prompt reflection of the current practices and serve as a catalyst for debate, cultivating new methods that enable psychological assessment to move beyond the risk of stagnation.

Beyond the 'photographic' assessment

As it has been established, the purpose of assessments in child custody cases is to inform judicial intervention. They occur when a psychologist is called upon to serve as an expert witness, providing the judge with information that aids them in making decisions in the best interests of the child. Given this purpose, the current prevailing approach is one in which the professional

observes the family as objectively as possible to obtain a neutral perspective. They subsequently report their perspective and its psychological interpretation to the judge and the parties involved. This approach, with its emphasis on impartiality, is what we call a '*photographic*' assessment, similarly to other scholars (Bandini, Alfano, & Ciliberti, 2008).

However, this presumption of objectivity clashes with what Popper and other distinguished scientific philosophers have been addressing for more than half a century: the observer is not external to the knowledge process, but an integral part of it. The field of quantum mechanics itself highlights this point. It explains how, for example, depending on the type of instrument the scientist uses, the same entity can be seen as a wave or particle.

This perspective is not only significant to the forensic field but is widely shared by scholars from various disciplines. It implies that assessment is a dynamic process, especially because it occurs during an interview, in which a structured relationship forms between the involved parties. And precisely because it is an assessment, the observer-observed discussion is central since the assessor is in the role of the observer and the family constitutes the 'object' of his or her observation. In this position, the psychologist – according to the epistemological contributions mentioned above – cannot be neutral and is instead an integral part of the evaluative dynamic. Therefore, it must be considered that the family and each element of the system will be viewed differently depending on the approach, model, attitude, and techniques of the consulting psychologist. This is further illustrated by the fact that different experts may provide conflicting evaluations of the same family dynamics and issues.

Therefore, we believe that photographic assessment is not only ineffective but also involves certain operational implications:

1. The need to maintain *distance* between the observer (the psychologist) and the observed (the family) and to adopt a neutral stance regarding what the other expresses. This requires the psychologist to disregard their own emotional and cognitive resonances, which are considered potentially disruptive elements.
2. The tendency to establish largely asymmetrical relationships in which members of the family unit undertake a *passive* role while the expert has the authority to interpret their dynamics and provide insight into their lives, upon which the judge may base their decisions.
3. The propensity to concentrate on the *static* aspects of the family's psychological dynamics. It involves assessing the situation from fixed points in time, which overlooks the potential for circumstances to change.

These are consequences of the photographic assessment that negatively affect the relationship between the psychologist and the family being evaluated, as well as the data collected. As our experience indicates, people who feel that they are being assessed often report experiences of discomfort, misunderstanding, and difficulty in expressing themselves effectively. These are all possible indications that a contentious relationship can affect both the course of interactions between the parties and the validity of the information acquired. We cannot assume that the quality of the relationship between the observer and those being observed is irrelevant to the data collected. The data is already impacted by the artificial nature of the situation, as well as the context, which families may perceive as judgmental. It is not uncommon for families to feel that they are under scrutiny, causing them to try to present themselves in a socially desirable light. Especially due to the serious nature of the circumstances, a family member's desire to be viewed as a perfect caregiver can influence their responses. In addition, the family often experiences the court context as a stressor, and the stress is considered by scholars a risk factor for parent-child relational quality (Pajardi et al., 2018).

Towards the evolution of forensic psychological counselling

Given the limitations of the photographic assessment and the need for a paradigmatic shift in forensic evaluations, in considering the possible directions of change in the approach we have turned toward an assessment that we have defined as *evolutionary*, in accordance with what other scholars have already suggested (Bandini, Alfano, & Ciliberti, 2008; Cesaro & Loddo, 2007).

The approach towards evaluation that we are proposing stems from the centrality of parental conflict in child custody cases and how its pervasiveness can harm the child (Camisasca, Miragoli & Di Blasio, 2013; Miragoli, Camisasca & Di Blasio, 2016; Puddu & Raffagnino 2015, 2016a, 2016b, 2018; Raffagnino & Puddu 2023; Sabatello, Verrastro & Thomas, 2018). Sometimes the effects of high conflict divorce on children have been assessed similar to those observed in neglect cases (Joyce, 2016).

Beginning with the centrality of this assessment, some scholars have proposed major features, processes and critical factors of parental conflict in order to provide judges useful information for their decisions (Pajardi et al., 2019) or to practicing counselors working with high conflict separation/divorce (Schmidt & Grigg, 2024).

In a comprehensive assessment that is meant to evaluate each parent's caregiving capacity and personality characteristics, the intense conflict that generally defines their relationship can become a central focal point, overshadowing other significant factors. To remedy this, we consider whether – remaining within the confines of the judicial mandate – there are alternative methods to provide the judge with information that do not cement

the current family dynamic, especially its problematic aspects, but consider and foster its potential to evolve.

An initial step that seems relevant in this regard is to think of the psychological assessment as a valuable opportunity for the family system, especially because disputing parents are unlikely to be capable of taking autonomous initiatives towards overcoming their conflicts. The psychologist, by nature of their third-party status, could play a crucial role in promoting awareness regarding dysfunctional dynamics the parents must modify, to enhance the cooperation of the family system. This awareness is considered particularly important by scholars who use the hermeneutic approach to understanding the meaning of what happens in and through conflict (Barbieri & Verde, 2008); the goal of fostering cooperative capacity among former partners as a function of changing the dynamics of conflict has long been emphasized by other authors, such as Bandini et al. (2008).

However, for this to be effective, the parents must maintain a functional openness towards the goal of co-parenting. Psychologically, this is expressed in their capacity for collaboration in order to serve the best interests of the child, unhindered by conflict dynamics. Parental capacity cannot be reduced to positive individual or relational characteristics towards the child; it concerns the way the parents manage to converge in their roles to optimise the child's functioning. By exploring the potential to modify the conflict dynamics, the expert can identify latent resources within the family, as well as the risk of potential violence in situations where discord caused by one party is the primary cause of the custody dispute.

Though we do not intend to transform the expert evaluation into a clinical context in the classical sense, we believe that exploring the potential for change in family conflict can function as an *intermediate space*, borrowing an expression from Florenskij, between a non-clinical and clinical framework. It can be thought of as a 'para-clinical, pre-clinical, pseudo-clinical opportunity...' in which the insights gleaned from the court-ordered assessment enhance the parents' awareness of the gravity of the current situation and its effects on the psycho-physical and relational health of the child. Simultaneously, it can introduce parents to individual and systemic resources that may allow for positive change within family relations.

In the face of a recurring and pervasive conflict dynamic, this intervention may challenge the perception of such conflict as enduring, if not irreversible. This perception may be exacerbated by the lawyers themselves, who can inadvertently fuel the dispute through their legal claims and by emphasising the shortcomings of the opposing party. In other words, it is a matter of shifting from a static *zero-sum game* marked by escalating conflict, where everyone loses despite each parent acting under the illusion that they can win, to a *non-zero-sum game* aimed at evolutionary change. This shift can be achieved by placing the attention on the child and recognising the harm parental conflict inflicts on their well-being. This necessitates the parents' ability to extend beyond mere verbal recognition of the child's suffering because of their

conflict and to enact attitudes aimed at actively breaking free from the dysfunctional dynamics in which they find themselves trapped. The role that lawyers can play toward this dynamic is recognized by several authors, including those who consider it an ethical duty of the lawyer to work in the direction of change in the best interests of the child (Bala, Hebert & Birnbaum, 2017).

The *how* of an evolutionary assessment

Though the expert must respond and adhere to the judge's questions, the distinction between a photographic assessment and the proposed evolutionary one lies in how the expert approaches their role in the process. It involves how one navigates the situation effectively and responsibly when called upon to conduct an assessment. This refers to the way the expert conducts themselves and their attitude toward the family members, the aspects on which they focus their attention or gloss over, and the way they pose questions, for example.

If photographic assessment implies the psychologist's neutrality and distance from the family unit, an evolutionary approach suggests undertaking an attitude of nonjudgmental participation aimed at understanding the family's ongoing dynamics. This understanding requires reflecting on one's own experiences: what they perceive, feel, and hear. In this way, the expert considers themselves an integral part of the evaluative process. Of course, this requires a strong degree of psychological sensitivity, which can be acquired through specific training processes, differentiating the expert from other professionals. They are not a mere executor of protocol, but an active participant in the evaluation process itself.

In terms of methodology or the approach the psychologist can adopt, the evolutionary perspective of assessment can benefit from insights derived from the complexity approach (Bocchi & Ceruti, 1985; Ceruti & Morin, 1988; Morin, 2021). This approach, our main epistemological reference for years, provides a valid frame of reference in which to place the various steps and their outcomes. When considering the limitations and possibilities for change in the conflict dynamic, it is imperative to have a comprehensive view of the various dimensions – subjective, objective, intersubjective, historical, and current – that characterize the family system. These dimensions are integrated, that is, interwoven, as the etymology of the word 'complex' (cum-plexus) suggests. Therefore, the psychologist must aim for a panoramic view of the family system in which the various elements, which gradually emerge, acquire a meaning that must be contextualized and shared with the parties during the interaction. What sets this approach, apart from cases in which the contextualization is only expressed in formal, written documents, is that it happens in real-time. Hence, it is not simply a matter of collecting data and reporting it to the judge, but of enhancing the potential for change in the conflict dynamic while referring to available resources and possible obstacles. It highlights links between different areas – parenting,

individual and couple history, behaviour of the child, ways of relating to one another, how the family dynamic is expressed – and brings them to the attention of the family. In this way, the psychologist can understand how individuals respond to the information gathered and determine their willingness to adapt and work through problems, adding substance to the assessment. For example, when discussing their personal history, elements may emerge that relate to one's current way of parenting in the face of ongoing marital conflict. The psychologist can help them to see the concrete negative effects of their conflict on the child's health and well-being. If they are able to grasp and accept this evidence, there is potential for change. Conversely, if they deny the negative impact or place blame solely on the other parent, this mindset becomes a major obstacle to the evolutionary process.

Although the psychologist may use other classical (e.g., Lausanne Triogue Test, Joint Family Drawing) or creative modalities, the ability of parents to recognize their shortcomings and acknowledge the impact of their discord on the child appears to be an effective litmus test of the family's potential to overcome conflict. Highlighted in the psychologist's report, this recognition may provide a useful informational basis for the work of any other expert that is appointed by the judge following the assessment. Because these appointments typically occur at the request of the parties, it is more likely to take place if they are motivated by shared awareness, even though this awareness does not imply clinical intervention in the forensic setting.

Considering that the assessment occurs within the forensic context, it is crucial that the expert to account for its specificities. Among others, they must gather information explicitly requested by the judge and adhere to the deadline of the assignment and boundaries related to the evaluative activity. Additionally, they must navigate the idiosyncrasies of the parties involved and the various relational dynamics of the family system. This encompasses the presence and influence of families of origin, new partners, and adult siblings; any psychological paths already taken by the family, the presence of significant issues such as addiction, and the interventions of different institutions or external services. The psychologist must also remember that their work fits within established relationships between parents and their lawyers, and is developed alongside the intervention of other colleagues, such as party-appointed expert witnesses.

All these aspects are significant in developing the comprehensive perspective related to the complex view mentioned above but also in creating a context that fosters a willingness to adapt based on the findings of the assessment in order to overcome the conflict. It is beneficial for the psychologist to promote a context of collaboration with both their colleagues and each party's attorney. Instead of viewing them as peripheral to the intervention, understanding that they are jointly pursuing the best interests of the child can prevent fuelling the animosity between the parents. Promoting the idea that everyone is working towards the same goal – benefiting the child – can reduce opposition towards the other party,

allowing families to work towards collaboration instead of conflict. The question arises: how does this evolutionary proposal align with the current legislation?

The viability of the evolutionary orientation according to the so-called *Cartabia Reform*

The evolutionary orientation of psychological assessment in the forensic setting, as portrayed above, aligns perfectly with the new guidelines dictated by the *Cartabia Reform* in Art. 473-bis.25 c.p.c. under the heading '*Office Technical Consultancy*'.

As is well-known, in family matters the judge takes protective measures regarding the interests of the child, prioritising their mental and physical well-being. Though the ideal scenario is considered to be one in which the child remains in the care of both parents, the judge may also designate one parent to be entrusted with the child's care, specifying the time and manner of the child's presence with each parent (see Article 337 ter of the Civil Code). The judge may grant custody of the child to only one parent if they deem that granting custody to the other would contradict the best interests of the child (see Article 337c of the Civil Code). The identification of the most suitable parent must be made based on a prognostic judgment of their ability to raise and educate the child. In cases with excessive levels of conflict that occur in the presence of the child, or those characterized by the presence of critical issues, such as violent conduct or mistreatment, addictions that impair one's ability to perform parental duties, serious neglect by one parent, mental problems or serious psychological distress, or dysfunctional behaviour contrary to the principle of co-parenting, the judge will utilise the assistance of a court-appointed expert witness. In these situations, where legal knowledge alone is not sufficient to resolve issues requiring specialised technical knowledge, the judge – pursuant to Articles 61 ff. (*Technical Consultant*) and 191 ff. c.p.c. (*Appointment of the Technical Consultant*) – appoints a psychologist, formulates the questions to be answered and sets the hearing at which the expert must appear.

Following the guidelines outlined by the *Cartabia Reform*, the expert is tasked with more than answering the judge's questions, respecting the adversarial process, and drafting an intelligible report within the procedural timeframe. The expert should also prepare a report that distinguishes facts they observed directly and the statements made by the parties and third parties involved, supporting their evaluations with scientific evidence or indicating the parameters on which they are based. Furthermore, concrete proposals for interventions to support the family unit and children should be included in the report. It is precisely this aspect that makes these guidelines compatible with the proposed evolutionary perspective of assessment. The expert, by elucidating the potential for change within the family conflict dynamic, is able to 'formulate concrete proposals for intervention in support of the family unit' as mandated by the reform (see art. 473-bis. 25 c.p.c.)(GU, 2022, October 19).

These proposals for intervention within the family landscape no longer remain in the realm of the 'possible' but can be immediately implemented, even during the judicial proceedings. Notably, Article 473-bis.26 c.p.c. affirms the authority of the judge, at the request of both parties, to appoint a professional chosen from the register of court-appointed expert witnesses (or beyond it upon the joint request of the parties) with specific skills capable of assisting the judge in intervening on the family unit to overcome conflicts between the parties, provide assistance to minors and facilitate the recovery or improvement of the relations between parents and children.

This rule is inspired by best practices observed in certain courts, which recognize the judge's need for assistance from professionals who are experts in a specialised field, not only for evaluation purposes but also to implement specific interventions. Accordingly, the rule grants the judge the authority to appoint professionals – pursuant to Article 68 c.p.c. – to carry out specific activities, expressly mandated by the judge. These activities are deemed necessary to resolve the family conflict or to support the parent-child relationship. Consider, for example, the numerous cases in which, even in the absence of seriously prejudicial conduct by a parent, parent-child relationships are disrupted by familial conflict. Other instances occur in which one parent is reluctant to allow the child to have access to the other parent, whom they deem unsuitable, or when minors have difficulty relating to the outside world because of the conflict within the family. In these cases, the use of professionals (e.g., psychologists, social workers, family mediators, educationalists) can be a valuable and often decisive aid.

In order to regulate the professional's role, however, it is necessary to place it in a procedural framework, as identified in Article 68 c.p.c. As part of the proceedings, the professional will be appointed as an auxiliary to the judge under the aforementioned Article 68 of the Code of Criminal Procedure. This establishes them as an 'expert in a particular profession' designated to assist the judge under Article 337-ter of the Civil Code, a provision that requires the judge to act in the best interests of the children. The role of the professional is to assist the judge in ensuring that the child maintains a healthy relationship with each of the parents, when possible.

The rule stipulates that these professionals can only be called upon with the prior consent of both parties to civil proceedings. This is firstly because the financial cost is assumed by the parties (unless they are eligible for financial assistance). Secondly, the intervention requires the cooperation and active participation of the parties. When met with opposition from the parents, the judge may resort to conventional methods of intervention, such as assignments to the social welfare service (GU, 2022, October 19).

It is evident that the parties themselves, even if required by the court to participate in the proceedings, will agree with the decision to appoint an experienced professional 'with specific skills capable of assisting the judge for certain interventions in the family unit, to overcome conflicts between the parties, to provide aid for minors and for the

resumption or improvement of relations between parents and children' (cf. Article 473a.26 c.p.c.), if, within the scope of the assessment, the defects and strengths of the family nucleus have been outlined, concrete proposals have been developed for overcoming conflict, or a better exercise of parental responsibility and intervention strategies to aid minors have been suggested.

Within this framework, the judge determines the objectives and terms of the intervention, which may follow a specified timeline if the intervention is lengthy. Upon its completion, the auxiliary must file a report on the activities conducted, and parties are allowed to file written comments. This intervention is different from the psychological assessment previously discussed in that it is aimed at resolving situations in which parent-child relationships are compromised, or specific difficulties emerge for the child.

In this new legal framework, the potential to utilise an evolutionary approach to judicial intervention may be realised. The expert, while being mindful of developing their report within the confines of the judicial mandate, will be able to submit to the attention of the judge and the parties what resources are available to improve upon the weaknesses of the parents and highlight the potential for change within the family dynamic.

Conclusions

The purpose of this contribution is to revise the traditional approach to the psychological assessment conducted by experts in a forensic setting, moving towards an evolutionary assessment. Since parental conflict is a key aspect of these cases which strongly affects children's well-being, the main objective of the evolutionary assessment is to detect the potential for change within the dysfunctional family dynamic. Thus, the expert's role should not simply be to record the family profile and its limitations at the present moment, but should instead be concerned with identifying the resources the family can use to mitigate conflict.

The perspective of the lawyer, well-versed in family law, on the compatibility of the approach proposed here with the objectives of the Cartabia reform, strengthens our optimism about its legal feasibility. The ensuing debate seems to be focussed primarily at the psychological level, illustrating the need for convergence among professionals regarding the meaning, substance and methodology of conducting a psychological evaluation in the forensic context.

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