

Future-Directed Dispute Resolution

by Samantha Thomas

This is the beginning. We intend to open a new domain of dispute resolution in marriage and divorce. To open this inquiry into a new domain is to sail into a sea that is not merely uncharted (for that could be no more than a simple extension of what we already believe). This is to sail into waters that are unknown – a discontinuous sea where the water may not even look or feel or act like water...

Currently, a divorcing couple is faced with a preposterous process. They have a marriage that is ending and issues that need to be addressed. They meet with the lawyers and other professionals, they argue, dig in their heels and try to hold on to whatever they can. Ultimately, in order to survive, they follow established legal procedures and social processes, and are left with despair, grief, loss – perhaps mixed with relief – dissipation of their assets or whatever else they're left with. If there are children at home, they are often left bearing the strain of both their parents' suffering compounded with their own.

Lawyers are trained to listen to a client's needs, desires, complaints and opinions from an adversarial point of view and an interest in "solving" the immediate problems. The lawyers represent their clients accordingly, and the battle begins. As this drama unfolds, the clients become convinced that their worst fears are not only justified, but are in fact coming true. They believe they need to be protected from their spouses. The spouse is considered to be a threat to his or her self-interested position, competing for property and the affections of their children. Each sees the spouse as his or her adversary, and looks in hope to the lawyer – as a champion – to fight for his or her self-interest. The lawyer also has an egocentric self-interest. Aside from issues of professional reputation – such as being recognized by peers as a "tough litigator" or a "winner" – most lawyers realize that adversarial divorce cases generate more billable hours, higher fees. Once the divorce becomes a contest between self-interested, adversarial professionals representing panicky, self-interested parties, it tends to drift inexorably toward a bitter and acrimonious outcome.

There are limited options. Sometimes one party will be resigned enough to give up the fight and accept whatever the other side offers. The outcome, which is seldom the product of authentic generosity, fails to reduce the bitterness anyway. This system produces a lot of victims, and very little satisfaction. If the statutes relating to divorce had been written in the criminal code, with the intention of punishing people for the "crime" of failing in their marriages, they probably would have been less punitive than the civil process as it is currently applied: cruel and (sadly) not unusual

It does not have to be that way. What if the divorcing couple could create – for themselves – a new future: one in which their absolute love for each other is expressed in honoring their shared commitments? (NB: *Although circumstances may be getting in the way of the experience of their love for each other, and love may not be expressed in any recognizable form, love is nevertheless there. The love that moved them to get married in the first place relentlessly persists.*) For instance, the couple could choose that although they will not be married any longer, they will continue to honor their shared commitment to the success of their children. Their marriage will have to continue in some way past the divorce, as they constitute themselves as their unmitigated stand for their children. This then becomes the context of their being. That is to say that being related (with each other or to others), being divorced, being parents, being apart and all of their ways of being, are shaped and formed, not by their individual preferences nor their self-styled pictures-of-how-it-should-be (PHISBEs), but by whatever is appropriate to the overriding context – in this example, successful children. Everything that they need to decide is inside that context. The property settlement, visitation schedules, living arrangements, custody issues all fall into place when talked through in genuine dialogue (dialogue =

dia- through + *logos* spoken word) and completed in this context. In this context, the failure of their marriage, when acknowledged and responsibly completed, creates the clearing for the ultimate success of their relationship. This allows them the possibility for loving, honoring, cherishing and (yes) obeying¹ each other so long as they both shall live.

In this approach, the lawyer functions, not as a representative or advocate for one side or the other, not as the representative or advocate for the children, nor for any other interest or entity. The lawyer is the representative and advocate for the future. The lawyer-as-advocate assists the couple and their children to create the future into which they will live. The lawyer-as-advocate has no commitment to any particular outcome or to do anything of a legal nature. The couple is allowed to freely create any future that inspires them (including continuing the marriage, even if the marriage no longer looks like a marriage), for when they are inspired, they will make perfect choices. The lawyer's only legal duty in this process is to resolve any legal entanglements that would be in the way of the couple's created and chosen future. The lawyer is available to all parties (husband, wife, children and any other involved persons) equally and without prejudice or bias. This is *their* future. The lawyer may also engage other professionals (mediators, coaches, therapists, financial planners, etc.), as needed, to forward the couple in living into this future.

Creating a future based on the couple's shared commitment to their children is just one example of the possibilities available in a future-directed divorce. Of course, a divorcing couple may create their future around any shared commitment. For instance, they may share a commitment to a business venture or enterprise, a charity, pets, the health and wellbeing of an ailing or disabled loved one. They may even have a shared commitment to never having to think about each other ever again, and when a relationship is complete, it can disappear. Any future, if agreed to and aligned on, is allowable. The chosen future they create needs only to be workable and appropriate, going forward. The future, after all, can be a very long time. The lawyer, as the advocate for the future, must be responsible to guide the parties away from basing their future on resentment or a desire for mutual revenge or any self-involved, self-righteous position, as this would not work for anyone, for very long.

This is not a kinder, gentler or better way to divorce. This is undivorce. Lawyers and other professionals trained in this domain of future-directed divorce and dispute resolution, would have to give up taking sides in these cases. But lawyers (like all other human beings) really want to take sides, so they would have to become very unlawyerly lawyers. Future-directed divorce, then, is a sort of (un)law practiced by (un)divorce (un)lawyers. They will produce (un)decision and (un)settlement, ultimately leading to complete satisfaction and joy.

A future-directed divorce will move fast, at times completing in just a few conversations. It will be simple, as most cases will require only one (un)lawyer. The parties to this (un)divorce won't need individual representation, as there will not be litigation – just Agreed Orders. It will be economical and the value of the marital estate will be conserved. Instead of ending their marriage in bitterness and acrimony, the parties have the opportunity to begin their life apart the same way they began their life together: inspired and enthusiastic about a future of limitless possibilities that lies ahead of them. The world really can work for everyone.

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¹ Obedience is from the Latin, *ob audire*, meaning “listening toward” and indicates respectful listening. See also *The Rules of Marriage*, by Samantha Thomas.