

Dedicated to Marc,
with love.

DISPUTED CUSTODY AND THE PEOPLE INVOLVED:
AN ECOSYSTEMIC PERSPECTIVE

by

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ABSTRACT

Custody disputes have traditionally been considered a legal matter. More recent trends have seen the recognition of divorce and custody as both legal and psychological events. This necessitated the involvement of professionals of the helping services in custody recommendations. Such a multidisciplinary approach is currently taken by the Office of the Family Advocate, Pretoria, in disputed custody matters.

It is suggested that the way in which the problem of custody is currently defined, is on a pragmatic level, and does not include a higher-order awareness as implied by an ecosystemic epistemology. Such an awareness denotes self-reflexivity, and calls for a more aesthetic emphasis. The dialectic between aesthetics and pragmatics is maintained by means of a descriptive look at the various systems involved in a disputed custody case. Adopting an ecosystemic epistemology is recommended, through the metaphor of mediation, as a further evolution of an already changing process.

Key terms:

Custody; Custody Evaluations; Case Study; Multidisciplinary Teams; Ecosystemic Epistemology; Family Mediation; Office of the Family Advocate; Descriptions; Aesthetics; Family Therapy.

CHAPTER 1

An Introduction

Overview

Disputed custody of children during or after divorce is traditionally considered a matter for the courts (Black, 1982; Camplair & Stolberg, 1987; La Cock, 1983; Steinberg, 1988). However, there has been an increasing reliance, both locally and internationally, on the assistance of child and family experts in advising the legal system on custody matters and decisions (Lind, 1989; Steinberg, 1988; Volgy & Everett, 1985a). Therefore various professions have become involved in the management of custody matters, which now often involve multidisciplinary intervention (Camplair & Stolberg, 1987). Such professionals include lawyers, the family advocate, psychologists and social workers. These different agencies all conceptualise the problem in different ways (Lambiase & Cumes, 1987), based on the epistemology or worldview they subscribe to. This in turn, will determine the nature of the intervention that follows, with regards to the management of custody disputes.

It is suggested that the various multidisciplinary approaches to custody disputes are all based on an epistemology adhering to the tenets of reductionism, lineal causality and neutral objectivity (Fourie, 1990). This refers to the way in which problems are viewed and therefore has direct bearing on the way in which they are 'treated' or managed. Reductionism refers to the notion of having to reduce an object or phenomenon to its most basic elements in order to understand and measure it. Grasping the whole is therefore contingent upon recombining the parts (Schwartzman, 1984).

Lineal causality refers to the cause-and-effect principle. One event/action causes another as a function of the property of the causal agent. Lastly, neutral objectivity refers to the notion that everything that is observed is perceived independently from the person observing it. In the search for 'truth', that search itself is then not thought to affect 'the 'truth' (Schwartzman, 1984). For instance, the legal system follows an adversarial approach. This process employs a third party as a 'judge' of the worth of the claims of each parent (Houlgate, 1987). The family advocate is assigned the task of hearing the evidence from both sides, and acting in the best interest of the children, based on the individual descriptions of family members from outside agencies. As a court decision is generally considered fair and thus final, it implies neutral objectivity or objectivity of observation. Furthermore, the case presented to the court is divided into two camps, each represented by professionals that highlight intrapsychic qualities of that person (parent) in order to gain custody, which is in keeping with the principle of reductionism, where the whole of the former family systems and the patterns of interaction that transpired from these are not taken into account. In another instance the social work system also tends to focus on the intrapsychic needs of the children, while independent psychologists might similarly present data of an intrapsychic nature proclaiming the 'goodness' or 'badness' of a particular parent.

With regards to both parents and children such assessments and explanations are therefore done in isolation of their place, role and function in a family unit. This again reduces the whole into measurable elements which in this case often are concepts such as subconscious, aggression, resistance and defence mechanism which are treated as if they were real entities (Fourie & Lifschitz, 1988). Lineal causality is also implied as one parent may be blamed for this or that symptom or characteristic of the child, negating the complex and recursive functioning of a family system, and the effects of the larger agency network on the process of symptom production and maintenance.

Problem Definition

A custody dispute therefore involves the family, which can be said to be a dysfunctional former system (Everett & Volgy, 1983), and a multidisciplinary network of professionals. For the purpose of this study, the problem can be defined on three levels:

1. On a first-order cybernetic level (Hoffman, 1990), it can be said that the assessment of, and intervention with these families are traditionally based on a lineal perspective which fails to recognise the complexities of systemic family processes (Everett & Volgy, 1983). The major limitations of the traditional model is that events are viewed in an atomistic, reductionistic way, which impedes the possibility of seeing patterned events. From this perspective, the professional is also seen as being in a hierarchical relationship with the family system.

2. On a second-order cybernetic level, the recursive effects of the mutual influences between members of the system comprising of professionals and the family, have not yet received attention with regards to the management of a custody dispute. The second-order view (Hoffman, 1990) sees the system as a self-organising, self-maintaining entity, which includes the professional/therapist/expert, in a collaborative rather than a hierarchical structure (Golann, 1988; Hoffman, 1990).

3. The third level concerns this larger system reaching a consensual domain of shared meanings. From a constructivist stance, it can be said that the divergence of different professional systems create a conversational context that permits the evolution of new meaning (Goolishian & Anderson, 1987). The professional and family system would therefore be what is termed by Goolishian and Anderson the 'problem determined system'. This is defined as a system comprising of everyone who enters into conversation about a problem. This system thus does not conform to traditional system boundaries such as 'the family' or 'the marital couple'. Rather, it involves everyone including the therapist and other professionals, who interact through language about the problem.

Insofar as the current approach to custody settlement is termed multidisciplinary, this approach maintains the vantage point of each participant within their own discipline, while the interfaces between the conceptual frameworks of different disciplines are ignored (Auerswald, 1968).

The Aim of the Study

The purpose of this study will be to explore the context of the settlement of custody disputes, including all the systems involved in such cases - therefore the whole ecological field - in order to describe the ways in which these various systems and the interaction between them result in the resolution of such a dispute, while taking a look at the process through which it arrives at such a point. In this case the study investigates the context of a family in which a dispute for custody of the children occurred. This family was referred to the Office of the Family Advocate in Pretoria.

This implies an ecological approach (Auerswald, 1968), where the interfaces between the systems are not ignored, but taken into account. The approach and assumptions underlying this study are therefore based on an ecosystemic epistemology, as defined by Keeney (1979). The ecosystem includes all the parties that form part of the relational system in which the problem of custody occurs, namely the family, their wider social network, the extended family, other professionals, welfare institutions and myself. Auerswald (1987) suggests that when following an ecosystemic epistemology the research method should result in the evolution of an ecological narrative. The study thus describes (in stead of explains) the multiple, differential ideas held by all the systems relevant to the case, as well as the interventions that transpire as a result of this ecology of ideas. The 'results' are presented in the form of a description of the multiple realities, as expressed in ideas and interventions, over time, that evolve from the context of the family's disputed custody.

Although the term epistemology has been used repeatedly so far, it forms the topic of discussion of chapter 3, as it merits thorough discussion. It will therefore suffice to say here that the underlying epistemology (epistemology being the rules we apply in making sense of

our worlds) of this study is an ecosystemic one and can be contrasted with a positivist or Newtonian epistemology (Fourie & Lifschitz, 1988; Schwartzman, 1984). In applying these epistemological rules they clearly determine much of our behaviour and our interpretation of the behaviour of others. The notions I will express, as forming part of my epistemology, have important implications insofar as these reject the epistemological stance of linear thinking and dualism, including lineal causality, purpose and objectivity (Hoffman, 1981). In accordance with an ecosystemic stance I will therefore introduce and adhere to the notions of holism and ecology, acausality and constructivism.

The Structure of the Study

With chapters 2 to 4 representing the theoretical body of this work, chapter 2 presents a summary of the most relevant literature on custody. Chapter 3 attempts at identifying and defining the epistemological concepts and ideas underlying this study, and making connections between them. Chapter 4, as an outflow from chapter 3, involves defining the methodological issues that arise from my epistemology, while also providing a structure within which the information gathered, may be presented.

Chapter 5 represents a case study in accordance with the guidelines presented in chapter 4, in which an attempt is made to illustrate as well as complexify the concepts discussed in the theoretical body of this study.

Chapter 6 is a concluding chapter, along with a closer look at mediation and its possibilities.

CHAPTER 2

Law and Social Science - The Literature on Custody

Introduction

Although a chapter of this nature traditionally includes a fairly representative perusal of the most current literature - in this case on custody issues and mediation - it is important to remember the epistemological framework within which this thesis is presented. From that perspective a literature survey represents a subjective and arbitrary punctuation of that which has been written about custody and mediation.

Throughout this discussion the reader will become aware of the dualistic nature of the arguments presented: the adversarial approach versus mediation; a mental health perspective versus a legal one; lineal models of custody resolution versus systemic ones..., which is referred to as "either/or dualities" by Keeney (1983a, p.3). In such cases, very often, only one side of such a distinction is accepted as the truth or more useful and more correct. The examples cited above, as derived from the literature, and presented in the rest of this chapter, are the result of such a dualistic way of drawing distinctions. Keeney (1983a, p.3) asserts that many such distinctions "are actually the two sides of a complementary relationship" and that the purpose of this thesis in general is to, like Keeney, "uncover patterns that connect both sides of these distinctions" - in other words overcoming the dualism; embracing a both/and rather than a either/or view of the phenomena.

This then refers back to my choice of arguments and literature presented, being my own way of "punctuating the stream of experience so that it takes on another sort of coherence or sense" (Bateson, 1972, p.163), which would also reflect my epistemology.

What follows is a summary of the literature on both the South African and international (mainly U.S.A and U.K) perspectives regarding custody and mediation reviewed, in the form of a historical overview. Presentations are made from both the legal and social science frames.

A Legal Narrative

Divorce and Children: A Historical Perspective

Over the years, changes in societal values and norms regarding the family and childhood have resulted in radical changes in the laws and outcome of adjudicated divorce and custody cases (Robinson, 1988; Wynne & Wynne, 1986). The welfare of the family, in the throes of divorce and a custody dispute is "likely to be determined by the values of the legislators and/or the officers presiding in the relevant courts" (Burman & Reynolds, 1986, p.119).

Under the present law in South Africa, the United Kingdom and the United States the 'best interest of the child' is the paramount and foremost consideration in custody decision-making (Bedil, 1988; Burman & Rudolph, 1990; Derdeyn, 1976; Hosten, Edwards, Nathan, & Bosman, 1980; Houlgate, 1987; Le Roux, 1987; Robinson, 1988). This was, however, not always the case.

The rights of fathers.

In the older western world, the father obtained absolute control over his children in judicial decisions under Roman law. Children were considered paternal property. The principle of absolute right of the father was thereafter also adopted by English common law, where it remained relatively unchallenged for centuries (Derdeyn, 1976; Robinson, 1988; Saposnek, 1983; Volgy & Everett, 1985b). It was indeed only in the 18th century that the English court assumed jurisdiction over the welfare of children in need of protection. The reasons for the superior custody rights of fathers, both in England and the United States, were based on the father's superior financial position and the man's superior position in patriarchal society. The welfare of children seemed relatively unimportant during that time, as children were considered primarily in the service of their father. An economic constraint then also prevented a mother from obtaining custody, because a father was absolved of any maintenance in the case of a mother having custody over his children. Only once the man's financial responsibility

towards his children was acknowledged irrespective of who had custody, did a woman stand a better chance of assuming custody of minor children. (Derdeyn, 1976; Saposnek, 1983)

The "tender years presumption".

With the industrialisation of the western world, the status of women changed as they were given rights previously denied to them such as voting, being gainfully employed and owning property. A gradual shift towards a maternal preference in custody disputes (Luepnitz, 1986), came into being with the "tender years presumption", claiming that during infancy, when a child is in need of tender nursing, he or she will remain with the mother, but will return to the father once this period has passed, and such a child is in need of moral training (Derdeyn, 1976; Saposnek, 1983; Volgy & Everett, 1985b; Wynne & Wynne, 1986).

Derdeyn (1976, p.1371) states that "the tender years presumption was one of the first tangible legal issues on which the developing rights of the mother were based. The best interest of the child was the other".

"The best interest of the child".

Challenges to the law of custody of children resulted in the best interest of the child test or principle, which was equally an acknowledgement of the special developmental needs of children, as a strengthening of the mother's right to custody.

This principle lead to the mother's superior right to custody based on a cultural assumption that the mother is better equipped to caring for children. Even though equality of the sexes have been proclaimed for years, statistics in most countries, including South Africa, show a vast majority of custody disputes being settled or decided in favour of the mother, unless definite evidence exists that exhibits misconduct on the part of the mother (Burman & Rudolph, 1990; Derdeyn, 1976, Volgy & Everett, 1985b). At present no legislated preference exists in South African law, in favour of either mother or father with regards to the allocation of custody (Hahlo & Kahn, 1975).

The "best interest of the child" principle, linked to the adversarial manner in which this is ascertained, does raise certain pertinent questions: working within this system, the best interest of the child is often decided, by proving the other parent unfit (parental culpability), with the implication that it would not be in the best interest of the child to award custody to that parent. This principle can therefore be said to be conducive to conflict between divorcing parents, because of vague standards and the process of polarisation engendered by such a system (Derdeyn, 1976; Robinson & Parkinson, 1985).

Because the 'best interests' standard, unlike the older, tender years presumption, makes it possible for each member of the divorcing parents to press a claim for custody of the child, they have a strong motive to enter, or at least threaten to enter litigation. (Houlgate, 1987, p.19)

The 'best interests' standard may therefore contribute to disputes between parents that, paradoxically, may be extremely harmful to the child.

Another important influence in the history of custody disputes is the book published in 1973, *Beyond the Best Interests of the Child*, by Goldstein, Freud and Solnit. These authors proposed that custody be awarded to a single parent who is assessed as being the child's 'psychological parent', and that it would be that parent who determines the extent of the remaining parent's involvement with the child(ren) (Goldstein, Freud & Solnit, 1973). Subsequent research have in fact opposed these speculations, and suggested that children's best interests are served if they have "continuous and regular contact with *both* parents" (Saposnek, 1983, pp.6-7).

No-fault settlements.

In the previous century it was often thought that the best interests of the child were adhered to when custody was awarded to the parent not at fault or not being the cause of the divorce. The underlying assumptions being that the guilty party would tend to repeat such wrongdoing

in subsequent relationships. Children would be better looked after by someone who had not transgressed the vows of marriage (Derdeyn, 1976).

The no-fault divorce law made it possible for couples to get divorced without assigning blame in order to do so, which necessitated less litigation and more negotiation. Disputed custody is nevertheless still often settled by awarding blame perpetuating the adversarial nature thereof (Wynne & Wynne, 1986). The courts have, however, attempted to differentiate between the moral unfitness of a parent and their ability to give adequate care (Saposnek, 1983).

The no-fault divorce came into being in South Africa in 1979 by means of the Divorce Act, 70 of 1979. This act incorporated the law regarding the interests of the children of a divorcing couple which included custody allocation (Section 6, Safeguarding of interests of dependent and minor children) (Burman & Rudolph, 1990; Burman & Reynolds, 1986; Hahlo & Kahn, 1975; Le Roux, 1987; Lind, 1989).

Joint custody.

Internationally, joint custody is a very recent development, and this trend has become a preferred and even mandated option in some American states (Derdeyn & Scott, 1984; Nehls & Morgenbesser, 1980). Joint custody is described by Volgy and Everett (1985a) as analogous to the process of system mitosis in biological cell division. The system subdivides into two subsystems with one parent in each new "cell", and the sibling subsystem is replicated in each one of these divided "cells". A systemic justification for the wisdom of such an arrangement is given whereby it is argued that "the structure of joint custody most closely duplicates the original nuclear family system as compared to other types of custody" (p.140).

It is therefore considered to most clearly approximate 'normal' family life (Volgy & Everett, 1985(b)) and thus considered an option in the best interest of the child(ren) in custody disputes (Burman & Rudolph, 1990), which lead to the incorporation thereof into the custody legislation of certain countries. In South Africa, joint custody remains an unpopular alternative

and has only ever been granted in isolated cases, after the precedent was set in the court order pertaining to *Kastan v Kastan* (Bedil, 1988; Burman & Rudolph, 1990; Eckard, 1992). Another frequently cited subsequent case is that of *Schlebusch v Schlebusch* (Bedil, 1988; Burman & Rudolph, 1990) in which an application for joint custody was denied, which seems to be the South African judicial preference, although nothing prevents a South African court to order in favour of joint custody (Bedil, 1988). The argument against joint custody presented by the South African courts is that shared responsibility invariably leads to a deadlock situation between parents (Eckard, 1992) which then has to be settled by the court and therefore is not functional. Eckard (1992, p.44) describes the court's position as a "traditional" one and states that "the court seems to be saying that co-operation or communication between divorced parents in the interest of the child...is an illusion".

Child custody evaluations.

In the adversarial approach to decision-making in custody matters, it has become common practice to consult a psychologist for the purposes of evaluation and a concomitant report for one side of the conflicting parties. A referral from the party's attorney who may believe that such a report would strengthen their case, is the most common way in which the services of a psychologist are enlisted (Trombetta, 1981; Wynne & Wynne, 1986). Procedural law, which is responsible for establishing the adversarial approach to custody disputes, is limiting in terms of the amount and nature of information about a family that can be brought into court proceedings (Girdner, 1985). Only psychometric tests considered 'scientific' can be brought as evidence, and information is generally organised in such a way as to present a favourable image of the client in question, while seeking to disqualify the opposing party as parent and caregiver. This takes place under the overriding assumption that what has to be determined, is which parent will further the best interests of the child. Insofar as this procedure takes place within the system of adjudication of divorce and custody disputes, and consultation is done on the basis of involving one party only, it serves to perpetuate conflict and polarisation. "The use of professional custody evaluations by behavioural science or other 'consultants'" is simply enlisted to "raise the quality of traditional custody adjudication" (Trombetta, 1981, p.13). Hoffmann (1989, p.107) also asserts that "the traditional service of custody evaluations has

retained its importance as a highly visible service rendered to the judiciary". It is therefore a question of therapists in the legal world, acting as 'hired guns' and subscribing to the rules of that world.

Such evaluations can therefore formally be defined as: "psychological and behavioural assessments of individual family members, and examination of relationships between family members, conducted by psychiatrists, psychologists, and others" with the aim of determining "the best custodial arrangement for the children involved" (Trombetta, 1981, p.14).

A psychologist or mental health worker can also be called to perform a custody evaluation as a service to the court, in which case such a professional does not represent either party, but is considered an impartial and objective third party. The criteria for employing such a professional will be based on their capacity for objectivity and skill in assessment procedures. Such a professional will have to furnish the court with a report of his or her findings and may have to be called to court to testify, in which case he or she would have to be able to withstand cross-examination. Such evaluations are generally demanded under the following circumstances, as listed by Hoffman (1989, p.108):

- When parents are unable to reach an agreement.
- When one or both parents behaved in a way to harm or injure a child.
- When the social environment of one or both parents is considered detrimental to the child.
- When the child has problems which require special considerations as to which parent is best equipped to deal with it.
- When the non-custodial parent appears to have superior capabilities to the custodial parent in providing for the needs of the child(ren).
- When one or both parents abuse alcohol or drugs which prevents them from adequately parenting the child.
- When a current visitation order does not seem to meet the best interests of the child.

Although these evaluations are not performed in the service of one of the conflicting parties, it is still a procedure rooted in litigation, with a report being submitted to the court as evidence, and the final decision resting with a judge, based on this expert, and other evidence. Parents are therefore not recognised in terms of their contributions in this process, and the focus is on pathology or abnormality, which would preclude the custody of one or other parent over the child(ren).

Divorce Mediation

Divorce mediation, as alternative method of conflict resolution, arose in an attempt to find a more appropriate method of dispute resolution - given the inherent disadvantages of the adversarial approach (Egle, 1983; Hoffmann & Wentzel, 1992; Houlgate, 1987; Howard & Shepherd, 1987; Koopman & Hunt, 1988; McGee, 1984; Mowatt, 1988) - and the fact that it has been acknowledged in legal circles that divorce, and therefore custody, disputes are more than mere legal events.

As with many alternative models, mediation has its origins in the Far East, where disputes are settled by such means, and court litigation is disapproved of, for the disturbing effect it has on cosmic harmony (Mowatt, 1988), as well as in the Middle East, among the ancient Hebrews (Hoffmann & Wentzel, 1992).

As an alternative method of conflict resolution, the rationale of mediation is to provide a win-win approach to the resolution of conflict, as opposed to the win-lose adversarial approach (Grebe, 1986; Hodges, 1986; Hoffmann, 1987; Pruhs, Paulsen & Tysseling, 1984).

Mediation (also called conciliation in British law) as an alternative form of dispute resolution, was adapted from a similar practice frequently employed in labour disputes and political mediation (Egle, 1983; Hoffmann, 1987). Through mediation the fact that divorce has a dual nature - that it is both a legal and a psychological process - becomes recognised (Girdner, 1985; Steinberg, 1988). It thus follows that mediation is an interdisciplinary process. Although this interdisciplinary nature of mediation has been recognised (Hoffmann, 1987;

Koopman & Hunt, 1988; Ruman & Lamm, 1983), it does seem to remain a practice under the auspices of the law (Pruhs, et al., 1984) especially in South Africa (Le Roux, 1987). The major critics of mediation as an alternative means of divorce and custody dispute resolution, are also drawn from the ranks of legal professionals, who are intent on keeping conflict resolution in divorce and custody within the legal sphere, subjected to legal ethics (see Burman & Rudolph, 1990; Mowatt, 1988 in this regard). Howard and Shepherd (1987, p.8) point out that mediation or conciliation does not form part of a social science or legal tradition and is consequently "in danger of being 'borrowed' by both groups and distorted to fit their own respective ideas and objectives".

Some of the major "measurable" benefits of mediation recognised by the legal fraternity and substantiated by research (Howard & Shepherd, 1987; Kressel, 1987) are:

- a higher degree of compliance with settlement terms than obtained with litigation;
- a greater degree of compromise occurring during negotiations, and
- relatively lower costs involved.

As an alternative means of dispute resolution, mediation is based on the principles of empowerment and self-determination. It is not an adjudicatory but a co-operative process (Wynne & Wynne, 1986).

It facilitates a balance of power between the couple through non-coercive means, thereby realigning the divergence between the spouses sufficiently to make them and their demands and wishes less diametrically opposed or damaging to each other and in consequence to the members of their family.
(Hoffmann, 1987, p.9-10)

A Brief South-African History

Following the international trend, South African law recognised the constraints inherent in the adjudicatory system in dealing with issues of divorce and custody, and suggestions were

made that divorce (and custody) should no longer be regarded as solely in the legal domain. This necessitated a remodelling of the system, in order to incorporate the behavioural sciences, and to find more effective ways of coping with an ever increasing and complexifying problem (Commission of Inquiry into the Structure and Functioning of the Courts, 1983; Lind, 1989).

Under the **Divorce Act** (70 of 1979) provision is made for no-fault divorce (Section 4) as discussed earlier, as well as the safeguarding of the interests of dependent and minor children (Section 6) (Hahlo & Sinclair, 1980). In terms of this section a decree of divorce shall not be granted until the court: (a) is satisfied that the provisions made or contemplated with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances; and (b) if an enquiry is instituted by the Family Advocate in terms of section 4(1)(a) or (2)(a) of the Mediation in Certain Divorce Matters Act, 1987, has considered the report and recommendations referred to in the said section 4(1).

In the remainder of the section referred to above, provision is made for the ordering by the court of any investigation, or appearance of any person before the court (with regards to safeguarding the interests of dependent children). It also makes provision for the court to have the right to determine which parent or person will have guardianship or custody of such a dependent child. The court also retains the right to appoint a legal practitioner to represent the child at any such legal proceedings (Divorce Act, 70 of 1979, Section 6; Hahlo, 1985).

Lind (1989) and the Commission of Inquiry into the Structure and Functioning of the Courts (1983) suggest that although this Act does make provision for no-fault divorce, it does not eliminate the acrimony evident in divorce proceedings prior to 1979. These and other limitations of the South-African law, with regards to divorce and custody matters were addressed by the Hoexter Commission's final report in 1983. The Commission found that the fragmentation of jurisdiction renders the adjudication of family matters in South Africa inefficient. This resulted in the ineffective distribution and application of human resources and a lack of co-ordination between social services and the court (Commission of Inquiry into the Structure and Functioning of the Courts, 1983, p.487). This Commission therefore controversially (regarding structure, manpower and costs) recommended the establishment of

a family court as an arm of the court, dealing exclusively with matters of family law (Commission of Inquiry into the Structure and Functioning of the Courts, 1983; Hoffmann, 1989; Hoffmann & Wentzel, 1992; Lind, 1989). According to the findings of the Commission, "the majority of lawyers were somewhat sceptical of the idea of a family court. On the other hand, representatives of social welfare agencies were almost unanimously in favour of the establishment of such a court" (Commission of Inquiry into the Structure and Functioning of the Courts, 1983, p.464). With this recommendation in consideration as well as the awareness of the prominence of divorce mediation in other countries, legislation in the form of the **Mediation in Certain Divorce Matters Act** (24 of 1987), was instituted. The Act provides for the appointment of Family Advocates for each of the divisions of the Supreme Court, by the Minister of Justice.

The powers and duties of the family advocate evolve around instituting an enquiry to enable him to furnish the court at a divorce trial with a report and recommendations on any matter concerning the welfare of each minor or dependent child of the marriage or on such matters as requested by the court.
(Hoffmann, 1989, p.105)

The Act also makes provision for the appointment of a family counsellor for each division of the Supreme Court, to assist the family advocate with an inquiry.

Hoffmann (1989, p.106), however, points out that this statutory restructuring has resulted in a compromise between the strongly advocated mediation services, as employed in other countries, and the equally strongly advocated system of custody evaluation, in which case it is a continuation of the then existing service. The use of the word mediation in the title is considered an inaccurate interpretation of the process implicated thereby, as the content of the Act strongly implicates the process of custody evaluation. This incongruity makes room for a lack of clarity about the nature of services offered in general, as well as a lack of clarity about the provision of mediation or conciliation services specifically (Burman & Rudolph, 1990; Lind, 1989; Mowatt, 1988).

The growing interest in the possibilities of mediation as an alternative method of conflict resolution is reflected in the existence and activities of the South African Association of Mediators in Family Matters (SAAM), which is a non-profit association of divorce and family mediators (Goldstone, 1992; "Focus on Divorce," 1992). SAAM is the outcome of a collaborative effort of three professions namely law, psychology and social work, to "promote and formalise the use of family mediation with particular emphasis on divorce mediation" (Hoffmann & Wentzel, 1992, p.11).

Initially launched as a pilot project, as recommended by the Commission of Inquiry into the Structure and Functioning of the Courts (1983), the Office of the Family Advocate came into being. The first family advocate, Adv. Francis Bosman, came into office on September 1, 1990 ("Die Advokate se Dienste," 1992), appointed by the former Minister of Justice, Mr Kobie Coetsee ("Unisa Academic," 1990). Since then, offices have been opened in all the major centres in South Africa. The system of the family advocate is explained as "innovative" and "unique to South Africa" and represents an "interdisciplinary approach to family litigation concerning the custody and access of minor children" ("Looking After," 1992).

A Behavioural Science/Mental Health Narrative

Limitations of the Adversarial Approach

Although the limitations of adversary in divorce and custody have been pointed out from within the legal ranks (Commission of Inquiry into the Structure and Functioning of the Courts, 1983; Koopman & Hunt, 1988; La Cock, 1983; Thoennes & Pearson, 1985), the vast majority of these arguments both locally and internationally, have been generated by scholars of the behavioural sciences (Camplair & Stolberg, 1987; Hoffmann & Wentzel, 1992; Kaslow, 1984; Marlow, 1985(a) & (b); Robinson & Parkinson, 1985). It is these challenges to the adversarial process that have provoked changes in family law, the structure and functioning of the court, and the growing interest in mediation.

The Hoexter Commission found that the adversarial approach on which South African procedure is modelled, forces the parties into confrontation the moment the plaintiff enlists the services of an attorney, and that this procedure was not conducive to reaching a settlement that would last, nor to the possibility of reconciliation (Commission of Inquiry into the Structure and Functioning of the Courts, 1983). The Commission therefore recommended that "in the adjudication of family matters a shift in emphasis away from the adversary system of litigation towards more inquisitorial procedures would benefit the administration of justice" (Commission of Inquiry into the Structure and Functioning of the Courts, 1983, p.523).

Marlow (1985(a)) describes the assumptions upon which the traditional adversarial approach rests, and states that these assumptions also have become the way in which we have come to view the process of divorce. These assumptions are:

1. That divorce and marriage are legal events, which the state therefore has a right to control.
2. That the failure of the marriage and the subsequent divorce were brought about by the misconduct of one of the parties.
3. That the purpose of the judicial system is not only to bring about the divorce between two people, but also to inform them of their legal rights and obligations arising out of their marriage, as defined by the law.
4. That the parties have conflicting and adverse interests, and that these conflicting interests not only characterise the dispute between them, but also give an explanation as to why it is so difficult for them to resolve.
5. That the respective interests of the parties must be protected, and that it is the function of the law to do so. The foundation of such protection is the judicial process, in the way it represents the respective parties, by separate attorneys.

The Commission of Inquiry into the Structure and Functioning of the Courts (1983) confirms this view in its final report and also states that although no-fault divorce has been instituted, the acrimony between the spouses still exists, especially with regards to ancillary issues such as custody of the children. In such cases, unsatisfactory settlements are reached, which does eventually necessitate the involvement of social welfare agencies.

It is suggested that this is an inappropriate set of assumptions, and limiting in terms of divorce and custody matters. Marlow (1985a) therefore also suggests an alternative set of assumptions by which to view the process of divorce - and therefore custody - matters:

1. Divorce is firstly a personal (as opposed to a legal) event.
2. A family in the process of divorce should be viewed as in a state of crisis by which the structure of their relationships is threatened.
3. There are no legal answers to personal matters, and the parties in a divorce should not be lead to believe there are.
4. Self-determination in terms of what is appropriate or not in their lives, should be granted to the divorcing parties, as all professionals are poor regulators of delicate relationships between people.
5. A divorced couple with children, will have an ongoing relationship following divorce. In such a case it is necessary to resolve the dispute between the couple in such a way that they may be able to negotiate and conduct parental functions in future.
6. Divorcing couples have conflicting interests, although it is not these that keep the couple from reaching an agreement, as assumed by the law, but the feelings of disappointment, hurt and anger. These feelings should thus be addressed in order to reach a settlement, in stead of them being exacerbated further as in the adversarial process.

7. Divorce should not be about a simplistic assigning of blame or praise to one party or the other. It should assume a holistic point of view, in which no single cause can be identified, and the focus is on the future, not the past.

8. Divorce is not an occasion to right the wrongs from the marriage, as is often the view held by the traditional adversarial system. To encourage this view, is to create false expectations and preclude the necessary emotional closure that has to follow divorce.

It is suggested that the "bereavement-related processes" in divorce and custody matters are often used and thereby exacerbated by the adversarial nature of adjudication, which is ineffective and inappropriate as couples are then seeking legal solutions to personal problems (Robinson & Parkinson, 1985, p.358). Specifically regarding custody, Houlgate (1987, p.19) asserts that the "best interest" standard applied in adjudicating such matters, is inherently defective, as standards are vague, giving parents an incentive to fight, which promotes conflict. The employment of a third party as a judge of the worth of the claims of each party, also has competition as its natural consequence. Because they advocate for the 'rights' of one of the spouses, lawyers initiate the process of escalating the conflict between parties. Even though it may not be the intention of the lawyer to do so, it is inherent in the system within which they operate. Parties may then also deny their individual roles in this process of escalation by blaming their spouses or their lawyers. The outcome of adversary is the cessation of conflict, not the resolution thereof, which is imposed on the couple by an order of the court (Grebe, 1986). The adversarial nature of the formal judicial process is described as particularly harmful to people who have to maintain ongoing relationships, such as divorcing families (Koopman & Hunt, 1988).

For similar reasons as given above, the Commission of Inquiry into the Structure and Functioning of the Courts (1983, p.522) found in favour of the creation of family court, and recommended that it consists of the following two components:

- a social component to be known as the family court counselling service, and
- a court component

The family court counselling service was to fulfil three functions, namely:

- the reception process - for sifting and classification purposes; availability of counselling and legal advice; referral to marriage counsellors when reconciliation is a possibility;
- the conciliation process - for the facilitating of negotiation and communication between estranged spouses and for the resolving of disputed points such as custody and access, and
- the supporting service to the court - in the case of adjudication of a family matter, the counselling service is to undertake the necessary investigation or action required by the court.

What did, however, emerge is the Mediation in Certain Divorce Matters Act (24 of 1987), which provides for a family advocate, for the further protection of the child, but no provision is made for conciliation or mediation in this Act, which makes the title misleading (Burman & Rudolph, 1990). As a service offered by the Office of the Family Advocate, mediation only takes place on the initiative of the relevant family advocate and the nature of such a service will depend on his or her definition thereof (Hoffmann & Wentzel, 1992).

So, although the limitations of the adversarial approach to family disputes are recognised by most, there is a reluctance, especially on the part of the legal profession to adopt the other alternative, namely mediation as an interdisciplinary model, due to the threat of the blurring of professional boundaries it may incur - a blurring of boundaries and battle for control of the problem, between professions that have traditionally always been ill at ease with one another.

Mediation as Alternative

Scott-Macnab (1992) in an effort to define terminology used in alternative means of dispute resolution states that mediation is a process "largely based on the consent of the parties to a dispute and upon this consensual element reliance is placed on the parties complying with the terms of the mutual agreement" (p.21). This process is used as an alternative to ordinary

litigation "which is a final, adversarial, adjudicatory process maintained by the state and supported by negative or positive sanctions which it has the power to command" (p.21).

If divorce is to be viewed as first and foremost a personal event (as opposed to a purely legal one) and mediation is considered a more appropriate means of conflict resolution within this view, mediation represents a paradigm shift in the way that we view divorce (Marlow, 1985(a), p.4).

As an alternative to the adversarial approach to child custody disputes, the co-operation of parents through mediation, to maintain better parent-child relationships, as well as functional relationships between adults, have been advocated widely (Trombetta, 1981).

A basic purpose of the field of divorce, family and child custody mediation can be construed as the creation of viable postdivorce families, and the mediation focus can be conceptualized as the mutually determined creation of parental agreements that are equitable and functional for each party as the family enters into a new stage of life. In child custody mediation, these foci are best understood as the creation of a postdivorce/nonmarital family within which child growth and development can be enhanced. (Koopman & Hunt, 1988, p.383-384)

Mediation as it is practised in the United States, Canada, Great Britain, Australia and New Zealand is characterised by a variety of models of mediation developed after Coogler's initial work titled *Structured Mediation and Divorce Settlements*, published in 1978. It is generally considered a method of brief intervention, focusing on issues of family conflict, but in terms of co-operation as opposed to opposition. Emphasis is placed on parental responsibility, and the underlying premise is that of empowerment (Hoffmann, 1987).

Hoffmann (1987) describes that central to any theory of mediation is an understanding of the phenomena of conflict. In mediation, the emphasis is on interpersonal conflict, especially to the

extent that is a continuation of conflict within the marriage or a function of unexpressed marital conflict. The aim is to create a win/win connotation, also creating a balance of power through non-coercive means. Other important features of the mediation process, as set out by Hoffmann are:

- the control of the mediator over the process;
- mediation may be a single session or lasting over a period of time;
- confidentiality is a feature, but judicially mandated reporting may limit such confidentiality;
- the mediator does not represent a party, and is solely concerned with reaching a settlement that both parties can live with;
- the focus of mediation is on the consequences of divorce;
- divorce mediation is an interdisciplinary endeavour;
- the development of a relationship between the mediator and couple does not have a therapeutic goal although the process may have therapeutic benefits for them;
- mediation is a structured process requiring active participation of all parties, and
- mediation does not replace the need for legal information and advice.

Most models of mediation described in the literature focus on the above mentioned aspects, as well as the stages of the mediation process, and the strategies and skills of a good mediator. It is widely recognised that the process of mediation does take place within a legal context, and with legal decisions to be made, but it is also recognised that the context within which mediation is practised, has an influence on the process (Robinson & Parkinson, 1985). In this sense, mediation has a strong psychological component, with theories resembling those of family therapy. It will thus also be the emphasis of this dissertation, that, mediation practised from a family systems approach is most suited to taking the broader context into consideration and view the family as a system within a larger legal and social welfare system and the implications thereof for not only the family involved, but also the professions themselves.

It seems that one of the major hurdles in discarding the 'either mediation or adversary' debate in favour of recognising the historical merits of both these views, in a both/and fashion, lies in

the lack of co-operation and the mistrust that have existed between these professions for years. It therefore appears to have become a matter of battling for the control of the definition of the problem (Stewart, Valentine & Amundson, 1991), the status and expertise of the 'winning' profession being at stake, at the cost of the other's.

With divorce and custody recognised as being both personal and legal events, collaboration between these professions are implied. In assigning the task of mediation to only one of these professions would result in unqualified counselling or inappropriate adjudication in the case of a lawyer, or lawful counselling and unauthorised practice of law by a mental health worker.

An interdisciplinary co-mediation team approach is therefore often recommended (Koopman & Hunt, 1988; McGee, 1984; Vanderkooi & Pearson, 1983). We are however reminded of Auerswald's (1968) warning that insofar as any approach is termed interdisciplinary, it maintains the vantage point of each participant within its own discipline, while the interfaces between these disciplines are ignored. From this view the image of a third, higher order field of study emerges with its own unique body of research and literature, that incorporates both legal and behavioural theory and philosophy, and produces professionals schooled in, and committed to, both these disciplines.

CHAPTER 3

An Ecosystemic Epistemology

"We should remember that the final goal of any science, although probably unobtainable, is to achieve a unified theory. In the domain of social science, ecology becomes the broadest metaphor to signify such an ideal". (Keeney, 1983, p.168)

Theory as Truth Perspective

NB Psychotherapists are constructors of reality. Construction materials and techniques may be tested - to the extent that they are more or less effective in building a certain reality. But the reality to be constructed is a matter of sociocultural value. Therapists should not expect that outcome studies will spare them the responsibility of taking an epistemological and ultimately axiological stand as to which problems are to be faced, how they are to be approached, and in what direction the solution is to be attempted. (Colapinto, 1979, p.440)

The relationship between theory and practice when viewed philosophically, can be said to start with the human's search for truth, and it is because of our imperfections and limitations that the knowledge of truth is so central to our activities (Rauche, 1990). Theories are 'truth perspectives' as they represent our view of the world in terms of our conflict experience of it under specific life and historical circumstances. We therefore only know truth-perspectives, constituted from our contingent experience of the world, but knowledge of the Truth is not accessible to our understanding. All different types of human experience yield different types of knowledge, each methodologically constituted from their respective types of human experience. Scientific knowledge is therefore knowledge constructed by human beings. As theory (and method) is humanly constructed, no scientific theory is conclusive or final, but rather problematic and controversial (Rauche, 1990).

Theories constituted from our various experiences, change, along with the changing circumstances of our lives (Lucas, 1985). It therefore follows that as theories are built on our changing and variable experience of reality, true freedom of this conflict is never attained and the problematic nature of theory never resolved, just as we never attain freedom of conflict, changeability and variability in our interactions with each other. It can therefore be said that theory and practice are fed from the same source, namely, our contingent experience of reality.

Although it was by no means the first use of the term, Gregory Bateson (Keeney, 1982) can be said to be the person to have introduced the term 'epistemology' to the field of family therapy. As Keeney puts it, the term epistemology is used more and more by family therapists, which accounts for the growing confusion and disagreement about what it really means. For that reason I will not attempt to clarify or disentangle this web of meanings, but rather give a definition that will coherently facilitate the essential arguments of this study. "Epistemology is ... neither a map, description, theory, model, paradigm, nor paradigm of paradigms. It is a process of knowing, constructing, and maintaining a world of experience" (Keeney, 1982, p.165). Knowing requires drawing distinctions, and drawing distinctions is a way of constructing a world, consequently knowing and constructing are recursive and inseparable. Joining with a family then becomes a "social construction of a therapeutic reality" (Keeney, 1982, p.165) and the activities of diagnosing, intervention and research are all recursively linked in a world of created experience.

A Changing Epistemology

From this viewpoint it becomes clear that psychotherapeutic theory and practice have evolved in relation to changing life circumstances and historical conditions, so that now too, there seems to be a need for alternatives to current/traditional social thinking, as the basis for understanding and practising therapy (Lukas, 1985). This notion is also expressed by Colapinto (1979) in an article proclaiming the relative value of empirical evidence. He asserts that the value of a particular epistemology lies in its relative efficacy. "An epistemology is efficient, i.e., allows for a satisfactory account and handling of 'reality',

within a certain sociocultural context and ceases to be so under a different context" (p.430).

Conflict between models or epistemologies are then not resolved by empirical research, but rather by sociocultural evolution. If epistemologies in general are truth perspectives, and epistemologies in the realm of psychotherapy in particular are views on problems and their solutions, the sociocultural definition of what constitutes a problem and a solution will ultimately determine the efficacy of a particular epistemology. Colapinto (1979) continues to explain though that "the relation between sociocultural values and therapeutic epistemologies are not a one-way linear process..." (p.432).

To attest this notion he convincingly describes how psychoanalysis developed as a small and circumscribed set of clinical situations into a very pervasive number of situations which were defined as pathological and in need of treatment -the demands of which psychoanalysis as an epistemology was unable to cope with. Out of this 'paradox' group-, brief-, and family-therapy models developed to alleviate the need created by psychoanalysis (Colapinto, 1979).

This transition also refers to a very important transition from viewing the locus of pathology as being seated in the individual as exemplified by psychoanalysis, for example, to the 'pathology' being found in the rules of the system, as exemplified by the development of family therapy and systems thinking.

Transformations from Old to New

New science emerged from the study of the 'inanimate' universe. The Batesonian evolution emerged from the study of the 'living' universe, and the ecosystems epistemology emerged from the study of a segment of the 'living' universe, namely families in the context of sociocultural systems...these

three idea sets share the same rules for defining reality, the same epistemology. (Auerswald, 1985, p.3)

Auerswald (1985, p.1) states that a new epistemology - "a new set of rules governing thought" - is pervading the "new science", and it differs greatly, and is in fact discontinuous with the thought systems of the Western world that has until now occupied centre stage.

Currently, the movement in science is in the direction of holism, ecological interconnectedness and constructivism, away from the traditional ideas of reductionism, lineal causality and objectivity (Lukas, 1985). This movement represents a new way of thinking about human behaviour as opposed to another theory of human behaviour - consequently a new epistemology (Fourie & Lifschitz, 1989). Auerswald (1985) also believes that the ecological systems epistemology as evolved from family therapy literature is in keeping with the new science epistemology and that "the ecosystems epistemology provides the basis for a technology of transformation" (p.2).

A variety of epistemologies of human behaviour exist. A particular contrast between a Newtonian epistemology rooted in classical physics, and an ecosystemic epistemology (Capra, 1982; Fourie & Lifschitz, 1989; Schwartzman, 1984) is found most useful to highlight the 'tenets' of an ecosystemic epistemology as described by Keeney (1979).

In the seventeenth century the nature of science changed coinciding with the work of Descartes, who proposed a method for reaching scientific truth. Descartes was famous for saying "I think therefore I exist" implying that the essence of human nature lies in thought - and that for that rationale, certainty can be achieved through intuition and deduction. The concept of analytical reasoning or reductionism can consequently be attributed to Cartesian philosophy. The ever present 'mind/body problem' also can be credited to the Cartesian division of mind and matter - the humanitarian sciences concentrating on mind and the natural sciences on body. This led to the revolutionary change in the image of nature from organism to machine, and the mechanisation of science. The mechanistic view of matter was also extended to living organisms, and human biology was explained as functioning according to the same rules that governed machines. Isaac Newton was however the man

who "realised the Cartesian dream and completed the Scientific Revolution" (Capra, 1982, p.48). Newton developed a complete mathematical formulation of the mechanistic view of nature, synthesising the work of Copernicus, Kepler, Bacon, Galileo and Descartes. "The Newtonian universe was, indeed, one huge mechanical system, operating according to exact mathematical laws" (Capra, 1982, p.49). Reality is the material world, made up of physical objects that adhere to the laws of force and energy. The Newtonian epistemology states not only that such an objective external reality exists, but that it can be observed objectively. Phenomena can be studied in isolation, by breaking it up into its constitutive parts, and then adding them to gain understanding of the whole. Events can be examined as if static or fixed in time, and one event can be seen as causative of another - forces acting unidirectionally upon others. All events and objects are viewed as independent, and so too the observer is seen as independent of that which he or she is observing (Bopp & Weeks, 1984).

In the late nineteenth century it was believed that the epistemology for understanding and studying physical reality had been perfected through the masterful work of Newton (Auerswald, 1985), and that his laws could in time also explain that which was *in* yet understood. However, the physicists Planck and Einstein, attempting to explain the behaviour of radiation emitted by a heated object, proved it impossible to fit these quantum notions with classical concepts, which led to the development of Planck's Quantum Theory, and Einstein's Theory of Relativity. These can be viewed as the epistemological foundations of a new physics, which incorporated notions of a monistic as opposed to a dualistic universe, the concept of a four-dimensional timespace as opposed to treating space and time separately, and a move away from lineal causality between events (Auerswald, 1985; 1987).

This transformation from classical to new physics was matched by a similar and equally relevant transformation in another field of natural science, namely evolution. Darwin's Theory of Evolution was developed during the same time, and consequently reflected the same mechanistic worldview as Newtonian physics. Just as the laws of Newtonian epistemology could not account for quantum physics, Darwin's famous notion of 'survival

of the fittest' remained concrete and did not include the notion of mind as an explanatory principle (Bateson, 1979).

Consciousness or mind is not an entity interacting with physical matter, but... is simply an expression or manifestation of the same systemic processes and relationships seen in the so-called natural world. Mind is neither reducible to or opposed to matter; more accurately, mind and matter are seen as facets of a common, universal reality. (Lucas, 1985, p.169)

Gregory Bateson's transformation of Darwinian theory - to create an evolutionary paradigm that included mind - was founded on notions derived from systems theory, cybernetics and ecology (Keeney, 1983a).

As seen in the arena of physics and evolution, the new science also developed with regards to philosophy and the humanities. Eighteenth century thinkers continued to apply the principles of Newtonian mechanics to the human sciences and human society, namely a rational approach to human problems (Capra, 1982). The philosopher, John Locke, appeared as the most influential figure in this development, as he created an atomistic view of society in which he described it in terms of its most basic elements, namely individuals. This entailed a reduction of the patterns observed in society to the behaviour of individuals. Locke based his theory of knowledge on the well-known metaphor of the human mind at birth as *tabula rasa* - a blank slate - on which knowledge, acquired through sensory experience, is imprinted. This philosophy - of all men being equal at birth - had a strong influence on the development of the schools of psychoanalysis and behaviourism, as it implied that all development was subject to the environment. Knowledge was seen as mental pictures of what was really out there, and the process of knowledge as a search for absolute truth - a realist view (Capra, 1982).

This can be contrasted with the teachings of Immanuel Kant (Capra, 1982), who emphasised the acquisition of knowledge as an invention as opposed to a discovery. Mental images are produced as a function of the interaction between the person and the environment - they are then active creations. The Kantian model can therefore be cited as the foundation of constructivist theory, which can also be seen as a transformation from objectivity of observation (classical science) to the participation of the observer in what is observed (new science) (Capra, 1982; Efran, Lukens & Lukens, 1988).

The two basic theories of modern physics have thus transcended the principal aspects of the Cartesian world view and of Newtonian physics. Quantum theory has shown that subatomic particles are not isolated grains of matter but are probability patterns, interconnections in an inseparable cosmic web that includes the human observer and her consciousness. Relativity theory has made the cosmic web come alive, so to speak, by revealing its intrinsically dynamic character; by showing that its activity is the very essence of its being. In modern physics, the image of the universe as a machine has been transcended by a view of it as one indivisible, dynamic whole whose parts are essentially interrelated and can be understood only as patterns of a cosmic process. At the subatomic level the interrelations and interactions between the parts of the whole are more fundamental than the parts themselves. There is motion but there are, ultimately, no moving objects; there is activity but there are no actors; there are no dancers, there is only the dance. (Capra, 1982, pp.82-83)

Auerswald (1987) points out that although Newtonian science has lost its predominance because its rules are no longer sufficient as a basis for a new epistemology, it remains as a paradigm of the new science of epistemology as it is both useful, and because there is no

reason to discard it if one accepts the redefinition of truth as heuristic, and if one discards dualism.

If it is assumed that the study of family therapy is partially rooted in science, then the emergent ideas of science have relevance for the development of family therapy epistemology. The evolution of the study of family therapy is closely linked to events in the evolution of the study of biology and physics, a link initially articulated in the writings of Bateson (Auerswald, 1987).

Auerswald (1987, pp.321-322) lists five paradigms that have emerged in the field of family therapy since 1959, and states that these all define the family in different terms:

1. The *psychodynamic* paradigm defines the family as a "group made up of the interlocking psychodynamics of its members who are at various developmental stages".
2. The *family system* paradigm defines the family as an independently operating system from which individual psychodynamics and those creating symptoms, emerge.
3. A *general systems* paradigm defining the family as a system that shares the characteristics of all other systems, and assumes a position in the "hierarchy" of systems - higher systems containing lower systems, as sociocultural systems contain family systems, and families contain individual systems.
4. The *cybernetic systems* paradigm defines any system, including the family, in terms of "circular information flow and regulatory mechanisms".
5. An *ecological systems (ecosystemic)* paradigm defines a family as a "coevolutionary ecosystem located in evolutionary timespace". This paradigm can be said to be rooted in the New Science. [It must be pointed out, that 'paradigm' is at a lower level of abstraction than 'epistemology' (Auerswald, 1987; Dell, 1985)].

Why Epistemology?

If one adheres to the notion of constructivism, it would follow that to understand any phenomenon or area of study, one should begin by describing how it was constructed - namely, the distinctions drawn that make up its creation. When it is believed that one actively participates in constructing one's experience of the world, the way in which we are to perceive the workings of the Office of the Family Advocate, depends on who we are. Consequently, to know who I am in this case, is to define my epistemology - the study of epistemology being "a way of recognizing how people come to construct and maintain their habits of cognition" (Keeney, 1983a, p.13). Consciousness is being aware of one's epistemology - being able to deconstruct the way in which you have come to see the world. The deconstruction implicated in the process of self-awareness, implies a study of people's "habitual patterns of punctuation" based on their "epistemological premises for making distinctions" (Keeney, 1983a, p.25).

A Conceptual Framework

Although essentially an anthropological text, Thornton's (1990) essay entitled *Recent trends in the theory of culture*, has general applicability for the social sciences, and proves a useful frame within which to re-evaluate the concept of culture or society.

As ecosystemic thinkers, we would not contradict Thornton's (1990, p.115) contention that looking at culture or then any social structure involves looking at "'us' from the point of view of 'we'" and finding appropriate ways of doing so. This notion comments on the nature of the relationship between the researcher and society or then the observer and the observed. Thornton uses the metaphor of the mirror reflecting the researcher/observer looking at him or herself, looking at the observed, which in turn reflects the realisation that the observer is part of that which he or she observes and the reflexivity necessary for such an enterprise to be truly Post-modern.

Indeed the most useful frame provided by Thornton (1990) is a differentiation between *Modern* and *Post-modern* approaches to culture/society which could be equated to the distinction between first- and second-order cybernetics (Sluzki, 1985). Modern approaches are characterised by "wholes" which are exemplified by timeless "parts" within which "function" and "structure", are important, and theory is presented as "schematic and categorical" - objectively without the observer entering into the description. The achievement of external theory about generalised wholes are in fact paramount in modernist approaches to social science phenomena in general (Thornton, 1990, p.116).

In contrast, Post-modern approaches exposes the Modern conceptions of holism and empiricism as illusions, and proposes in turn that the study of culture/society can only be "conducted from within culture" which therefore also renders external theory inappropriate, while promoting "methods" and "procedures" (process) as a means by which "the ideas and resources which constitute culture" can be grasped (Thornton, 1990, p.117).

Defining the Field of Study

The Office of the Family Advocate and the activity involved in determining custody of children in divorcing or divorced families, can be punctuated as the focus of this study. Consequently it is the study of a particular social structure or culture. This domain was however traditionally considered a legal or judicial matter. The recognition of the social nature of the problem of custody disputes created a role for social science practitioners, albeit a subjugated one, in this process (refer to chapter 2 for historical discussion). With this in mind, I want to further define the field of study, as the study of the *community* of people (professionals and family members) involved in the process of settling a custody dispute. Due to the increasing involvement of psychologists in particular, the relevance of this study is readily apparent, as indeed very little has been written about it in South Africa.

Historically, the confluence of disciplines and consequent emergence of the structure of the Office of the Family Advocate was preceded by a shared perception of the *need* for intervention in a rapidly growing socio-legal problem. In this sense the approach is termed

multi-disciplinary. However, in the process of differentiating 'disputed custody' as the 'problem' to address, it also becomes reductionistic, reified and as a result immobilising. Such a view becomes immobilising because it disregards the complexity of family life, isolating the symptom of complex interaction and disregarding relationships. We are reminded of our definition of epistemology ie. that *knowing* requires *drawing a distinction* which implies *constructing* a world of experience. Pre-defining the 'problem' to be addressed, also constructs it. Furthermore, in defining the roles of each discipline involved as distinct and hierarchically ordered, it ignores the interface between them and again creates separate categories, which serves to reduce the whole.

In as early as 1968, Auerswald (1968) proposed that an interdisciplinary approach (also referred to in this dissertation as a multidisciplinary approach) translates to each discipline imposing a singular view on a problem situation, and although it is argued that concepts are borrowed from other disciplines which broadens the boundaries of such an outlook, only concepts that offer no serious threat to a discipline's worldview are incorporated to conceptualise a problem. Auerswald argues that the interface between the conceptual frameworks of disciplines are ignored which indeed means that the interface between all areas of systemic functioning, represented by the various disciplines, are also ignored. Auerswald warns that an interdisciplinary assessment by definition narrows the ecological field by focusing on a specific arena of operational life, through the *content* of the messages received. This, he claims, results in "a predetermined template of the theoretical structure of the dominant discipline" (p.205).

Adopting an ecosystemic epistemology would be in keeping with Thornton's (1990) post-modernist notion of culture or community as a process whereby people's shared ideas and interconnectedness are evolved. For this study the implications would be twofold:

1. On one level, an ecosystemic perspective with its emphasis on pattern and relationships would serve to focus on the *context* of interaction among individuals involved and their environment (Bechel, 1984) and would constitute the totality of such relationships (Perkel, 1988). Trickett (1984, p.265) defines this as "the community imbeddedness of persons and

the nature of communities themselves". In Auerswald's (1968) terms it means taking account of the interface between conceptual frameworks of the disciplines involved in determining custody as well as the general context of the Office of the Family Advocate. According to Auerswald the ecological approach is aimed at the interfaces of the arenas of operational life and assesses the *structure* of the field, resulting in "an idiosyncratic template of the structural and operational configurations" of a particular system (p.205). This also implies that such assessment as well as intervention is never limited to a predetermined unit such as an individual or family, but could include the school, the church or even an entire community.

A focus on content, arbitrary punctuation of time such as fixed appointments, predetermined units of treatment, specialised fields of interest within demarcated disciplines and referrals between disciplines are ways in which the ecological field is narrowed down, inevitably serving to ignore the interfaces, ultimately resulting in an incomplete look at 'reality'.

Taking account of the ecology does not imply universal applicability or validity, but rather refers to a concern for *context* which Auerswald (1971) defines as "broadening the field of enquiry first before narrowing the field" (p.263).

On this level I will therefore yield a *description* of the defined field of study, by means of the conceptual language provided by an ecosystemic epistemology.

2. On a different level, I will endeavour to show how *mediation* may serve as a theory/method, informed by ecosystemic epistemology as meta-theory, in addressing the complexity of the stated problem and taking account of the interface between the disciplines. This could be seen as an intervention directed at the level of system of the family and professionals involved in determining custody.

Rappaport (1981) introduces the concepts of *paradox*, *antimony*, *dialectic* and *convergent and divergent reasoning* in an argument considering the relative value of needs-

and rights-models of community psychology. He maintains that all social situations and problems contain paradox, be it real or false. When a problem poses a real paradox, it is because it is made up of real antimonies, such as needs and rights. As I have discussed in chapter 2, one of the principal issues in determining custody is looking at the rights of the parents while serving the needs of the children. On a different level, it can also be said that insofar as the Office of the Family Advocate has been established as a service to the community, it is largely based on a needs model, although it contains within it the paradox of needs versus rights. This model assumes that the state as parental figure is responsible for identifying and providing for the needs of dependent people, unable to resolve their own disputes, and create acceptable solutions. The actions that necessarily follow from such an assumption are consequently based on the hierarchical roles of the expert/patient and may create as many problems as it intends to solve, by ascribing needs to a (geographically defined) community that may reflect more about the assumptions of the 'experts' than the community they serve. (These assumptions often being rooted in a pathology model of individual functioning). A further implication of actions based on a needs model would be *creating* a need for service delivery which develops in relation to the *learned helplessness* acquired by families who have been convinced that they need professional intervention. Although this has relevance, as it evolved as a result of social circumstances and contextual demands, in terms of Rappaport's concept of paradox, responding to need is one-sided in approach.

Responding to the paradox, does however cause a push-pull effect which Rappaport (1981) refers to as the dialectic or dynamic tension between the antimonies. Maintaining the dialectic is therefore preferred to becoming one-sided. In Rappaport's view social problems are by nature dialectic, and require divergent solutions as opposed to a convergent mind-set, producing one single solution.

This leads to an awareness of the dualistic nature of the argument presented, which is referred to as "either/or dualities" (Keeney, 1983a, p.3). What Rappaport (1981) calls one-sidedness is similar to Keeney's notion of accepting only one side of the distinction as the truth, or more useful and correct. The needs model is an example of such a dualistic

way of drawing distinctions. However, when viewed ecosystemically, these distinctions are actually two sides of a complementary relationship, and that in keeping with Rappaport's notion of discovering and confronting the paradox would be to "uncover the pattern that connect[s] both sides of these distinctions" (Keeney, 1983a, p.3).

Rappaport (1981) proposes an ecological approach to social problems with a symbolic sense of urgency (as opposed to security) to embark on the pursuit of paradox, leading to the emergence of a variety of contradictory solutions, which should be welcomed as this represents a both/and view as opposed to dualistic answers that in themselves create new problems.

Ecosystemic Epistemology: Aesthetics and Pragmatics

Bateson, cited in Keeney (1983a, p.190), states that "the truth which is important is not a truth of preference, it's a truth of complexity...of a total eco-interactive on-going web...in which we dance, which is the dance of Shiva".

Uncovering the pattern that connects

Ecosystemic epistemology (based on cybernetics, ecology and systems theory) is proposed by Keeney and Sprenkle (1982) and discussed here as a way of framing the interface between description and action or aesthetics and pragmatics. Specific consideration will be given to the function of language in the relationship between epistemology and practice, as well as art and technique in therapy.

A *pragmatic* position as defined by Keeney and Sprenkle (1982) involves reducing phenomena into manageable bits, therefore simplifying for practical purposes, with a focus on utility and outcome, while *aesthetics* is defined as a move in the opposite direction, with a tendency towards holism and complexity - an effort to increasingly grasp the underlying patterns that characterise therapeutic contexts. A pragmatist's questions reflect a concern for technical detail, while the aesthetic questions will focus on the patterns of interaction. ||

From an ecosystemic perspective, both aesthetic and pragmatic questions need to be asked, as therapy is seen as an integration of the two. The nature of such integration is contingent upon "the form of dialectic between these two juxtaposed patterns" (Keeney & Sprenkle, 1982, p.3). It should, however, be recognised that these concepts are of different logical levels, which implies that mixing these levels would result in confusion. Debating these concepts would also remain fruitless as long as each responds from its own level. The epistemology that embodies both these concepts would therefore have to "embody two identifiable patterns" (p.3): reductionism (pragmatics) and holism (aesthetics), with a necessary juxtapositioning between them - therefore an interactive system of description and action.

It has often been asserted from an ecosystemic view that one cannot *not* have an epistemology, and one always acts in accordance with an epistemological frame. In the same sense, theory always forms part of one's actions, whether it is from a utility perspective (pragmatic concern) or from a concern regarding the importance thereof (aesthetics). Notwithstanding the clear distinction between theory and action it is consequently evident that a relation exists between the two levels in a way that modifies one another. This interaction can be defined as a sensitivity towards theory facilitating less harmful therapy or systemic intervention, while an application of useful techniques would in turn verify theory and its utility. The dialectic prescribed by Keeney and Sprenkle (1982) proposes that "the trick and the art lie in the simultaneous influence of epistemology on clinical practice and clinical practice on epistemology" (p.6). A recursive influence as opposed to lineal effects, between these two patterns, is implied by this interaction. This is a more encompassing view than one that emphasises difference, as it aims to respect patterns that distinguish as well as connect aesthetics and pragmatics; description and action (Keeney, 1982). These distinctions are therefore in the words of Varela (1976, p.62) "not one, not two".

Saying that ecosystemic epistemology embraces an interactional as opposed to a lineal view implies a logic of negation - a distinction within which one side is chosen as more correct than the other. As a consequence aesthetics and pragmatics also are interpreted as a

distinction between experiential or strategic therapy (Keeney, 1982). These should, however, be reframed as related through the logic of complementarity, which implies that within a circular or recursive epistemology it may be equally convenient and appropriate at times to think in terms of a lineal hypothesis or a pragmatic concern.

In terms of this dissertation, it implies being sensitive to the assumptions of my epistemological stance (thinking about my thinking) while describing patterns in the field of study.

Technique as intervention

The discussion of the dialectic between aesthetics and pragmatics has important implications in terms of viewing technique or intervention. In this regard, Allman (1982), Keeney (1983a) and Keeney and Sprenkle (1982) distinguish between technique and art. Concern over clinical practice leads to a specification of techniques, while concern over the coupling of techniques with the system being treated as well as the ecologies both are part of, is a concern for art. This encompasses the second-order cybernetic view of the therapist being part of the system being treated (or the observer being part of the observed), while a concern for techniques is a view of the therapist outside of the system.

Art is to technique as authentic experience is to simulation (Keeney & Sprenkle, 1982), yet artistry in therapy is reducible to basic technique and method. Becoming an artist is therefore addressing the dialectic between aesthetics and pragmatics (Keeney, 1982).

Technique viewed from the perspective of pragmatics is referred to as conscious purpose (Allman, 1982; Keeney, 1983a) and does not take the whole ecological context into account, which may lead to higher order problems. "From this perspective, problems only arise when our technique is not adequately tempered by higher orders of cybernetic process" (Keeney, 1983a, p.188). It merely addresses the short arcs and has little regard for interlocking circuits of life within systems. Working without sensitivity to aesthetics may consequently be seen as a way of perpetuating pathology.

"I believe that action, if it be planned at all, must always be planned upon an aesthetic base" (Bateson cited in Keeney, 1983a, p.187). This refers to art rooted in aesthetics, where practice is focused on growth of oneself and other and effecting higher-order change or change of epistemology.

The implication for intervention is that techniques from a pragmatic frame are designed to alleviate symptomatic relief in a shorter timespan, but may induce other forms of pathology as a result of being insensitive to the wider ecology of which such problems are part. These concepts therefore also hold implications for the perception of change, as from an aesthetic base for technique, change is connected to a broader time-frame requiring patience for change, and in fact moves away from a pre-occupation with change towards experiential awareness and respect for ecology. What is needed for an aesthetic base for intervention is responsibility on the part of therapists for the contextualisation of their techniques, and the coupling thereof to higher orders of mental process, namely 'unconscious' orders of mind (Allman, 1982; Keeney, 1983a). Conscious and unconscious orders of mind need therefore be recursively connected as "parts of self-corrective feedback" (Keeney, 1983a, p.189). Technique is consequently organised as a complementary part in a broader ecosystem. With regard to intervention, Keeney (1983a, p.194) states:

In this interactive dance, a whole pattern of organisation rather than conscious intent on purpose triggers action. Sociofeedback in therapy also demonstrates this process. Here, a whole pattern of cycled transforms triggers change, rather than the conscious purpose of the individual.

The observer and observed or therapist and system become recursively connected through feedback, and the therapy becomes a road to second-order change through the uncovering and construction of patterns that connect.

However, in order to become an artist requires the continual practice of skill or technique, and therapy is the context for such practice, with a view to the therapist's epistemological change (Allman, 1982), which would make of him or her an artist as opposed to a technician - so that the patient study and application of technique begin to coalesce into a meaningful pattern (Keeney, 1983a). Artistry implies the search for pattern rather than truth - how a variety of different descriptions fit together, rather than which description is more correct. Such a stance is also referred to as a state of 'neutrality' which is best described as a state of 'curiosity'. Actions towards a system based on curiosity about different descriptions and the pattern of such relationships are defined as neutral (Cecchin, 1987).

In terms of this study, the application of professional skill and technique sees the technicians (all the professionals involved in a custody case) as outside of the system being treated. Consequently again, skill practised from the vantage point of each discipline ignores the interface between disciplines (Auerswald, 1968), and precludes a second higher-order awareness of the process of intervention in families in crisis, which may serve to perpetuate the problem.

The nature of language

The interface between the therapist's/observer's epistemology and practice is mediated by means of the language of the therapist/observer (Keeney & Sprenkle, 1982). The nature of this explanatory language (Papp, 1982) used both in the process of therapy and for means of post hoc description, inevitably leads to some form of dualism as it is structured in a way that reduces the world into nameable parts. Ecosystemic epistemology (as discussed above) is committed to the recognition of complete circuits and whole ecologies, implying a non-dualistic conceptualisation. However, by virtue of the said nature of explanatory language one is continually stuck in a dualistic frame - everything can have meaning only in terms of its own opposite. In order to become unstuck, a dialectic challenging the dualisms of language is proposed that continually disentangles each linguistic frame. Yet one cannot fully escape dualistic framings, using Western language. In this sense, ecosystemic

epistemology attempts to translate reified nouns into forms of language that describe relationship and process, and attempt to continuously challenge its own assumptions which is inevitably cast in dualistic explanatory language. However, figurative language (Papp, 1982) has a tendency to synthesise and combine levels of thought and action into a more holistic picture, providing a more circular perspective. The use of such figurative language therefore results in techniques such as the use of metaphor, imagery, narrative, and story-telling that are in keeping with the ecosystemic commitment to holism and synthesis, that highlight relationship and process.

"Metaphors provide a complete gestalt in which dissociated facts and events can be seen in relation to one another". The richness of the symbols and imagery which it provides, gives rise to complexity which forms a "link between perceptions, behaviour and interaction" (Papp, 1982, p.454).

It has repeatedly been stated that in order to address the dialectic between aesthetics and pragmatics or description and action, it is necessary to uncover the pattern that connects these complementarities. One such way includes Bateson's (1979) principle of double description, which requires a view of relationship juxtaposed from multiple perspectives (Penn, 1982) and generates holistic information about process and relationship as members of a system punctuate the flow of interaction (Keeney, 1983b). It means that the simultaneous combination of everyone's punctuations provide a glance at the whole interactive system. Double description can consequently also be seen as a way of using language to "direct us towards higher order description" (Keeney, 1983a, p.38) in spite of the structural constraints of our language. Circular questioning, developed by the Milan Associates, can be seen as a technique of double description, as it exemplifies how the notions of circularity and co-evolutionary change (Penn, 1982) is put to practice. It represents a way of looking at the patterns that connect, and refers to feedback from the family or system based on information obtained about relationships and change, which represents arcs between past and present, or how a problem is connected across time. The relations discerned by means of double description or circular questioning, could be discussed in terms of logical typing and the dialectic between form and process.

Bateson (1979) defines 'aesthetic' as being responsive to the pattern that connects. As mentioned, the communicational world or world of language is structured in terms of difference, and the structure of this world is characterised by logical typing which involves levels of description, categories of description, epistemologies of description etc. Logical typing is the discrimination of levels of communication. It suggests the hierarchical structure of experience, and such hierarchy is recursively structured - our distinctions are always distinctions drawn upon distinctions. Orders of recursion also refer to logical typing, and it is the task of an epistemologist to mark the orders of recursion invoked in any given description.

Logical typing resembles a hierarchical ladder of how to think about the pattern which connects, implying that the pattern which connects is a meta-pattern. With the notion of logical typing, there is a logical distinction between the observation and the phenomena observed, or the description and the phenomena described, which has the nature of classification (Bateson, 1979). When information is mapped according to the hierarchy of logical types, it becomes a zig-zag ladder or dialectic between form and process, which demonstrates Bateson's recursive approach to epistemology.

Description of process refers to the observer's punctuation of the stream of events, based on sensory experience, practically devoid of theoretical abstractions. The left side of the ladder is called classification of form. This refers to naming the patterns that organise each order of description, namely simple action, interaction and choreography. Classification of form is therefore an abstraction that connects the elements of each order of description together in a meaningful way.

To move from one order of description to another requires a double description. The idea is that the interplay between two views of the same logical type results in a view of a higher logical type.

This way of punctuating the stream of events and naming the patterns that emerge correspond to particular orders of recursion which are related to the distinctions drawn by the observer (Bateson, 1979). Describing and classifying simple actions involves the order of distinction of behaviour. The identification of the categories of action leads to the analysis of context, which is the next order of recursion, based on the information generated from the previous level. These contexts themselves are subject to a higher order organisation, namely meta-context.

The distinction of the dialectic between form and process is therefore between description of sensory experience and typology or categorisation of such description. Bateson (1979) points out that this ladder represents a *typology of process*.

Therefore, to tie this to the notion of logical typing Bateson (1979) states that if we start to map real events onto the hierarchies of the paradigm of logical typing, we do not find only a list of classes, classes of classes and classes of classes of classes, but it also becomes a zig-zag ladder of dialectic between form and process.

Keeney (1987) and Keeney and Ross (1992) have adapted the notion of form and process into a formal way of understanding the construction of systemic therapeutic realities. This system of clinical notation demonstrates a way of understanding the construction of therapeutic realities and encompasses the dialectic between description and action, mapped on hierarchical orders of recursion that include behaviour at the bottom; the interactional context; and social ecology at the top. Based on Bateson's (1979) zig-zag ladder of form and process, Keeney (1987) and Keeney and Ross (1992) propose the management of semantics and politics - semantics being the construction of meanings synonymous to *description* and politics being the specification of *action* - all within a communicational frame.

In terms of intervention, the therapist introduces new semantics, or political action that may be addressed on the level of behaviour or interaction and that may give rise to new semantic labels or meaning.

Intervention in this way is aimed at creating new meaning (challenging semantic labels) which may have political consequences which may challenge further meaning, or it may be aimed at effecting political change (action) in order to give rise to new meaning ascribed to action, and so on. Insofar as any technique may be used in order to challenge meaning (for example, narrative, stories, fables, metaphor, double description or circular questioning), and any technique may be used to change action (for example, ritual, role play, sculpting and individual presentation of metaphor), the notation of form and process or semantics and politics is not a technique of intervention in itself, but rather a way of making sense of the process of intervention and change.

In becoming "an artist of therapy...a starting point is practice" (Keeney, 1983a, p.199). We are reminded of the dialectic between description and action; aesthetics and pragmatics which makes us conscious of the wider ecology of which people and symptoms are a part, and the patterns that connect these. We are therefore not practising a skill to become technicians, effecting rapid change, but artists, concerned with epistemological and higher-order change. In this interactive dance of description and action - the "dance of Shiva" (Keeney, 1983a, p.198), a "whole pattern of organisation rather than conscious intent or purpose triggers action" (p.194) through the process of circularity and social feedback.

When therapy is seen as a vehicle for epistemological change...a therapist who is part of such a learning context will eventually experience his world in a profoundly different way - he will have learned to discern and construct patterns that connect (Keeney, 1983a, p.195).

CHAPTER 4

The Methodology - Descriptions of Descriptions

To model the human studies entirely on the sciences is, I believe, intellectually misguided, scientifically sterile, and morally dangerous. It is misguided because it ignores or misconstrues familiar cognitive processes; sterile because it does not yield the knowledge we need; and dangerous because it fosters the conception of man as something else in the world which can be manipulated. (Rickman, 1967, p.131)

The aforementioned reference to 'the sciences' refers to the Newtonian tenets of reductionism, lineal causality and neutral objectivity in research. Such an epistemology stresses that the observer be impartial and objective, and that values and beliefs held by the observer biases the truth; that reality can be broken into concrete and discrete units by means of which it can be observed; and that discrete events are causally linked, flowing from past to present (Holland, 1991; Schwartzman, 1984). Holland (1991, p.33) states, however, that "neither the phenomena of human consciousness nor the realities of professional practice conform to the ontological assumptions and methodological requirements of the scientific method". Pragmatically such realities of professional practice often include questions of ethical choice and moral responsibility, rendering empirical methods useless. Aesthetically, the richness, complexity and depth of the human experience is largely sacrificed when adhering to a scientific empirical methodology as eloquently expressed by Laing, cited in Capra (1982, p.40):

Out go sight, sound, taste, touch and smell and along with them has since gone aesthetics and ethical sensibility, values, quality, form; all feelings, motives, intentions, soul, consciousness, spirit. Experience as such is cast out of the realm of scientific discourse.

In essence we are therefore reminded of the value of *context* and *meaning* (Riessman, 1991). Human reality rather than being a series of discrete events can be described as clusters of meaning in constant transformation as a result of our interaction with our environment, such interaction providing for context without which words and actions have no meaning (Bateson, 1979). In the context of an ecosystemic epistemology this implies that each system is unique in terms of its observable characteristics or sets of relations, and more importantly, that the meanings ascribed to such characteristics and relations are idiosyncratic to that system. Research would therefore be a description of the change in the relations as a system interacts with its environment. An ecosystemic perspective would invite a 'polyphonic orientation' to the description of interaction in recognising the complexity of interaction. This would mean abandoning trying to find a 'true' explanation, but rather generating multiple descriptions within a frame of 'curiosity' so as to build a more systemic view. If we are curious, we act towards the system in the way that is truly neutral (Cecchin, 1987).

Reference as made above to *interaction*, *relationship*, *context* and *meaning* will form the basis of this proposed description-as-research from a frame of *curiosity* or *neutrality* as proposed by Cecchin (1987) and Palazzoli, Boscolo, Cecchin and Prata (1980). In order to arrive at such a description we are reminded of double description as discussed in chapter 3. "Seeing relationship requires double description" (Keeney, 1983a, p.37).

In this regard, White and Epston (1990, p.3) refer to the "interpretive method", as the process by which we make sense of the world and how the meanings we ascribe to events determine our behaviour. Meaning is again recursively linked to consciousness or knowing our epistemology. White and Epston (1990, p.5) also refer to the "analogies" or maps by which social science examines the world. Positivism can be identified as being one such analogy. Adhering to cybernetic logic, it therefore also follows that the analogy employed, constructs reality in a peculiar way, as positivism would construct the world in discreet observable units with definite causal links from one to the other.

An alternative analogy frequently proposed is that of narrative analysis or the analogy of text (Holland, 1991; White & Epston, 1990). "Behaviour is seen through the analogy of a story that the person is telling about what he/she is doing and how such tasks and experiences are organized into a meaningful whole" (Holland, 1991, p.33).

At this point the reader is once again reminded of the 'aim' of this study with a view to describing how these aims will be arrived at, constituting a methodology, namely: a description of the patterns of interaction between the systems involved in a case of disputed custody within the context of the Office of the Family Advocate in Pretoria, primarily by means of the participant observation in a single case, over time.

Given Bateson and Keeney's emphasis on double description and logical typing as means of seeing patterned events, the nature of the information to be presented will be *metacommunicational*.

Information was gathered over time (Sept. 1993 - Dec. 1994) by means of:

- Participant observation in a 'mediation' session with all systems involved.
- Participant observation in an unstructured evaluation session involving the children in dispute.
- Unstructured interviews or discussions with the individual systems involved regarding the process.
- An analysis of all documentation involved in this single case, as secondary source.

Similar methods of assessing families involved with larger systems, as proposed by Coppersmith (1983) and Imber-Black (1988), are adapted and used as a framework for the ordering of the information obtained into a descriptive whole of metadescriptions, involving the following:

1. A description of the systems involved both directly and indirectly including helping professions, agencies, legal representatives, the family and myself. Such a description

would also make reference to the nature of their or my involvement. Coppersmith (1983, p.87) asserts that such information "provide[s] the skeletal features of an ecosystemic map".

2. A description of the way in which the problem is being defined by all the systems involved which would also reflect the worldview to which each subscribes, and the way in which these interact to form the process that is a 'custody case'.

3. A description of the nature of the relationships between systems such as between the family and professionals, between helping professions, between myself and other systems and so on.

4. A description of my own manner of assessment of this process between myself, the family and larger systems in terms of the concept of 'neutrality'. This denotes a meta-level position in a bid to detriangulate and be "allied with everyone and no one at the same time" (Palazzoli et al., 1980, p.11). Neutrality also refers to generating descriptions "within a frame of curiosity rather than within a frame of true and false explanations" (Cecchin, 1987, p.407) and therefore to looking at patterns rather than cause-and-effect.

5. A description of the process of gathering information of a metacommunicational nature in terms of the concept of 'circularity' (Palazzoli et al., 1980). This refers to the gathering of information of a relational nature, by soliciting information of difference or change, implying pattern rather than fact.

The demarcation of descriptions in such a way constitutes an idiosyncratic punctuation of information that is recursively linked and through which discernable patterns are sought to emerge, which implies an aesthetic frame.

According to Keeney (1983c) ecological assessment, which can be said to define the methodology of this study, requires gaining access to information on the levels of a) individual behaviour, b) social relationships or dyadic interaction, and c) social group structures.

An awareness of the levels of system aimed at in assessment is termed by Keeney (1983c, p.159) as an "ecological awareness". In essence this means that inferences about dyadic or system functioning cannot be made through assessment of individuals (Filsinger, McAvoy & Lewis, 1982). Information about whole relationships could, however, be obtained by means of double descriptions which would yield information regarding an individual's *perceptions* of interaction. On the part of the investigator this implies the use of descriptive language corresponding to the level of system being assessed. A relationship ensues from two descriptions of different points of view (De Shazer, 1983). Descriptions of interaction, that is, *double-descriptions* can therefore allow one to make inferences about the relation of one level of system to other levels of system.

Such a view corresponds with Bateson's (1979) theory of logical typing characterised by a zig-zag ladder of dialectic between *descriptions of process* and *classification of form* as discussed in chapter 3.

With regard to the ordering of data, an ecological awareness inspires a "synchronic" or nonlineal perspective, derived from cybernetics, whereby bits of description are organised into a "present-state circular description" (Keeney, 1983c, p.164) in an attempt to reflect the wholeness of an interacting system which is *pattern*. The nature of the information obtained in this study is in the form of narrative, which Riessman (1991) contends, is organised around circular rather than lineal time, as past experience and future possibilities are collapsed into present meaning.

CHAPTER 5

Disputed Custody - A Case Study

Descriptions of the Systems Involved

The Family System

(No real names were used, in order to protect the identity of the people involved.)

Jaco Conradie, the biological father and "Applicant" in this case, is a 32-year-old, Afrikaans-speaking male who has been married twice, and is living in Pretoria with his three children. Although currently divorced, it would seem that he is living with a girlfriend. At the time of his application for custody, he was also unmarried and living with his mother, Mrs Lorraine Odendaal, who was instrumental in his application for custody of her grandchildren.

Sandra Kruger (previously Conradie) also known as the "Respondent" is the mother of the children in question. She is a 32-year-old female brought up in a dual-medium home, and lives in a small town in Natal. She was also living there at the time of the application for custody by Jaco Conradie.

The children born from the marriage between Jaco and Sandra, and around whom the issue of custody arose, are Anzeé Conradie (now aged 10) and the identical twins Christopher and Colin Conradie (now aged 8). The children lived with their mother, Sandra, stepfather and half-siblings, Sharon and Shane Kruger (now aged 5 and 3 years respectively), until the time of their father's application for custody in July 1993.

The stepfather, Sandra's husband, is Karel Kruger, a 29-year-old, Afrikaans male who is also the biological father of Sharon and Shane Kruger. At the time of Jaco Conradie's

application for custody of the three Conradie-children, Karel was the sole breadwinner and supporting Sandra and the 5 children, working as an operator for a paper mill.

Jaco and Sandra were married in 1983 and divorced in 1987. Control and custody of the minor children (Anzeé, Christopher and Colin) were awarded to Sandra. In 1989 Sandra married Karel and moved to Natal. Until that time, contact existed between Jaco and his children. However, Jaco also remarried in 1989. His new wife was not eager to accommodate his children from his previous marriage which did not promote contact. Jaco seemed to have accepted this and had no contact with them. According to Sandra, he also did not pay maintenance during that time. Jaco's mother, Mrs Odendaal, did however have contact with her grandchildren during this time. In 1991 Jaco obtained a divorce from his second wife.

The first real contact he had with his children again, was during the July school holidays in 1992. Sandra claims that this renewed interest came about as a result of her suing for maintenance. According to Sandra the twins, then aged 5, met their father then for the first time. Anzeé, although she had not seen him for some years, could remember him. The school holiday went well, and the children returned to their mother for the new term. An incident arose some months later, however, in which Anzeé claimed, by way of telling a friend, that she was sexually molested while in Pretoria. (The children were said to have been left in a park while their grandmother, Mrs Odendaal, went shopping. A man allegedly touched her in an inappropriate manner.) Sandra informed the school teacher of this, in order to obtain the services of the school psychologist. Anzeé was enlisted in a sexual education discussion group at the school where it was felt that she was not significantly traumatised and no therapy was therefore indicated. Some confusion resulted from this incident, with Jaco and his mother denying that this could have occurred in Pretoria, and alleging that it happened in Natal. Karel was considered the perpetrator, by them.

The children came to Pretoria again for the July holidays of 1993. According to Jaco they were only due to come for the December holidays of that year. Sandra was said to have phoned Jaco's mother, insisting that he had to take them for the July holidays or not at

all. Jaco went to fetch them, and initially all went well. Mrs Odendaal, Jaco's mother, was looking after them during this holiday. According to her and Jaco, the children started acting 'strangely', approximately a week before they were due to return home. They were apparently wetting their beds, displayed a significant loss of appetite, and became listless. According to Jaco and his mother, they said that they did not want to return home because they did not get enough food, and were often beaten by their stepfather. There were specific allegations of them being slapped through the face, and the twins having had their heads knocked together. It was also thought that Anzeé was acting inappropriately towards the boys in the sense that she was mothering them. Questioning Anzeé around this, allegedly also revealed that she was responsible for the physical care of her younger half-siblings at home, and had to get up excessively early in the morning in order to finish in time for school. It would seem that it was mainly Mrs Odendaal who extracted this information from the children, as she was with them all day while Jaco was at work. She would then inform Jaco every night when he got home of what had transpired with the children that day.

As a result of these allegations, Jaco took the children to a private psychologist A, who after having spoken to them, felt that they should not be returned to their mother's home. Jaco could, however not afford her report and was referred to another psychologist B, who evaluated the children psychometrically, and recommended that they remain in the care of Jaco and his mother.

Jaco immediately enrolled the children at the primary school in his area. Anzeé, who was in Std 1 then, is said to have adapted quickly. The twins, Christopher and Colin, experienced problems and had to be evaluated by the school psychologist C, who recommended that they be placed in a remedial school because of serious learning disabilities. She also recommended that they be evaluated neurologically.

According to Sandra, she was never informed that the children would not be returning after the school holidays, and only discovered the reasons for this when she went to lay a charge of kidnapping. She described it as having been a tremendous shock, and believes

that this whole thing was orchestrated by Mrs Odendaal in order to have the children with her, as she had been trying to convince Sandra for years to move back to Pretoria so that she could have her grandchildren near her. Sandra denied allegations of the children not having had enough to eat, or having been physically abused by Karel. She described him as a good father, who helped her raise the children as his own. She indicated in interviews that there had been disciplinary problems with the children, as the twins were 'impossible' and Anzeé was difficult in the sense that she was a sensitive child. She also indicated that Karel was very strict, and preferred corporal punishment as a means of disciplining. She said that she had been aware of the twins' learning difficulties as they were assessed by the school psychologist in Natal as well. Although she was at times uncertain about the handling of the children, and preferred to leave the disciplining in Karel's hands, she never believed that they were incompetent parents or acting to the children's detriment.

Guided by his mother, Jaco believed that he was acting in the best interest of his children, and felt it his responsibility towards them to apply for the amendment of the custody order. Mrs Odendaal reacted on the information she had obtained from the children, as she had been very close to them, especially Anzeé, who confided in her regularly. Sandra considered herself close to her children, and thought that although they suffered financially and experienced problems with the children, she was shocked by the extreme turn of events. Although Karel complained about the naughtiness of especially the twins, and admitted that he frequently had to give them hidings, he felt upset about the allegations made against him, especially in the light of Jaco never having taken an interest in the children before. Karel saw them as his own, as he had supported them financially for all the years when Sandra received no maintenance. The children themselves were very traumatised during that time. Their ambivalence became clear in the way in which they exhibited strong emotional ties with their mother, while expressing a preference to live with their father.

On July 27, 1993 an application for amendment of custody and control as specified in the divorce ruling, was made by Jaco, and an interim order gave him custody pending a complete inquiry by the Office of the Family Advocate.

The Office of the Family Advocate

Jaco and Mrs Odendaal were first seen by the family advocate and his family counsellor (a social worker A) on 11 August 1993. Sandra was in Natal and informed the Office of the Family Advocate that she could not afford to travel up. As a result, the assistance of the Department of Welfare in Natal was enlisted in obtaining a social worker's report on Sandra and Karel, with regard to custody of the children in question. Such a report was supplied, and placed the Kruger parents in a favourable light. However, Sandra later informed the office that she would make the trip to Pretoria, and a meeting with all the parties was scheduled for September 8, 1993, especially with a view to mediating the dispute. Specifically, the meeting was attended by: Jaco Conradie; Mrs Odendaal; Sandra Kruger; Karel Kruger; Anzeé, Christopher and Colin Conradie; the family advocate; the social worker A; a psychologist D, consulting for the family advocate, and myself.

The parties were not seen together. Jaco and his mother were interviewed first, Sandra next, and Karel after her. The children were also seen on their own by myself, the psychologist D and the social worker A. A separate assessment of the children was also done on September 23, 1993, by the psychologist D. The psychological report from psychologist B was also entered and referred to as information, but it was the opinion of the panel that independent evaluations of the children were necessary, by someone who had seen the whole family.

Based on the above-mentioned information obtained, reports were compiled by both the social worker A and the psychologist D. This process culminated in a final report compiled by the family advocate in which recommendations for the custody of and access to the children were made to the court.

The role and function of the family advocate is clearly defined by Chief Family Advocate Francis Bosman (1992; 1994) and the following description represents a summary thereof.

It coincides with my own experience of the procedures at the Office of the Family Advocate:

A description of the role and function of the family advocate must be viewed in terms of the Mediation in Certain Divorce Matters Act, 24 of 1987 which came into operation on October 1, 1990 with the institution of the Office of the Family Advocate, which in turn can be seen to have resulted from the recommendations of the Hoexter Commission's Report some years earlier (chapter 2 refers) (Bosman, 1992; 1994).

The role of the family advocate as defined by the Mediation in Certain Divorce Matters Act is that of representing the minor child in the Supreme Court and providing a service to the Supreme Court which in turn empowers the family advocate to initiate an inquiry into matters concerning the welfare of minor or dependent children. "Intercession by the Family Advocate occurs only after action or application; (a) by order of Court; (b) at the request of the parties; or (c) on the initiative of the Family Advocate authorized by the Court" (Bosman, 1994, p.3).

Bosman (1992; 1994) defines the function of the family advocate as threefold, namely monitoring, evaluating and mediating. These functions are generally integrated especially in the case of an inquiry being initiated by the family advocate. Monitoring refers to the scrutiny of all court documents regarding divorce and post-divorce applications involving the welfare of children. On the request of the family advocate, the court may authorise an inquiry, which generally results in a fact-finding inquiry upon which a report with a recommendation regarding the minor children is compiled. Monitoring then also includes reviewing of all settlement agreements as well as unopposed divorce actions upon request of the court in order to ensure that the welfare of the children is paramount.

In the case where a dispute exists between the parties regarding the children or the advocate disagrees with the settlement reached by the parties with regard to the 'best interest of the children' principle, an evaluation may be deemed necessary, as happened in the case of *Conradie v Kruger*. In this regard the family advocate is assisted by family

counsellors and they should in terms of the Act be suitably qualified. In practice these counsellors consist mostly of social workers, although volunteer professionals (suitably qualified) may also be used. Such counsellors form an integral part of both the mediation and evaluation functions within the Office of the Family Advocate. The procedure to be followed with such an inquiry instituted by the family advocate, is also considered at the discretion of the family advocate.

Despite its title the Mediation in Certain Divorce matters Act does not define mediation. The way in which mediation however has been developed is defined by Bosman (1992, p.57) as:

an alternative dispute resolution mechanism ...[and] a dynamic process whereby the family advocate in a atmosphere where conflict is reduced to a minimum, actively encourages the parties to participate in a discussion seeking a mutually acceptable solution in regard to matters pertaining to the children.

This is considered especially applicable in cases where guardianship, custody or access is disputed. Bosman (1992; 1994) does, however, stress that mediation by the family advocate differs from mediation commonly viewed, although this will be discussed in more detail in chapter 6.

In the case of disputed custody and/or access the procedure generally followed is outlined by Bosman (1992; 1994) to be as follows:

1. The parties including the children and any other relevant family or significant others are invited to attend an inquiry at the Office of the Family Advocate.
2. The procedure and stance of the Office of the Family Advocate is explained to all concerned, that is, the principle of best interest of the child; the reason for the inquiry and

the roles of everyone involved, and the neutral stance adopted by all experts. Throughout the family advocate acts as chairperson of the proceedings.

3. If possible, the parties may then be interviewed individually by the team "and relevant disputes of law and fact outlined" (Bosman, 1994, p.10). Parties therefore have the opportunity to express their views for and against custody and access individually, and opposing views of one is put to the other.

4. An interview is then conducted with the children by either the family counsellor or both the counsellor and family advocate, after which another joint session with the parties is held. "The family advocate puts the *prima facie* impression of the mediation team to the parties for discussion and possible agreement" (Bosman, 1992, p.59). If agreement cannot be reached, further investigation is indicated. This happens especially in cases where the psychological wellbeing of either parents or children are questioned and calls for a psychological evaluation of the whole family.

In the sessions in which I took part, it was explained to the parties at the outset, that the session was an opportunity for everyone to state their case, although not a context for cross-questioning as in court, and that it was the role of the advocate and other 'experts', as we were defined, to adopt a neutral stance, therefore not choosing the side of any parent. It was further explained, that the team was exclusively concerned with the interests of the children involved. It was explained that the grounds for divorce were only to be discussed if it had direct relevance with regard to the children. The facts obtained in this way, would result in a report which would serve as a recommendation, not an order, as such an order may only be made by a judge. It was made clear that the contents of such a report is never arbitrary, but instead is drawn up according to entrenched legal principles and the principles of expert theory. The guidelines for such a report are also determined by the judge.

Myself

I became involved in the workings of the Office of the Family Advocate and the Conradie/Kruger family, as a direct result of my interest in this field of study and my proposal for this dissertation.

In turn, my interest in this field of study is of a more personal nature, having been a child from divorced parents. Although I never experienced any part of my own parent's divorce as traumatic, probably due to my parents taking great care in handling the matter in a sensitive and responsible manner, and although no heated arguments and dramatic battles for custody ever took place, as a child I was always aware of the most subtle and unspoken interpersonal violence, hence my own fear of conflict or even confrontation, and an endless need to mediate.

I was introduced to Advocate Francis Bosman in August 1993, by Dr Yvonne von den Worm (at that time, a consulting psychologist for the family advocates, and a Unisa lecturer) during which meeting I was granted permission to be a participant observer in a custody case for the purpose of using this as a case study for my dissertation. Selection of the case was to be determined by the staff of the office and myself, provided the family members concerned gave their explicit consent.

It was agreed that the Conradie v Kruger case was suitable for my purpose. On the day of the initial interview with the family, I was introduced to them by the family advocate and their consent was obtained. Before having met them, I was given the opportunity to sit in on another case, in order to obtain an understanding of the way in which this office operated, and the processes involved in a custody enquiry.

In both cases my role was defined as being a Master's student in Psychology and part of the panel of family experts along with the social worker and consulting psychologist. My attendance and participation was also noted in the final report drawn up by the family advocate. My participation was readily received by the family advocates, and it was my

impression that both the advocates and social workers relied significantly on the input from consulting psychologists. Interaction between the professionals appeared relaxed and informal, although sessions between both families and professionals assumed a more formal structure. Such sessions were invariably lead by the family advocate who functioned as chairperson of the proceedings.

My initial contact with the Conradie/Kruger family was only at the Office of the Family Advocate, between September 1993, at the time of the inquiry, and November 1993, when the final recommendation was made. Subsequent contact was at my own initiative and mainly by telephone. This occurred in the period October to December 1994. Although Jaco Conradie gave his consent for my participation in this case, I could not trace him for the follow-up interview in October 1994, and a message from him through Sandra Kruger indicated that he did not wish to take part in this study any more, as the children "have been through enough". Contact with the Office of the Family Advocate in the form of follow-up interviews with the family advocate and social worker also occurred in October 1994.

Outside Agencies

Mention has already been made of the professionals outside the Office of the Family Advocate who became involved. When Jaco and his mother became aware of the problem with the children during the July 1993 school holidays, the children were immediately taken to psychologist A who heard their concerns and assessed the children. It was the psychologist's opinion that the children should not be returned home. No report in this regard was obtained from her due to the fee involved, which Jaco realised he could not afford.

For that reason, the children were referred to psychologist B on August 10, 1993. At this stage the children were not returned to their mother and were enroled in a new primary school. Anzeé was evaluated by means of an intelligence test as well as projective testing, including the Columbus (selected cards), the Thematic Apperception Test (selected cards), and the Draw-A-Person Test. The twins were evaluated by means of the Nel-Sonnekus

Developmental Scale and projective tests including the Draw-A-Person Test, the Children's Apperception Test, and the South African Picture Analysis Test. Information was also elicited in the form of conversations with the children. In conclusion it was found that:

1. All three children displayed strong feelings of intense unhappiness, signs of excessive punishment, poor preparation for school and intense feelings of rejection. It would therefore not be in their interest to return to their mother. It was also found, after a conversation with Jaco and Mrs Odendaal, that they (the adults) were not prepared to return the children to their mother under these circumstances; that they were able to care for them both financially and emotionally, and that the children were already well adapted in their new school and environment;

2. It seemed essential that the custody order should be amended in the favour of the father, and

3. A report from a social worker with regard to the circumstances of the mother, be obtained as these were not known to the psychologist B at the time.

At about the same time, the social worker A at the Office of the Family Advocate requested the assistance of a social worker B of the Department of Welfare in Natal to compile a report regarding the circumstances of the mother and stepfather of the children in question, in terms of Regulation 6 of the Mediation in Certain Divorce Matters Act (24 of 1987) with regard to amending the custody order. Details of the information known to the office at that time (possible molestation and physical abuse), as supplied by the father and grandmother, were provided in the request. This request was in turn handed over to the Christelik-Maatskaplike Raad, to whom the Kruger family was known, due to their involvement in the church. Information for the compilation of a report was obtained by means of interviews with Sandra and Karel Kruger, the class teachers of the primary school in Natal, which the children had attended before, and two friends of the family. Written reports were also obtained from these teachers.

The report from the social worker B indicated that (a) Sandra and Karel Kruger could be described as adequate and caring parents, who valued family life and were well integrated in community life, including church and school activities and voluntary group programmes, and who sought help voluntarily in order to have their children returned to them; (b) although they were able to provide for basic needs, the family was suffering financially; (c) a problematic relationship existed between Karel Kruger and Mrs Odendaal and that Mrs Odendaal was known to this family to be manipulating, possessive of her grandchildren and domineering in terms of her son, Jaco, which made this social worker believe that the motives for amendment of custody and allegations made should be questioned, as well as Jaco's ability, independent of his mother, to take responsibility for the children based on his record of non-involvement and non-payment; (d) allegations of sexual molestation of Anzeé by Karel therefore appeared unlikely, and that allegations of physical abuse of the twins were more a case of strict discipline and choice of corporal punishment; and (e) the Kruger couple for that reason could be regarded as fit and responsible parents.

The report from the primary school in Natal, regarding Anzeé, indicated that she was a good pupil, spontaneous, neat in her work and well groomed. Mention was made of her involvement in the "Help-Span" group after her mother informed the school of her allegations of molestation, and it was noted by the teacher that no evidence of emotional trauma was evident, so no further intervention was indicated after the matter was discussed with Sandra. The report regarding Christopher and Colin stated that they were always well groomed, had difficulty with formal school work upon which it was decided to return them to a pre-school programme, from which they benefitted. The teacher described them as quiet and reserved initially, but that they got on well with other children and always looked happy and friendly, although they did not communicate with her much. She also reported that Sandra often came to enquire about their progress, helped them with work at home, and brought them lunch if she could not give it to them in the mornings.

No written report was obtained from the primary school in Pretoria where the children were placed after the July 1993 holidays. A written record of the conversation by telephone between Anzeé's schoolteacher and the social worker A from the Office of the Family

Advocate indicated, however, that Anzeé was well adapted, but that she exhibited concern regarding the care of her siblings at home in Natal. This was interpreted as supporting evidence for the fact that Anzeé was said to have adopted a mothering role with regard to all her younger siblings, which was considered inappropriate.

Christopher and Colin were evaluated by an educational psychologist C connected to the Pretoria Educational Aid Centre. No report exists, but recorded notes on a conversation by telephone, between the social worker A and the psychologist C revealed that the twins have an average to above-average intelligence, but underachieve due to identified learning restraints. It was recommended that they should be placed in a school for specialised education. It was also stated by the school teacher that the twins were reserved and exhibited poor communication skills.

Other outside agents were the attorneys of both the "Applicant" (Jaco) and "Respondent" (Sandra), to whom the initial affidavit by both Jaco and his mother, and opposing affidavits by Sandra and Karel to both sets of attorneys respectively, were made. Furthermore, these attorneys were responsible for all formal correspondence and flow of information between their clients and the Office of the Family Advocate.

Back to the Office of the Family Advocate

As a result of the conflicting nature of the information gathered at that time, it was deemed essential that a psychologist D, appointed by the family advocate, had to re-assess the children. All the information from both sides was made available to her. Apart from access to all documentation, psychologist D was also present at the session held at the Office of the Family Advocate on September 8, 1993. To assess the children, she used the Children's Apperception Test, the Family Systems Test, and the Draw-A-Family Test. She concluded:

1. That custody of the children should be awarded to Jaco Conradie. It was found that the children primarily experienced their life at home in Natal as based on themes of lack of

physical care and excessive punishment. Furthermore, the children indicated that they would prefer to stay with their father and grandmother. It was felt that a strong emotional involvement existed between the children their father and grandmother.

Although a strong emotional tie seemed to exist between the children and their mother, there also seemed to be serious problems in the relationship between the stepfather, Karel, and the children in terms of exaggerated strictness and excessive physical punishment by him.

It was the impression of this psychologist D that the twins were emotionally and intellectually neglected and under-stimulated. Symptoms of enureses and encopreses reported by Jaco and Mrs Odendaal were taken as evidence of serious emotional problems in the twins.

Both Sandra and Karel seemed to lack the necessary skill to handle the children in an appropriate manner, which lead to Sandra adopting a passive stance and Karel being left to discipline, which he seemed to have done excessively. The fact that there were five young children in the Kruger home and that the family was struggling financially, was felt to be a contributing factor to this situation.

It was her impression that the children were well adapted in their new school and environment, and that Jaco was doing as much as possible to manage their needs, especially the educational needs of the twins.

It was not felt that the children were influenced against their mother by Mrs Odendaal. She was found to have a strong personality and supportive towards her son, but that he took responsibility himself. Jaco impressed as a mature, emotionally stable person, who had a strong bond with his children.

2. It was recommended that Sandra received regular access to the children, as the children had a strong emotional tie with her and they were not in essence considered at risk with Karel.

3. That Jaco, Mrs Odendaal and the children received family therapy.

With this information as well as all the above mentioned results at hand, the social worker A connected to the Office of the Family Advocate drew up a report summarising that:

1. Although the Respondent, Sandra Kruger, and her husband were concerned and caring parents, certain constraining factors seemed to oppose their efforts. These factors included that:

- The Kruger-family's poor financial position, led to the children's claim that there was insufficient food for them.
- Both Sandra and Karel exhibited an inability to handle their five children simultaneously, which resulted in Anzeé being over-involved in the care of her younger siblings. Both the Respondent and her husband described the twins as "naughty" resulting in frequent, excessive discipline.
- All three children, but especially the twins experienced serious emotional problems that could not be ascribed to the dispute around custody only.

2. It was acknowledged and understood that both the Respondent and Mr Kruger had strong feelings around the dispute, and it was stated that the Christelik-Maatskaplike Raad was prepared to support the Kruger couple in order to handle and work through the situation.

3. The children were well adjusted to their circumstances at their father's home at that time. Their problems were being addressed and the Applicant, Jaco, was found to be a suitable and capable parent, and could take responsibility for the children.

4. The place of the Respondent as the biological parent could, however, not be denied, and continued contact between her and the children would be in the best interest of the children. The Applicant acknowledged the role of the Respondent as mother and would endeavour to maintain said contact. The Applicant would also need support to handle the situation. He was therefore prepared to enlist the help of psychological services with a view to family therapy.

The social worker A's report contained the above mentioned recommendations and reads as follows:

- That custody of the minor children, Anzeé, Christopher and Colin be amended and awarded to Jaco Conradie.
- That Sandra Kruger be awarded reasonable access to the children.
- That Sandra receives assistance from the C.M.R. in order to deal with the emotional issues surrounding this matter.
- That Jaco receives psychological assistance with a professional of his own choice, in the form of family therapy.

On October 19, 1993, a final report with recommendations to the court was drawn up by the family advocate. All the information regarding the case gained from interviews as well as expert reports, was detailed. Any discrepancies of facts were listed and commented upon. These included:

1. The alleged molestation of Anzeé. The advocate commented that in all probability Karel was not the perpetrator. He stated that although it would seem that an isolated incident by an unknown person had occurred, he was advised that she had no negative or unresolved emotions in that regard.

2. That the Respondent was indeed a loving and concerned mother, which impression was verified by all parties consulted and was also the impression of the panel.

3. That the three children were not really difficult (neither at the office nor at the private rooms of psychologist D by whom they were evaluated). Nevertheless it was found that the Respondent experienced an inability to handle the children effectively. It seemed that she disciplined too little and expected Karel to "over-discipline" to compensate. The fact that the family was struggling financially also contributed to a situation in which the couple found themselves unable to handle the children. Punishment did take place, especially with regard to the twins, which appeared to be excessive. It did seem that situations arose in which the couple simply, out of desperation, relied on a hiding in order to control the children.

The final recommendation reads as follows:

- Custody and control of all three children is awarded to Jaco.
- Reasonable access is given to Sandra.
- Jaco and the children should receive family therapy for as long as the professional involved deems necessary.
- Sandra receives services from the C.M.R. for as long as the agency deems necessary.

On November 4, 1993 a settlement agreement of the Supreme Court in respect of the application between Jaco Conradie and Sandra Kruger, with regard to custody of the minor children, was signed by both parties. According to this agreement, control and custody of the minor children were awarded to the Applicant (Jaco) subject to the right of the Respondent (Sandra) to reasonable access. Such reasonable access was defined as one weekend per month, every July school holiday and half of every December holiday with every alternative Christmas day included.

Descriptions of Descriptions of the Systems Involved

What follows are distinctions drawn by me, based on the distinctions I drew from the study of epistemology which is the process of my knowing or constructing this experience.

The recursive nature of an ecosystemic epistemology is demonstrated by the means in which the concepts discussed in chapter 3 return here, informed by what has been described above, while what has been described above, is generated from within the broader frame of this epistemology, as defined in chapter 3.

The Definition of the Problem

The history of custody disputes clearly illustrated that, both the legal fraternity as well as the behavioural sciences recognised that the problem of awarding custody, could not sufficiently be addressed within the framework of one discipline. Hence the creation of this Office of the Family Advocate, with a special family legal advisor, family consultants in the form of a social worker, expert consultants in the form of psychologists as well as other community social agents such as teachers and religious leaders, who are called upon to become involved. In this sense it becomes a multidisciplinary approach -a seemingly logical solution for dealing with a complex problem. The term 'multidisciplinary approach' does become misleading as it does not signify a unified approach. To the extent that it signifies any disciplines it would seem to be accurate. From the case study it becomes clear that making a custody recommendation involves the following process: the collection of data, the ordering of that data within a certain framework, the formulation of hypothesis (these first three components being ongoing), and finally the formulation of an intervention in the form of a recommendation which is presented as a settlement agreement. As Auerswald (1968) points out, the key step in this sequence is the way in which the data is organised within a certain framework, as this step determines the previous step namely the collection of information as well as everything that happens subsequently. With the multidisciplinary approach as practised in the above case study, each professional remains within the framework of their own discipline, which implies a selected focus or a narrowing of the ecological field.

In this case the family advocate, in legal tradition, defines the problem in terms of gathering facts and investigating contradictory ones to the extent that these are detailed and in his final report, which is 'never arbitrary' and is drawn up according to 'entrenched legal

principles'. Parties are interviewed individually and "relevant disputes of law and fact outlined" (Bosman, 1994, p.10). Parties express their views and any opposing views of one party are put to the other, therefore on a micro and less formal level, a perpetuation of the adversarial approach. Naturally, from within such a framework this is appropriate.

Conversely, from the social work point of view, the problem is defined as one of social circumstances, which in turn is defined by a finite number of indicators including; indications of pathology; financial status; accommodation and facilities; school, church and community involvement; psycho-social history; availability of social and educational facilities, to mention only a few. The legal discipline hierarchically remains the dominant one, to the extent that certain legal concepts are borrowed by social workers in this setting and incorporated into their discipline, such as legal terminology and the requirements of the Mediation in Certain Divorce Matters Act (24 of 1987). The overarching legal view is easily incorporated, as determining social circumstances also relies heavily on the accumulation of facts, although often more 'arbitrary' due to the inferences that need to be made.

Generally more abstract and therefore less factual, is the definition of the problem from the consultant psychologist's perspective. For that reason the marriage between the law and psychology is traditionally more uneasy than that between the legal system and social work. In the psychological sphere the definition is based on the children's intrapsychic conflicts as projected in testing and the strength of the emotional bonds among children and their parents as inferred from clinical impressions as well as the children's projective testing. In this case the concept of 'proof' and 'objectivity' is borrowed from the legal discipline, hence the need for testing as well as the role of the psychologist as expert consultant.

The Relationship Between Systems

The sequence of this process for a custody recommendation was conducted from within each discipline with the result that the "interfaces between the conceptual frameworks of different disciplines...[were] ignored" and as a result "the interfaces between the arenas of

systemic life operation...represented by the different disciplines...[were] also ignored" (Auerswald, 1968, p.204). Although there was no unifying theory in this multidisciplinary approach, the common demoninator underlying this process is an almost exclusive focus on the *content* of information gained while the *context* of such data is lost. As a result of the different frameworks of the various disciplines the only way in which to communicate with each other and be understood was in terms of the content or inferred construction, based on content.

A focus on content resulted in the theoretical framework of each discipline determining the perspective on these facts and therefore the way in which they were interpreted. The dominant discipline being a legal one, and the focus being on content, the ecological field is narrowed down to a set of dualities or antimonies such as good parent versus bad parent; true versus untrue statements; emotional needs versus physical needs; responsibility versus irresponsibility; financial stability versus financial instability; and family stability versus family instability. Such a narrowing down would seem appropriate from within the context of making a recommendation for custody as a single solution was seemingly needed.

However, from a higher-order or ecosystemic view with a focus on the context and therefore the relationships between both family members and professionals, the dualistic frames of content are transcended. In Rappaport's (1981) view taking account of context serves to maintain the dynamic tension or dialectic that exists between antimonies, which avoids one-sidedness and requires divergent solutions. In much the same way Cecchin (1987) favours multiple descriptions, rather than looking for true and false explanations, as a way of remaining truly neutral, and recognising the complexity of interaction. Anderson and Goolishian (1988) advocate maintaining openness in the therapeutic conversation, rather than narrowing the focus or becoming too committed to one idea, in order to promote the emergence of multiple realities. All these authors, however, become one-sided in reflecting their conscious preference for focusing on an *aesthetic* position - a tendency towards holism and complexity.

A focus on context in this case would be an apparent disregard for content messages such as alleged molestation, harsh punishment, alleged underfeeding, and neglect of educational needs which serves to ignore the relationships and contexts within which such statements and allegations were originally created. Dualisms can, however, be seen as the two sides of a complementary relationship, and in order to transcend this, one is to search for the pattern or relationships that connect both sides of such a distinction. A focus on the relationships would inspire possible questions such as: Why has this become an issue between the parents now? What changes in the relationships among the players lead to the father's renewed interest in his children? Why is the grandmother living with father now? What role does she play now? How was she involved with the family in the past? Why did the mother encourage renewed contact with the children now? How is the stepfather's role defined vis-a-vis the father?

From my position as participant observer it became apparent that the focus on outcome (i.e. making a recommendation for custody) resulted in a *pragmatic* position adopted by all the disciplines who became involved. Such a position requires the reduction of phenomena, in the form of content gathered, into smaller and more manageable bits with an emphasis on utility. This position also assumes that the information that is not useful within such a frame is not included. From a legal perspective, the utility of information is guided by the principle of what is in 'the best interest of the child'. As a consequence, in order to operationalise ('pragmatise') such a frame, would require the creation of categories such as financial ability; emotional bonds; children's needs and parental capabilities as a way of reducing the phenomena into manageable bits. It is within this process of simplification and focus on outcome that the other disciplines are co-opted by the legal system into answering the pragmatic questions posed from a legal perspective. The role of any other discipline is therefore already defined, namely as one of bringing in their technical skills in eliciting/finding/proving that which is already predetermined as the question. Hence the focus on testing by psychologists, and the gathering of hard psycho-social facts by social workers. For example in this case, the educational needs of the children were already defined as one category for determining what is in the best interest of children. As the category was predetermined, the only role for the psychologist was to test in order to

confirm that need. Such confirmation is naturally needed as the legal system is based on 'proof'.

An ecosystemic perspective embraces the dialectic of pragmatics and aesthetics. As illustrated above, these concepts are of different logical levels. Pragmatics in this case refers to posing questions by means of predetermined categories, while aesthetics would refer to questioning the process of posing questions by means of predetermined categories. Embracing these concepts therefore means the embodiment of two patterns namely reductionism and holism, with a necessary juxtapositioning between them so that it becomes an interactive system of description (aesthetics) and action (pragmatics). This implies that these two patterns are related through the logic of complementarity. It means that if one is aware of the recursive nature of these patterns existing together, it may be appropriate or convenient to adopt either position at a particular time. Consequently it follows that if one is aware of *creating* categories and dualities from within a higher-order view or (an aesthetic awareness), such a pragmatic position becomes appropriate. Without an aesthetic or higher-order awareness pragmatic concerns become one's realities within which it becomes impossible to acknowledge that any other reality may exist. In this way it becomes impossible for any professional involved in this case to acknowledge that any other set of facts may have been equally relevant without taking a higher-order view or questioning one's questions. Keeney (1983a) asserts that when technique (pragmatics) is not informed by higher orders of cybernetic process it leads to the creation of new problems or the perpetuation of pathology. Techniques within the pragmatic frame of making a custody recommendation, are designed to alleviate the crisis that arise in a family, within a limited time-span, but may induce new problems or perpetuate the pathology in the family as a result of being insensitive to the wider ecology or context of which such problems are a part. Paradoxically, a pragmatic position with a focus on technique, skill and proof results from the sense of 'responsibility' associated with making a custody decision. Yet, from an aesthetic base our responsibility is towards the contextualisation of our techniques and the recursive questioning of our assumptions.

From our viewpoint, which some may consider extreme, this position is irresponsible because the therapist who takes this stance often lacks the capacity to examine the pragmatic consequences of his own behaviour. He is not aware that his way of acting and thinking has become part of the problem. (Cecchin, Lane & Ray, 1992, p.8)

An integration between description and action or aesthetics and pragmatics is mediated by means of the language of the observer. The use of linear language inevitably leads to dualistic framings and a reduction of the whole. However, one way of addressing the dialectic through language is by means of Bateson's (1979) principle of double description. In this sense the simultaneous combination of the punctuations of all the disciplines involved provide a glance at the whole interactive system of the Office of the Family Advocate. In turn, these relations discerned by means of double description could be discussed in terms of logical typing and the dialectic between form and process or hierarchical structure of experience, which is recursively linked.

In order to do that, I would first have to discern the typology of process or logical typing by means of which I have come to decide on selectively focusing on the level of the ecology of relationships (system) of the Office of the Family Advocate.

On the first level (having described how I have come to be involved with this family) the children's holiday with their father leading to the presenting problems of molestation, physical abuse, and emotional and physical malnourishment resulted in an application by the father to amend the custody order, which was disputed by the mother. Such a description of process culminates in a semantic label called *a custody case*. This is the classification of form or naming of the pattern summarised above, and occurs on the level of the family. On the next hierarchical level, the process culminating in a case of disputed custody results in the mobilisation of the people who work in the Office of the Family Advocate which involves the gathering of information from both parties and by means of the use of various professionals, the compiling of reports and finally the making a recommendation. The name

or semantic label awarded to this process of behaviour and relationships can be termed *an inquiry* and occurs on the level of the Office of the Family Advocate, which incorporates the lower level of the family. The following level or meta-context involves my own process of gathering information by means of doing a literature study, sitting in on interviews, conducting my own interviews, having access to reports as well as all the persons involved over time. The semantic label or classification of form I have chosen for this process is that of *a participant observer*. This meta-level therefore includes not only the level of the family and the Office of the Family Advocate but also myself, which in turn is recursively linked to the level of the family and the level of the Office of the Family Advocate. This then becomes the formal way of understanding the construction of the reality of this study.

In turn, I chose to focus selectively on the second level of system of the Office of the Family Advocate and the process that is termed an inquiry. Clearly as illustrated above, such a focus is informed by both the levels of the family as well as my own ecology of ideas as they are recursively linked.

A focus on this level of the events as I experienced them and the orders of abstraction I have imposed, can be mapped onto Bateson's (1979) typology of process. On the first hierarchical level the description of process involves the actions of the father's application for the amendment of the custody order, and the sworn affidavits by both parties relating to the allegations made or grounds for amending custody. On the abstract level, these actions determine the frame, namely a socio-legal one which is to be imposed on the actions following on the next levels. Such a frame is formalised by the Mediation in Certain Divorce Matters Act (24 of 1987). On the next hierarchical level the definition of the problem results in separate interviews with the parties by a multidisciplinary panel, including an interview with the children, the requisition of a report from an outside social work agency as well as psychologists, school reports, psychometric testing of the children by an expert consultant, the scrutiny of any evidence provided by the members of the family, and the discussion of these facts by the members of the multidisciplinary team. These actions clearly constitute the gathering of content data which is more abstractly referred to as an inquiry. On the third level the actions or description of process involve the

creation of categories considered important in determining what would be in the best interest of the children, which is then superimposed on the data gathered in the form of a final report. The abstract formulation of this process is called a recommendation.

This typology illustrates the previous discussion of the extent to which other professionals only become involved on the level of the gathering of information - that is, on the level of looking at content - the nature of this process having been determined at the previous level as conducted from within a legal frame.

It becomes apparent that during the inquiry at the Office of the Family Advocate, that information was gathered through the lens of a socio-legal frame. The story or narrative that was elicited from the family was not so much 'their story' as it was the story of the people involved in having to decide.

Back to the Family

One year after the final recommendation was made and the custody order amended in favour of Jaco, I contacted the family again. Jaco indicated (by way of Sandra) that he was not willing to expose the children further, and therefore did not wish to participate in further discussion. As he had moved and I did not have his telephone number, I could also not reach him directly. His reason for refusal was, according to Sandra, that the children had been through enough and that he did not wish the whole matter to be dragged up again. Sandra was, however, willing to speak to me and the following information about the family was obtained: During the preceding year, Sandra saw her children on two occasions (school holidays). She said that everything went well during the holidays and that the children looked 'OK'. She was concerned about Anzeé because she seemed a little quiet. With regard to herself, Sandra described herself as very depressed and bitter at times during the year. She consulted a psychologist for about a year, and claimed that she felt better, but that she still had days when she was overcome by feelings of depression. She is still in therapy. She and Karel do not discuss the children's removal, but she knows that he misses them too. Her two youngest children also experienced the loss, and Sharon (now aged 5)

cries for Anzeé often. Sandra subsequently found an office job and has been working for several months now, which also relieves most of their financial burdens.

Reflecting on her experience at the Office of the Family Advocate, Sandra indicated that it all seemed unreal to her, and that she never once believed that her children would really be taken from her, as she had always been their parent, and Jaco didn't even know them very well. That is also why she was convinced that Mrs Odendaal 'orchestrated' these events, because she did not believe that Jaco would have gone to these lengths on his own initiative.

Sandra is determined to re-apply for custody with the help of her psychologist, and feels that Jaco might not even dispute it. According to Sandra, Jaco and the children never did go for family therapy as was recommended. He gave up the five-bedroomed house he had rented for himself, his mother and the children a few months after the inquiry. Jaco and the children are now living in a three-bedroomed house, with a girlfriend and her child. Mrs Odendaal no longer lives with them. Jaco apparently told her to leave, as she became too much for him. This is the second girlfriend he has had living with them. According to Sandra, the twins only attended the remedial school for a few weeks, after which the father was told that there was nothing much wrong with them and that they could be placed in an ordinary school. They now are attending the same primary school as Anzeé.

More Descriptions of Descriptions

The process by which a custody recommendation is made, is guided by the principle of what is in the best interest of the children. In this case, the best interest of the children were ascertained in an adversarial manner. The vague standards that define such 'best interests' give parties an incentive to fight. Both Sandra and Jaco are in their own right good or adequate parents. The existence of a structure such as the Office of the Family Advocate and the legal process of making a custody recommendation, provided them with a content through which to attempt to resolve issues arising from the continued relationships between

them and their families. Through entering this process the parties were immediately polarised and conflict engendered through the nature of the process.

However, when one views the outcome of this dispute and the nature of the relationships one year after the amendment to the custody order, it becomes apparent that the process in the families that preceded the application for custody, is still ongoing, and that events transpired that were not anticipated or taken into account when the custody recommendation was made. It is not my intention to evaluate the decision to award custody to Jaco, but to indicate that the assumptions upon which the process of deciding were based, are erroneous. It implies that it is mistaken to believe that one can find legal solutions to personal matters. It implies that although parents, such as Jaco and Sandra, have conflicting interests regarding the children, it is not these that keep them from reaching agreement regarding custody, but rather the unresolved issues that exist in the relationships between them and other family members, that may have little to do with who has custody of the children. Fighting about custody only provides them with a context through which to attempt to address these issues. It is therefore mistaken to believe that a custody dispute can be settled by the assignment of blame or parental culpability and that single causal factors in the past can be identified. It is mistaken to believe that the focus of custody is on the past and not the future.

The outcome of this disputed custody was therefore the cessation of the legal conflict, but not the resolution of the issues between them. This is clearly borne out by the fact that once again the issue of custody has arisen - now from Sandra's side. The focus on content during evaluation, as mentioned earlier in this chapter, also resulted in change of content over time. It would seem that Sandra is now the 'more stable' of the two parents in terms of finances, work and accommodation, and she is the one seen to be receiving the help recommended by the family advocate, in the form of therapy. On Jaco's side, changes of school, residence, jobs and relationships have occurred which creates the content around which a new application for custody (from Sandra's side) can be made.

Therefore, when viewed over time, in the way in which it was done in this study, the custody recommendation made in the 'best interest of the children' resulted in a change of the position of the players on the field, Jaco now being the custodial parent and the children living in Pretoria, but the process has remained the same - the issue between the parents remain unresolved and one is portrayed as more good than the other. New content has been created around which a dispute for custody can be initiated. Consequently, as far as the interests of the children are concerned, they are still living in a process of disputed custody, for, although the roles have changed and the 'goodies' have become the 'baddies', the process for them has remained the same. They are still living with the guilt that arises from divided loyalty between disputing parents, which will no doubt again be reflected in projective testing, such which would necessarily follow a new custody inquiry.

The inquiry into the disputed custody in the *Conradie v Kruger* case captured a moment in time and space, in the ongoing relationships between the people involved, and the content as presented at that time was arranged into categories which served as guidelines in determining what would be in the best interest of the children. The focus on the past and linear causality precludes the necessity to follow up, as it is assumed that the conflict is resolved. Such a lack of involvement over time allows the professionals involved to believe that an ethical and moral conclusion was reached that would result in a change in relationships. However, the change occurred in the actors and not the play - a play in which the roles assigned to the children were not really made any less difficult.

In order for the experience to have been meaningful for the family, a focus on context and the interface between multiple stories would have been necessary, irrespective of outcome. On another level, when the professionals involved begin to reflect on their own assumptions - their ability for self-reflexivity - they begin to acquire a position that is both ethical and therapeutic and therefore responsible (Cecchin et al., 1992). In moving towards such a position they attempt to "remain free from the co-optive nature of consensual belief, to be willing not to become a true believer in what...[one] is asked to do by the state, or the institution, or even the clinic in which...[one] works" (p.9).

CHAPTER 6

A New Look at Mediation

An ecosystemic epistemology as defined in this study is a way of maintaining the dialectic between aesthetics and pragmatics. In turn, the approach to making custody recommendations is determined by outcome and therefore reflects primarily pragmatic concerns. In simplifying, a pragmatic concern results in a focus on method and, as stated, on outcome. Aesthetics is concerned with higher orders of mental process which requires self-reflexivity and seeks to uncover the patterns that connect these. In an attempt to embrace the dialectic between these concepts, juxtaposed and described throughout this dissertation, I will propose that *mediation*, informed by ecosystemic epistemology as meta-theory, may serve as an appropriate theory or method for addressing the pragmatic concerns of custody disputes. In this sense, mediation could be seen as an intervention directed at the level of system of the family and the professionals involved in a custody dispute.

It has been stated that mediation is named as one of the functions of the family advocate in terms of the Mediation in Certain Divorce Matters Act (24 of 1987) although such mediation is not defined by the Act (Bosman, 1994).

The concept of mediation has however been developed and given content administratively and has been implemented as part of the procedure when an inquiry is conducted by the family advocate. Put in a nutshell, the family advocate aims to settle the matter between the parties with maximum participation of the parties and the children...on terms most favourable to the welfare of the children. (p.7)

This quotation, which forms part of a definition of the role of the family advocate in South Africa, implies an attempt at co-opting family members in reaching a settlement. In

this way the term mediation is therefore given content, and employed as a term denoting a means of conflict resolution that can be contrasted with the adversarial approach. An awareness does, however, exist that this definition does not conform to the adherence to a strict model and theory of mediation. No such model is practised as part of court-connected 'mediation' services.

Through this study it has become apparent that disputed custody, and what is in the best interest of the children, are more complex than deciding who is a most suitable parent. This awareness comes from viewing the process of relationships within a family over time. In the current system of making custody recommendations, no provision is made for follow-up evaluations and interventions, and the context of information used in addressing pragmatic concerns are not included in the definition of the problem. The metaphor of mediation is proposed as a means of addressing both these concerns. Pragmatically, mediation in this sense could therefore involve: (a) the assessment of families as a whole system and the nature of the relationships between all subsystems and how these give rise to the need for legal intervention; (b) the co-evolution (with the family) of acceptable arrangements that minimise conflict and provide structure and predictability for the children, and (c) follow-up sessions over a period of a few months, for purposes of re-assessment and dealing with new issues as or if they arise, which at the end of this process will result in an order made by the court. This process should therefore also include regular contact between professionals involved in which ideas are exchanged and assumptions challenged.

In addition to a growing awareness of court-connected mediation, a number of private initiatives, formalising the use of family mediation, have seen the light. Most noteworthy is the establishment of the South African Association of Mediators in Family Matters (SAAM), as a result of the collaboration between representatives of the disciplines of law, psychology and social work. The most prominent functions of SAAM are the promotion of family mediation, the education of both professionals and the public in this regard, the training of qualified mediators, ongoing research as well as the determination of standards of practice (Hoffmann & Wentzel, 1992).

The models of mediation and the training of mediators proposed by SAAM and other independent authors are considered commendable and thorough efforts in addressing the pragmatic need for alternative dispute resolution of family matters in South Africa. The emphasis of this study, however, does not warrant an analysis thereof, and the reader is referred to Hoffmann's (1992) *Family Mediation in South Africa* for a most concise review of the current thinking in this regard.

From a second-order or meta-perspective with an epistemological concern it follows that when a need such as family mediation is identified, the service that arises from it, is characterised by fragmentation and specialisation, and the need rather than the person or family becomes the focus for intervention (Fruggeri, Telfner, Castellucci, Marzari & Matteini, 1991). The inherent danger in such an approach is that it underscores a "worldview which attributes meanings to behaviours, events and phenomena which are separated from the process of social interaction from which these behaviours, events and phenomena emerge" (p.xviii). The definition of the problem to be addressed, namely family disputes, determines the context and therefore also the system to be treated, namely the family. However, the social structures such as the professionals involved in family mediation are also determined by, as they determine, the system to be treated and "cannot then be thought of as neutral with respect to the way systems are determined by the problem" (p.xix). In recognising such a co-construction, the problem determined system includes the social service or professionals involved (Goolishian & Anderson, 1987). Such a system represents the starting point for a process of actions which is geared to trigger change - "a process which is not limited to the client, but that will involve also the premises of professionals and staff in relation to which clients and services have been constructed" (Fruggeri et al., 1991, p.xix).

Looking at the history of the development of the need for an alternative form of intervention in family disputes again, two phases can be discerned:

1. A growing awareness of the dual nature of family disputes such as custody issues, allowed for the reorganisation of services (creation of the Office of the Family Advocate)

following new divorce legislation (Mediation in Certain Divorce Matters Act 24 of 1987). This allowed for the involvement of other disciplines, in line with the growing awareness to psycho-social aspects of divorce and custody issues, in what was traditionally only a legal domain. Such a development may be seen as a first step in an evolutionary process of making the service of family dispute resolution more connected with the environment which makes for increased complexity.

2. The second phase has seen increased communication between professionals in the form of the multidisciplinary teamwork as it is currently practised. This phase can also be seen as an attempt at integrating different approaches and languages, be it under the rubric of the law or by the creation of a new model (mediation) fed by various disciplines. This second phase is, however, still characterised by (adapted from Fruggeri et al., 1991):

- viewing the professionals as outside the system to be addressed;
- professionals being unaware of their own functioning or institutional demands;
- a total focus on the problem and the techniques with which to intervene;
- the utilisation of dichotomies such as adversary versus mediation, and
- a search for an integrated viewpoint or meta-synthesis.

This phase, characterised by an emphasis on technique, denotes a pragmatic stance.

It is proposed that a third phase is entered, whereby this evolutionary process is taken beyond reductionism, technique and the search for one integrated view, towards greater complexity and the amplification of difference, through the proposed metaphor of mediation. Such an (aesthetic) definition of mediation would be characterised by (adapted from Fruggeri et al., 1991):

- a greater awareness of the different services offered by everyone involved and the relationships between them;
- efforts to create a coherent team working on each case in the form of an evolving and changing meaning system;

- the planning of strategies that may include cooperation with other agencies;
- including oneself as part of the problem system, and
- the acceptance of complementarity or the construction of knowledge through relations, which implies a rejection of a privileged and 'correct' way of observation and explanation.

Mediation defined as such implies that the integration of many perspectives is based on a social construction of knowledge within which each professional involved will attend to an aspect of a whole system resulting in an intervention or recommendation which is more than the sum of all these parts (Fruggeri et al., 1991). Similarly the focus is broadened to include the professionals as part of the system being observed. In this sense it truly becomes - as the title of this dissertation indicates - disputed custody and the people involved: an ecosystemic perspective.

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